

**BLOGS**

Fraud/Misrepresentation

Sixth Circuit Affirms Dismissal of Kentucky Consumer Protection Act Claim

Meanwhile, the Sixth Circuit recently affirmed the dismissal of a prospective franchisee’s consumer fraud claims against a franchisor, holding that the plaintiff failed to state a claim upon which relief could be granted. *859 Boutique Fitness, LLC v. CycleBar Franchising, LLC*, 2017 WL 2731311 (6th Cir. June 26, 2017). The prospective franchisee, 859 Boutique Fitness, and the franchisor, CycleBar Franchising, participated in negotiations for a cycle-studio franchise. During a closing call, CycleBar executives indicated that the terms and conditions of the franchise agreement were agreeable, and Boutique Fitness signed the franchise agreement. CycleBar also informed Boutique Fitness that its executives “had executed the franchise agreement immediately.” Following the call, Boutique Fitness immediately wired \$59,500 in franchise and training fees to CycleBar. Two days later, CycleBar notified Boutique Fitness that it would no longer sell Boutique Fitness a franchise and that it would refund the entirety of the franchise fees. In response, Boutique Fitness brought suit against CycleBar, raising claims for violation of the Kentucky Consumer Protection Act (“KCPA”) and negligent and fraudulent misrepresentation, among others.

The district court held that Boutique Fitness had failed to state a claim under the KCPA because the statute only provides a private right of action to an individual who purchases goods or services primarily for personal, family, or household purposes. On appeal, Boutique Fitness argued that another statute, Section 446.070, provided a cause of action for a violation of the KCPA because it allows “a person injured by the violation of any statute [to] recover from the offender such damages as he sustained by reason of the violation.” The Sixth Circuit rejected that argument, reasoning that Section 446.070 was inapplicable because it only operates in situations where the statute that was allegedly violated provides no remedy for the aggrieved party, and in this case the KCPA prescribed the remedy for its violation. In addition, the court upheld the dismissal of the misrepresentation claims, finding that Boutique Fitness failed to show a nexus between the alleged misrepresentation that the franchise agreement had been executed and any specific injury, as the franchise and training fees paid by Boutique Fitness had already been refunded. Further, because Boutique Fitness pled a claim of misrepresentation that began on the day of the closing call, other amounts expended by Boutique Fitness in furtherance of its contractual relationship with CycleBar could not be considered.

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