

## BLOGS

State Franchise and Dealer Laws

# Indiana Federal Court Grants Dismissal of Allegations of Fraud, Franchise Act Violations, and Practices Act Violations

A federal court in Indiana has granted a franchisor's motion to dismiss five of the six claims brought against it by a franchisee. *Gre-Ter Enters. v. Mgmt. Recruiters Int'l, Inc.*, 2018 WL 3145572 (S.D. Ind. June 26, 2018). Gray Plant Mooty represents the franchisor in this case. In 1998 and again in 2005, the franchisee, Gre-Ter, entered into franchise agreements with Management Recruiters International ("MRI"), a franchisor of recruiting and contract-staffing businesses. In 2017, Gre-Ter brought suit against MRI, alleging violations of the Indiana Franchise Act and the Indiana Deceptive Franchise Practices Act and breach of contract relating to territory exclusivity, the misuse of advertising funds, and the failure to make accounting records available.

In considering MRI's motion to dismiss, the court concluded that Gre-Ter had not adequately pled that MRI failed to register or disclose its system in violation of Section 3 or Section 9 of the Franchise Act. Gre-Ter's complaint was inadequately supported by facts, the court determined, because MRI never failed to provide disclosure statements to Gre-Ter when Gre-Ter was a prospective franchisee, and Gre-Ter failed to provide support for its assertion that MRI had failed to register its business in Indiana. The court further found that there was no private right of action with regard to these claims. Moreover, Gre-Ter, although alleging fraud, failed to identify any false or misleading statement made by MRI that would support a fraud claim. Accordingly, the court dismissed these claims.

As to the Practices Act allegations, Gre-Ter alleged that MRI's franchise agreements allowed it to make substantial modifications to the agreements without the franchisee's consent. The court found this allegation unfounded because the franchise agreements only allowed for written modifications that were agreed to by the parties. Next, Gre-Ter argued that it was treated in a discriminatory fashion because MRI had failed to adhere to the parties' territorial exclusivity agreement. The court found that this claim was merely a recasting of Gre-Ter's breach of contract claim and that Gre-Ter had failed to allege how it had been treated differently from other franchisees. Similarly, the court found that Gre-Ter had not articulated how MRI's alleged failure to comply with the franchise agreement was unreasonable and therefore more than a simple breach of contract claim. Thus, the court dismissed the Practices Act claims as well.

The court determined that only the breach of contract claim would remain. Specifically, the court found that Gre-Ter had adequately alleged that MRI had

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impermissibly allowed one or more franchisees to operate within Gre-Ter's territory in violation of the franchise agreement. The court made clear, however, that Gre-Ter's breach of contract allegations relating to alleged violations by MRI of its disclosure document (concerning the use of advertising funds and making certain accounting records available) could not proceed, because the disclosure document was not an independent contract or agreement between the parties.