

Zee Association Lawsuit Survives Motion to Dismiss

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On July 19, 2011, the United States District Court, District of Connecticut, Warren W. Eginton, Senior District Judge ruled that EA Independent Franchisee Association, LLC ("plaintiff") could proceed with its lawsuit against Edible Arrangements International, Inc. ("EA"), and certain affiliates thereof (collectively, "defendants").

The plaintiff in this case represents more than 170 franchisees of EA and its complaint alleges that:

1. EA violated federal regulations by failing to disclose its relationships with its affiliates while requiring its franchisees to do business with them;
2. that there were undisclosed fees associated with franchisees' mandatory use of an online ordering system provided by an affiliate of EA and computer software provided by another affiliate of EA.;
3. that EA improperly imposed new rules requiring longer franchise hours of operation and the purchase of supplies from only certain vendors;
4. that franchisees paid for national advertising, but EA used the money for the benefit of itself and an affiliate which operates a website selling products similar to those of EA; and that EA unfairly allows only selected franchisees to fill orders for Dipped Fruit. Plaintiff seeks a declaratory judgment that EA breached the franchise agreements, violated the implied covenant of good faith and fair dealing, and violated the Connecticut Unfair Trade Practices Act (CUTPA).

Defendants moved to dismiss the complaint for lack of standing. In declining to dismiss the complaint the District Court noted that an association, such as plaintiff in this case, has standing to sue if: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Bldg. & Constr. Trades Council of Buffalo, N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 144 (2d Cir.2006).

Defendants focused on the third prong of these standards and asserted that plaintiff's members would be required to participate in the lawsuit, thereby depriving plaintiff of standing. Defendants also pointed out that the EA franchise agreement requires arbitration of disputes, and argued that franchisees should not be allowed to evade that requirement by forming an association for the purpose of bringing litigation. However, the court noted that defendants themselves explained that plaintiff "has no right or obligation to arbitrate ... on behalf of its members." The court held that the arbitration provision of the individual members' franchise agreements did not require the Court to conclude that plaintiff lacks standing.

Defendants argued that as to the fees for the online ordering system and computer software, "there are at least three significantly different versions of the franchise agreement at issue and at least as many different versions of [disclosure documents]." However, the court found that the existence of three different versions of the relevant writings does not establish the need for individual participation. Defendants acknowledged that the versions all provide for a fee, and the propriety of such fees is the focus of plaintiff's complaint. The Court held that it could consider each of the versions and their corresponding fees without receiving individual guidance from plaintiff's members.

Defendants also argued that plaintiff's members may have had different experiences with the new rules requiring longer franchise hours of operation and the purchase of supplies from only certain vendors. Defendants pointed out that the complaint alleges that EA has sanctioned some franchisees who do not comply with the new rules and that EA unfairly selects only certain franchisees to fill orders for Dipped Fruit. Defendants, therefore, contended that these claims would require the individual testimony of plaintiff's members. The Court disagreed because defendants' arguments address the damages that plaintiff's members may have sustained, and the plaintiff is seeking only declaratory relief. The District Court held: "The complaint puts at issue the propriety of defendants' rules and actions, not the degree to which individual franchisees may have been hurt by having to keep their franchises open longer hours, having to purchase supplies from approved vendors, and not being able to fill orders for Dipped Fruit. "[W]here the organization seeks a purely legal ruling without requesting that the federal court award individualized relief to its members, the [associational standing] test may be satisfied." *Bldg. & Constr. Trades Council*, 448 F.3d at 150."

Plaintiff asserted that it will be able to prove its allegations by using only experts and defendants' documents. The District Court held that the Court would afford plaintiff the opportunity to do so, and that it may reconsider plaintiff's ability to maintain standing if circumstances warrant as the case proceeds.

In August 2011, EA filed a motion for reconsideration of the District Court's denial of its motion to dismiss for lack of standing. EA argued that the court had overlooked "extensive authority" that "uniformly holds that associations cannot pursue claims on behalf of their members when members have agreed to mandatory arbitration of those claims. The District Court disagreed, finding EA had relied "primarily on federal district court decisions involving motions to compel arbitration, not motions to dismiss for lack of standing." On September 21, 2011, the District Court denied EA's motion for reconsideration.

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