

**BLOGS**

State Franchise and Dealer Laws

Washington State Supreme Court Provides Guidance as to What “Fair And Reasonable Price” Means Under The Franchise Investment Protection Act

The Washington Supreme Court has answered two certified questions from a federal district court regarding the meaning of the phrase “fair and reasonable price” under Washington’s Franchise Investment Protection Act (“FIPA”). *Money Mailer, LLC v. Brewer*, 2019 WL 4508353 (Wash. Sept. 19, 2019). FIPA prohibits franchisors from selling to a franchisee any product or service “for more than a fair and reasonable price.” A federal district court certified two questions regarding that prohibition: (1) whether a franchisee may rely on the price at which the franchisor is able to obtain the product or service in the absence of evidence indicating that the price was not a true market price; and (2) whether a franchisor violates the prohibition as a matter of law when it charges the franchisee twice what it pays for a product or service.

Based on the plain meaning of the statutory language and its legislative history, the court held that what is a “fair and reasonable price,” is a question of fact that should take into account the following factors: (a) the price at which the franchisor acquired the products or services; (b) statements about profit margin made by the franchisor; (c) the franchisor’s charges to other franchisees for the same or similar products or services; (d) what other similarly situated franchisors charge similarly situated franchisees for the same or similar products or services; (e) business and industry practices; (f) the price the franchisor pays for the products or services; (g) the price at which the franchisee could obtain the same or equivalent products or services elsewhere, including in an arm’s-length deal on the open market; (h) the value that the franchisor adds to the product or service; and (i) any other unspecified market forces at issue in any given case. The court noted that this list of factors was not exhaustive, exclusive, or mandatory and “not every factor need be referenced or used.” Given these factors, the court held that (1) a fair and reasonable price is not inherently established by the price at which the franchisor obtains the product or service; and (2) a franchisor does not violate FIPA as a matter of law by selling a product or service for twice the price at which the franchisor obtained it.

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