

BLOGS

Employment

Massachusetts Court Limits Plaintiff's Damages in Franchisee Misclassification Case

Earlier this year, *The GPMemorandum* reported on a ruling that sent shock waves through the franchise community when a Massachusetts federal district court judge compared a franchise to a modified Ponzi scheme and ruled in a putative class action case that Coverall, a janitorial services franchisor, had misclassified its franchisees as independent contractors when they were actually employees. *Awuah v. Coverall North America*, 2010 U.S. Dist. LEXIS (D. Mass. March 23, 2010). Following its earlier adverse ruling, the Massachusetts court has provided Coverall with some victories in the case. The court tried the claims of a few of the named plaintiffs as an example and then denied class certification, without prejudice to the possible later certification of a class raising the misclassification claim. Most recently, the court ruled on the damages claims of one of the named plaintiffs, Anthony Graffeo, granting Coverall partial summary judgment on all but two of Graffeo's damages theories, but granting partial summary judgment to Graffeo on the remaining theories. See *Awuah*, 2010 U.S. Dist. LEXIS 101876 (D. Mass. Sept. 28, 2010).

Graffeo sought damages under a Massachusetts independent contractor statute that provides that a misclassified worker is entitled to "damages incurred." Graffeo made the overarching argument that Coverall had violated public policy by creating a system in which employees are charged to work, and he sought "damages incurred" consisting of fees paid to or withheld by Coverall, including franchise fees. Coverall countered that Graffeo could not prove any damages, because he had received at least minimum wage, had not worked overtime or submitted a workers' compensation claim, and had agreed to all of the fees in his franchise agreement.

Noting that it was sympathetic to Graffeo's public policy argument, the court nevertheless rejected it. The court ruled that Graffeo was effectively arguing that, at least in the cleaning industry, a franchise system must be unlawful when, in fact, there was no indication that the Massachusetts legislature disfavored franchises and, to the contrary, state statutes condone such systems. The court then went on to accept most of Coverall's arguments, holding that the court was not aware of any law that prevented Coverall from entering into an agreement with Graffeo to shift certain costs to Graffeo, so long as Coverall paid the statutorily required amounts that are an employer's obligation. The court did rule, however, that Coverall was not entirely free to shift the cost of insurance to Graffeo, because state law required Coverall to provide workers' compensation coverage. Recognizing issues of statutory law determinative to the case's outcome, the court further ruled that, with the parties' agreement, it would certify the dispositive issues to the Massachusetts Supreme Court for that court's review.