Jury Nails Boroian in South Beach Trial on All Counts, Including Fraud

Posted Sun, 2009/10/11 - 20:34 by **Janet Sparks**

Don Boroian, president of Francorp, testifies in January about buying franchises from new franchisor creation Palm Tree Computers. source/**YouTube**

MIAMI – On Friday, October 9, just prior to midnight, a Miami jury reached a verdict in favor of five South Beach master franchisees on all nine counts against Donald Boroian and his **Francorp** development firm. The claims included fraud, conspiracy, unfair and deceptive practices, negligent misrepresentation, and violations of state laws. Robert Einhorn, Zarco Einhorn Salkowski & Brito, representing the franchisees said it was a total victory. “We are gratified that the jury held Donald Boroian and Francorp responsible for their deceptive and fraudulent business practices in this case.”

But the verdict could extend beyond those findings. Einhorn asserts that the jury’s decision sends a clear message to Francorp and other franchise “packaging houses” that they will be held accountable for the preparation of false and misleading franchise documents for their clients, and that these franchising consultants cannot engage in the unauthorized practice of law. Although the unauthorized practice of law issue wasn’t a separate claim in the case, he said it was evidence that supported the negligence and the unfair and deceptive trade practices act claims. He added, “So, there’s no official finding on it but it could be assumed that the jury concluded that by entering its verdict on everything claim.”

In summarizing the litigation, Einhorn previously stated, "Don Boroian and his company completely stepped out of the role of being a franchise consultant to become his client's partner, her joint venturer and her legal counsel. They actively participated in a scheme to defraud my clients." South Beach’s principal, Carol (Meyers) Brothers, brought the concept to Francorp to develop its franchising program. Boroian first met Brothers in 1978, when she brought her first concept, Pop-In-Maid Service, to him, a company she later took into bankruptcy.

Franchisor South Beach, a promoter and seller of health and lifestyle products, granted the exclusive rights to sell franchises in geographic areas to master franchisees. The lawsuit alleges that Boroian and Brothers induced people to buy into the system based on misrepresentations they gave about the company and its owner's checkered background.

Carol Brothers, originally named as a defendant but dropped after filing for personal bankruptcy, testified at last week's trial for Boroian. While his own defense was basically that Brothers was the one at fault in the South Beach lawsuit, Brother's testimony conflicted with his theory of defense. Einhorn said she admitted on the stand that she perjured herself and lied to the bankruptcy court. He said that is a serious offense. And she admitted to forging two letters, which Boroian had accused her of doing.

Read jury verdict

Following a mediation session two weeks prior to trial, Boroian refused to offer anything to settle the case. After getting the jury verdict he vowed to appeal the decision. But Einhorn asserted, "Even if he takes an appeal that doesn't stop us from going in and collecting the judgment. We'll aggressively pursue all avenues including pursuing Francorp clients who owe money to the firm." Einhorn explained that he knows Boroian has a large book of receivables, so that is something they would go after if necessary.

Einhorn feels Boroian's biggest downfall was not Brothers' incredulous testimony. He feels it was the fact that Boroian has not stayed away from Brothers, even though his defense theory was that she was the cause of the litigation. Einhorn said that evidence shows she continues to work in his "representative program," which pays a percentage to representatives who bring in client leads to Francorp.

In the jury verdict, the five South Beach master franchisees were awarded all of the damages they were seeking, plus entitlement to attorney fees. Einhorn explained the reason why there are random damages awards for each plaintiff under each claim is because the judge instructed the jury that the total damages award could not exceed the amounts claimed by plaintiffs. "They [plaintiffs] sought and received the total sum of approximately $365,000, which was divided and spread across the various plaintiffs and claims by the jury in accordance with the Court's limiting instruction, said Einhorn. "Because the Plaintiffs prevailed on three different statutory claims, the plaintiffs will also be entitled to recover their attorneys' fees, which will add several thousands of dollars to the damages award."

One franchisee involved in the litigation said, "We are all relieved that after a four-year battle we were finally heard." She said it had been a grueling week in trial with Francorp, but fortunately the judge in the case was extremely diligent in his efforts to try cases and close them.

--

Related Articles:

- **Practicing law alleged (*Franchise Times* Magazine: September, 2008)**
- ***South Beach* case moves forward (*Franchise Times* Magazine: June ...**
- **Francorp Attorneys Walk Out over Illegal Practice of Law**
- **Francorp Trial Nears, IRS Closes in on Boroian**
- **As Employees Jump Ship, Francorp Brings Out Big Gun**
- **Carol Myers, aka Brothers, Selling New Concept**
- **IRS Demands Near-$1 Million Payment from Francorp's Boroian**
- **Boroian Speaks Out on IRS Woes, Moving Forward**
- **Franchisees Accuse Francorp of Unauthorized Practice of Law in Partnering with Client**
- **Boroian Free at Last**