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Oral Statements Fail to Convert Trial Franchises to Regular, but Improper Notice Leads to Award of Lost Profits and Lost Future Business Value

Jimico Enterprises, Inc. v. Lehigh Gas Corporation, 1:07-CV-0578 (GTS/DRH), 2010 U.S. Dist. LEXIS 75763 (N.D.N.Y July 27, 2010); 2010 U.S. Dist. LEXIS 109394 (N.D.N.Y. Oct. 14, 2010)

In May 2006, there was a dispute involving Sunoco, Lehigh, and the New York Thruway Authority as to which company was going to become the new franchisor for the 13 stations on the Thruway that were no longer going to be ExxonMobil. Lehigh had been awarded the stations, but Sunoco filed a challenge. Because of the uncertainty, Lehigh offered the dealers agreements that were clearly marked "PMPA TRIAL FRANCHISE AGREEMENTS." The plaintiff dealers made numerous equitable arguments. They alleged that representatives of Lehigh told them that they intended to keep the dealers for "as long as Lehigh [itself] had a contract with the Thruway." Lehigh also sent the plaintiffs a letter, inviting them to a meeting at which they would be offered "Temporary Agreements" that would be "closely related" to the long-term agreements Lehigh had at the time with ExxonMobil to supply gasoline. At the meeting, Lehigh presented slides, one of which referred to partnering with the dealers "for long term, mutually beneficial success." At the meeting, the plaintiffs were required to sign the Franchise Agreements, which were entitled "PMPA TRIAL FRANCHISE AGREEMENTS" and provided for a four-month term.

Less than two months into the franchise relationship, one of Jimico's two stations was having financial difficulty, and Lehigh believed Jimico agreed to a mutual termination. Lehigh arranged for a new dealer to begin operating the station immediately (its contract with the Thruway required that all stations always be open). When the Lehigh representative arrived for the changeover, Jimico refused to sign the mutual, but nevertheless left the station. As a result, the only formal notice Lehigh provided was oral notice shortly before the termination. With respect to the other Jimico station and the Brownson station, Lehigh informed them that it was terminating their Trial Franchise Agreements, but did not provide proper written notice. Jimico and Brownson sued, claiming that assurances by Lehigh's representatives that the franchise agreements would be extended converted them into regular agreements that were subject to the full termination procedures of PMPA § 2802. Plaintiffs also claimed that they were not given proper notice under PMPA § 2804.

The District Court for the Northern District of New York granted Lehigh's motion for summary judgment on the grounds that the agreements were valid Trial Franchise Agreements under the PMPA, thus permitting Lehigh to terminate the relationships when it did. The Court found that the franchises satisfied the four requirements for a trial franchise: (1) they were entered into after June 19, 1978, (2) the franchisees had not previously been a party to a franchise with the franchisor, (3) the initial term was for less than one year, and (4) the agreements were in writing, stated clearly and conspicuously that they were trial franchises, and specified their duration, the fact that they might not be renewed, and that the provisions of PMPA § 2802 were inapplicable. The court rejected the plaintiffs' argument that oral statements by Lehigh's employees had converted the franchises to non-trial franchises, finding that an oral promise by a company official could not "vitiate the express terms of the agreement" which clearly and unambiguously provided that they were TFAs.

The Court also held, however, that Lehigh had failed to provide the notice required by PMPA § 2804, which requires that notice of the termination of "any franchise" be in writing, posted by certified mail or personally delivered, explain the reasons for termination, and ordinarily be sent 90 days prior to the date of termination. Following a hearing on damages, the Court awarded plaintiffs compensatory damages consisting of lost income during the required 90-day notice period. In the most surprising part of the opinion, the Court also awarded the plaintiffs damages for lost profits from the sales of their trial franchises even though it found the plaintiffs' damages calculations to be seriously flawed and acknowledged that the dealers

had failed to provide evidence that any "terminated trial franchise with 90 days or less remaining on the term of its lease" had even been sold.

The plaintiffs argued that the lost profits from the sales of the Trial Franchises amounted to $721,678, based on a "standard" three-fold calculation of the franchises' yearly EBITA (earnings before interest and taxes). The Court found that there were "three significant obstacles" to the potential sales -- the plaintiffs had to find willing purchasers, persuade the purchasers to accept full value for the stations, and obtain Lehigh's approval for the sales. Rather than rejecting damages altogether as unduly speculative in light of these formidable hurdles, the Court instead reduced the plaintiffs' damages figure by 50% for each of the three "obstacles," awarding 12 ½% of the total amount claimed and made awards ranging from $21,268 to $37,901 per station. The Court also awarded punitive damages of $30,000 (because Lehigh failed to provide a valid explanation for the lack of written, timely notice) and attorneys' fees.

Our Comment: The decision is a reminder of the importance of having good documents and the danger of oral and written statements by employees that a franchisee may use to argue that the written agreements were modified. In this instance, the written agreements prevailed. The decision also highlights the necessity of compliance with the notice requirements under all circumstances; even if the dealer says it will sign a mutual termination, the franchisor should make sure it is signed ahead of the termination date. The damages award is troubling, particularly the lost future profits, which were based on a hypothetical sale of the trial franchises. This award is inconsistent with other cases and logic, and hopefully is unlikely to be followed by other courts.

Disclosure: Our firm represented Lehigh through the summary judgment portion of the case, but has not been involved in the subsequent proceedings.

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