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BLOGS

State Franchise and Dealer Laws

Texas Court Grants Motion to Dismiss Franchisee's WFIL Claims

A franchisor recently prevailed on a motion to dismiss an amended complaint filed by a former franchisee, which alleged the franchisor had violated the Wisconsin Franchise Investment Law during the franchise sales process. *Braatz, LLC v. Red Mango FC, LLC*, 2015 U.S. Dist. LEXIS 54885 (N.D. Tex. Apr. 27, 2015). On November 4, 2011, Red Mango provided Braatz with its current FDD, which included a form franchise agreement. On December 28, 2011, Red Mango provided Braatz with an official franchise agreement to sign, which was executed and returned by Braatz with a check on January 5, 2012. At the same time, Braatz completed a mandatory franchisee questionnaire, indicating that Red Mango had provided financial projections that were not provided in the FDD. Upon receipt of the questionnaire, Red Mango resent a blank questionnaire and asked Braatz to modify its response, which it did. Braatz eventually closed its franchise due to financial hardship, and then filed for rescission of the franchise agreement on the basis that Red Mango failed to provide an additional 14 days before submitting the revised questionnaire, which constituted a material violation of the franchise law. Red Mango filed a motion to dismiss.

The court sided with Red Mango, finding that Braatz's actions upon receipt of the second questionnaire demonstrated the immateriality of the alleged violation. The court noted that Braatz promptly submitted the new questionnaire, with answers revised to conform to the acknowledgments or representations in the franchise agreement, confirming that Braatz had not relied on any representations made by Red Mango concerning actual or potential revenues, expenses, or profits. Also, promptly following the submission of the revised questionnaire, Braatz provided Red Mango with another check to cover the remainder of the development fee owed. The court found that Red Mango's request that Braatz revise its answers in the questionnaire was necessary to ensure consistency with the representation to which Braatz had already agreed. Because the request did not present any new requirements for franchise ownership, the court found that the failure to provide an additional 14 days to complete the questionnaire could not be considered a material violation of the franchise law. The court granted the motion to dismiss but gave Braatz leave to file and serve a second amended complaint.

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