

BLOGS

State Franchise and Dealer Laws

Sixth Circuit Affirms District Court's Finding That Sale of Upgraded Equipment Was Grant of Franchise

The United States Court of Appeals for the Sixth Circuit has affirmed a judgment granting rescission of a purported franchise agreement and holding the franchisor and its salesperson jointly and severally liable for damages. *Lofgren v. AirTrona Canada*, 2017 WL 384876 (6th Cir. Jan. 27, 2017). The lower court's judgment was summarized in Issue 202 of *The GPMemorandum*. AirTrona Green Technologies had previously sold an "ozone process" automobile deodorizer business plan and related equipment to the plaintiff, Lofgren. In 2011, AirTrona Canada (the apparent "alter-ego" of AirTrona Green Technologies) sold Lofgren a new plan for a "sanitation process" deodorization business, which provided for training and new equipment for which Lofgren was charged a premium. The business plan also required Lofgren to regularly report to AirTrona Canada. Neither the salesperson nor AirTrona Canada delivered a franchise disclosure document to Lofgren in connection with the sale. When the business failed, Lofgren sued AirTrona Canada and the salesperson on the grounds that the Michigan Franchise Investment Law ("MFIL") makes "an employee of a person [liable under the statute] who materially aids" in a violation of the statute jointly and severally liable for damages. The defendants appealed the district court's judgment in favor of Lofgren, arguing that they did not grant a franchise to Lofgren, the salesperson should not have been found jointly and severally liable, and the court's remedy was improper.

The Sixth Circuit disagreed with the defendants on each point. First, the court found that all three elements of a franchise were present in the 2011 sale given that (1) AirTrona Canada had never previously transacted with Lofgren, the new equipment changed the nature of the services provided by Lofgren's business, and the sales invoice listed "1 Franchise Michigan location"; (2) Lofgren's business relied on procedures "prescribed" by the defendants; and (3) the defendants had no explanation for the purpose of the extra amount charged to Lofgren over the value of the equipment, if it was not a "franchise fee" within the meaning of the MFIL. Second, the court disagreed with the salesperson's contention that he was an independent contractor, which would have shielded him from joint and several liability under the MFIL, since he had held himself out as an employee of AirTrona Canada, had made personal promises to Lofgren, was Lofgren's primary contact, and had full knowledge of the nature of the sale. Lastly, the court found that the lower court's grant of rescission and award of damages was not improper, since those remedies were explicitly allowed by the MFIL regardless of causation. The court found that the defendants had committed more than a mere technical

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violation of the statute in failing to provide a disclosure document to Lofgren and that there was no evidence that Lofgren had acted in bad faith. The court declined, however, to award Lofgren his attorneys' fees for the appeal.