Franchise Times®

High Stakes

Coverall decision could impact more than cleaning franchises

By Julie Bennett
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The Massachusetts Supreme Judicial Court (SJC) has raised the stakes in the long battle between immigrant and minority workers and the country's major commercial cleaning franchises. On August 31, six of the high court's seven justices ruled companies found guilty of misusing the franchise model to "sell low-paying jobs" in Massachusetts will be required to pay back all the franchise fees, royalties and insurance premiums they had collected from their misclassified employees.

The ruling is another twist to a series of lawsuits filed on behalf of Massachusetts commercial cleaning franchisees by Shannon Liss-Riordan of Lichten & Liss-Riordan of Boston. Although the case before the Massachusetts high court involved only Anthony Graffeo, a franchisee from Coverall Health-Based Cleaning System of Boca Raton, Florida, the decision may carry over to similar lawsuits Liss-Riordan has filed against five other cleaning franchisors in Massachusetts and could influence the outcomes of franchisee lawsuits in other states—and cost franchisors millions of dollars.

Liss-Riordan called the SJC ruling "the final word" in her battle with Coverall, and said it was "a vindication of worker rights we have been working toward for a long time." She added, "If Coverall is smart, they will come and resolve these issues with us now."

But Coverall Vice President and General Counsel Jacqueline Vlaming said her company has no plans to concede. "This case is not over," Vlaming said. "We are trying to figure out what the ruling means, but we think it doesn't mean a whole lot. We still have the prospect of appealing the earlier decision by a district court judge that our franchisees are employees."

The struggle began in 2004 when Liss-Riordan walked into an immigrant rights center near Boston and began to hear variations of the same story. A foreign-born worker had been talked into buying his own business, by paying a franchise fee to a commercial cleaning company, then paying thousands more dollars for a book of business.

The franchisor negotiated all contracts with customers, collected all invoices, deducted royalties, management fees, insurance premiums and monthly installments for loans they had offered him, then paid him what was left. Many of these franchisees said they were earning about $4 an hour. And once they got comfortable on a job, the franchisor terminated them, and sold the contract to another franchisee, Liss-Riordan says.

By 2006 Liss-Riordan had organized their complaints into lawsuits and in March 2010, U.S. District Court Judge William Young ruled that Coverall had misclassified 10 franchisees as independent contractors when, under Massachusetts law, they met the criteria of being employees.

Since dealing with franchises was new territory for Judge Young, he asked the Supreme Judicial Court four questions about how the misclassified franchisees had been paid by Coverall and how they should be compensated. Could Coverall not pay franchisees for work completed, for example, if their customers failed to pay their bills? Could Coverall shift expenses to their franchisees that employers must legally pay themselves, such as workers' compensation and other insurance coverage?

The justices added a question themselves: If franchisees are ruled employees, must the franchisor rebate all their franchise fees and royalties?

The court decided all questions in favor of the franchisees, raising the ante on future litigation. A cleaning franchise that loses a misclassified worker lawsuit in Massachusetts will be liable to pay each mislabeled franchisee thousands of dollars. Damages in cases filed after 2008 may even be tripled. "The cost of being wrong is very high," said Gregg Rubenstein, of the Boston office of Nixon Peabody and one of the attorneys representing Jani-King of Addison, Texas, in similar lawsuits.

SJC decision polarizing franchise community

John Holland, an attorney with Dady & Gardner, a Minneapolis law firm that represents franchisees, said, "These cases have become a major topic at franchise bar association forums. I don't think the decision will be a major game-changer; franchisors will still exert overwhelming control over franchisee operations. But in the Coverall system in Massachusetts, the franchisor will no longer be able to externalize costs typically borne by an employer."

Alisa Harrison, vice president of communications and marketing for the International Franchise Association, which had filed an amicus brief on behalf of Coverall, said the IFA will continue to oppose the earlier decision that franchisees, under some circumstances, are really employees. But Toronto-based attorney Michael Webster, chair of the International Association of Franchisees and Dealers, questions why the IFA is defending commercial cleaning franchisors in the first place. "The IFA should have given the court an overall picture of franchising and not sided with companies that seem to be taking all the advantages of being a franchisor while avoiding the disadvantages of being an employer," he said, citing payment of payroll taxes and covering workers' insurance costs.

Liss-Riordan, too, makes a distinction between what she calls "legitimate" franchises, like McDonald's and Dunkin' Donuts, and the commercial cleaners. She said she will continue to pursue other issues of the Coverall case still pending from Judge Young's 2010 decision, (such as whether her plaintiff pool can be certified for class-action status), in addition to lawsuits against Jani-King, Jan Pro Franchising International, System4 Commercial Cleaning, CleanNet USA and All Pro Cleaning. Lawsuits against Jani-King are also pending in California and Pennsylvania.

Case goes on

Technically, the Coverall case cannot be settled until all the other issues before Judge Young are resolved, Rubenstein said. "If someone slips and falls at your business, you can settle with her and continue doing things the same way. But if Coverall paid today's plaintiffs, the courts could still find there's something fundamentally wrong with the way they conduct business and they would be wrong about other franchisees tomorrow." He added, "Of course, I don't think they are wrong."

Courts are putting the squeeze on companies that misclassify franchisees.

In the meantime, Coverall has stopped selling franchises in Massachusetts and is treating its 250 franchisees there like employees, covering their insurance costs and paying them regular salaries.

Vlaming said Coverall's local business had suffered "a little bit of a fallout" after publicity from the 2010 and recent Supreme Judicial Court decisions. "We are still selling franchises in other states," she said.

However, it's business as usual for the other five commercial cleaning franchise systems in Massachusetts. But a master franchisee from one of the other systems, who asked not to be named "because it would put a target on my back," said, "We are treading on eggshells. We hear that Shannon (Liss-Riordan) is backed by organizations with deep pockets and she's going to keep digging until she destroys us all."