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## South Beach Franchisees Seek Legal Fees from Francorp, Boroian

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MIAMI – After winning their case, five South Beach franchisees are now asking a Miami circuit court to set an amount to be paid by Donald Boroian and his firm Francorp as fair compensation for their attorney fees and costs. The November 3 verdict confirmed that the franchisees prevailed on every count on which the jury was asked to deliberate, including fraud in inducement and concealment, negligent misrepresentation and omissions, and violations of state laws. And according to the motion filed by Robert Zarco, Robert Einhorn and Brian Roller of Zarco Einhorn Salkowski & Brito on December 1, their franchisee clients were awarded “every penny they requested.”



As background, Boroian and his firm had devised a scheme to defraud franchisee investors when setting up a franchise program for client Carol (Meyers) Brothers, who he had a relationship with dating back to 1978. Francorp was accused of acting as Brothers’ business advisor and legal counsel, to assist her in inducing people to buy franchises in her fraudulent South Beach Franchising program.

When the five franchisees plaintiffs discovered they had been duped into purchasing a bogus franchise system, they filed their lawsuit. As the Zarco attorneys dug deep into the convoluted program they found that Francorp and Brothers had built the franchise on lies and deception around the renowned brand name of “South Beach,” which Brothers had no legal rights to.

But how does the court and franchisees’ attorneys figure out how much they should fairly receive in fees?

In determining the legal fees his firm is entitled to by law, Zarco prefaces his argument with Boroian’s own testimony. He declared at trial that he spent approximately \$500,000.00 in attorneys’ fees defending himself and his Francorp firm in the case.

Zarco’s motion states that a reasonable fee award is determined under the “federal lodestar approach” adopted by the Supreme Court of Florida. “The “lodestar” [meaning the guiding factor] approach required a two step analysis. The first is calculating the time expended in performing the services, multiplied by a reasonable hourly rate. The second is determining whether the lodestar should be enhanced or reduced through consideration of certain issues, which he spells out in his motion.

One such factor is that franchisee plaintiffs had to “unearth” the fraudulent scheme of the Francorp co-conspiring defendants, which required the investigation of more than 10,000 documents, depositions and interviews with more than ten witnesses. They also underwent significant efforts to investigate the whereabouts of Brothers’ “fabricated attorney,” implemented in the scheme, in order to confirm that he in fact did not exist.

According to their motion, Zarco lawyers also expended significant time and effort to investigate Francorp's method of conducting business. Such issues included the engagement in the unauthorized practice of law and the application of laws of the courts of both Florida and Illinois. Francorp defendants thwarted the franchisees plaintiffs' efforts to gather necessary discovery by asserting "attorney-client" privilege, and used other tactics to stall the litigation, which ultimately lasted four years.

The amount of legal fees is in excess of \$360,000, which Zarco states is commensurate with the recovery and the uniqueness of the legal issues in the case. While it began as a partial-contingent matter, the fee arrangement was converted to a complete contingency agreement early in the litigation. After the franchisees made an initial, nominal payment, the Zarco attorneys had no assurance of any payment at all. They also assumed the risk of collecting any final judgment that might be procured.

Zarco states, "In view of these considerations, this factor supports an enhancement of the fee by a multiplier of 2.5 to 3.0."

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