

Immigrants cry foul over cleaning franchises

Company maintains practices aboveboard

By Diane E. Lewis and Stephen Kurkjian, Globe Staff | June 20, 2005

After Edinei Machado journeyed from Brazil to the United States three years ago for a better life, starting a business of his own seemed a plausible goal.

So, when Machado, 29, of Malden, heard about a company that franchises commercial cleaning businesses around the world, he saw it as a chance to improve his circumstances. In July 2003, he and his wife, Rachel, 27, emptied their bank account and sank \$12,200 into a franchise offered by Coverall of Boston, a unit of Coverall North America Inc., a private firm headquartered in Florida.

Within months, the Machados' relationship with Coverall began unraveling.

Now, the Machados are among many immigrants across the country who bought cleaning franchises thinking their lives would improve, only to find that they are paying for the right to work harder and longer hours, according to Boston lawyer Shannon Liss-Riordan, who represents a dozen Brazilians in Greater Boston who purchased franchises from Coverall.

"The claim is that this is an investment opportunity, but what really happens is the pay these people receive is actually coming out of their own pockets," said Liss-Riordan. "It is bad enough to work in jobs that pay less than minimum wage, but it is worse when you pay money to work in a job and still get meager wages."

Coverall denies that the company is mistreating its franchisees and it defends its practices as legal and aboveboard.

"We promote economic growth and independence for a culturally diverse group of prospective business owners through franchise ownership opportunities," said Jacqueline W. Vlaming, vice president/general counsel for Coverall North America.

Liss-Riordan, who in May began negotiating with Coverall on behalf of her clients, said she had hoped to recover damages for the financial harm she claims they suffered because of alleged misrepresentations that Coverall supervisors made to them. Liss-Riordan wanted her clients to be regarded as Coverall employees rather than independent contractors and, as such, deserving of various employee benefits, including minimum wage, overtime pay, workers' compensation insurance, and unemployment insurance.

Established in 1985, Coverall has revenues of \$200 million a year. The company sells cleaning franchises to individuals for \$6,000 to \$32,000 each. In return, it promises to provide its franchisees between \$600 and \$10,000 per month in cleaning contracts for a minimum of one year.

Operating out of an office in Stoneham, Coverall of Boston has 242 franchisees who are responsible for cleaning 1,150 buildings.

Like the Machados, many of those who purchased Coverall franchises are immigrants. With only a rudimentary command of English, Liss-Riordan said, her clients from Brazil were

more vulnerable in their dealings with Coverall because the 24-page franchise agreement, filled with legalistic and complicated provisions, was written in English.

Edinei Machado and several other Brazilians interviewed with the help of a translator said that, without a contract in Portuguese, they were left to depend on the assertions of Coverall's regional supervisors to understand key elements of the contract.

Many of those verbal assertions, dealing with how long it would take to complete cleaning work at individual sites and how each franchisee could make extra money by performing special services, turned out to be wrong, they said. For example:

Machado said he was told that in addition to the standard fee he would make doing basic cleaning, he would be paid for special services such as waxing floors and washing windows. But when he began working at the two buildings, he learned that the special services were part of his basic cleaning work and he would not be paid extra for them.

Additionally, in interviews with Globe reporters, Machado provided documents showing that Coverall stopped paying him for work done at his biggest account -- \$2,063 per month -- late last year because of poor service. However, Machado presented a letter from the building's proprietor showing he had a "respectable record" of performance and should be retained as the site's cleaner.

Valdecir Goncalves, 36, of Lawrence said a supervisor told him that it would take 20 to 24 hours per week to clean two dialysis centers in Amesbury and North Andover. He alleges that it took more than twice as much time to clean the buildings. He said when he objected, he was told his supervisor would negotiate with the buildings' owner for a pay increase. But the increase never came, Goncalves said.

Frustrated by the 12-hour days he had to work to earn the \$2,000 per month his franchise was supposed to provide, Goncalves abandoned his Coverall agreement in March. He said he paid \$11,500 for the franchise in December 2003.

Sandra Lisboa, 39, of Everett contends that she did not receive the expected amount of work from Coverall after she agreed, in 2002, to pay more than \$13,000 for a franchise that was supposed to help her earn \$2,000 per month. She maintains that for most of the first year, she received two buildings to clean -- in Jamaica Plain and West Roxbury. Cleaning those two buildings garnered just \$310 per month.

Lisboa protested and said she was given two additional buildings in Somerville to clean. They paid an additional \$910 per month. She also received a doctor's office that paid \$135 per month. But nearly three years after she signed her Coverall contract, she says she has never received the full \$2,000 per month she was promised.

Vlaming said Coverall should not be blamed because it offered Lisboa several other buildings to clean, including one 7 miles from her home, but she rejected them, claiming they were too far away. Lisboa says she turned down sites because they involved too much work and not enough money. Today, Lisboa paints houses seven days a week, traveling to jobs as far away as Fall River in order to pay her bills.

Vlaming denied that Coverall's regional supervisors misrepresented the work and made promises to persuade individuals to sign up with the company. She says the Brazilian franchisees had ample time to consider the contract because Coverall gives applicants as many as 10 days following their initial meeting with a regional supervisor to sign the agreement. Vlaming also said they had enough time to have the contract translated into Portuguese.

"No doubt many of these same people purchased homes with a loan from some source and they signed multiple pages of documents in English," Vlaming said. "Are the disgruntled franchise owners that you interviewed suggesting that we should discriminate against prospects on their basis of their language skills and deny them the right to buy a franchise business because their command of English is not perfect?"

Immigrants in Massachusetts are not alone in complaining about their dealings with Coverall. In California, a group of immigrants and low-wage workers settled a claim against the company in 2003. They alleged that Coverall failed to meet any of the promises it made to them.

Virginia Keeny, a Pasadena, Calif., lawyer who represented the plaintiffs, said some of the workers were recruited by Coverall employees; others saw notices in local newspapers about franchising opportunities. In every case, she said, the workers were presented with detailed legal contracts in English rather than in their native languages. Many of the plaintiffs were immigrants from El Salvador, Africa, Armenia, India, Mexico, or the West Indies.

"We believe that there are hundreds of individuals in southern California who have been impacted by these practices," said Keeny. "We alleged that certain companies, like Coverall, have been preying on people by selling franchise agreements that are punitive in their terms and that Coverall does not have the ability to fill."

Keeny said Coverall representatives yanked jobs from her clients, claiming that they had not serviced customers properly when, in fact, there was not enough work to go around.

Coverall has been cited in the past for failing to inform potential customers about the full consequences of the contracts they were signing. In 1994, Coverall signed a consent decree with the US Federal Trade Commission to resolve a complaint that it failed to provide documentation to substantiate the claim to customers that they would make a certain amount yearly if they purchased a franchise. While not admitting any wrongdoing, Coverall paid a \$100,000 fine to the FTC to settle the claim.

Vlaming said that under Coverall's current owners, who bought it in 1998, regional supervisors are not allowed to make any claims to prospective franchisees that are not spelled out in the company's standard contract.

Steven Toporoff, franchise program coordinator for the FTC, said federal law does not mandate that such contracts be in a foreign applicant's language. "But the question raises a much broader issue -- whether giving someone who does not speak English documents to sign that are not in their language is a deceptive business practice," he said. "That is an open question. There is concern among some franchisees that they might be getting documents that they don't understand."

While the federal government maintains standards under which companies can offer franchises, Massachusetts relies on the consumer protection law and the independent contractor law to safeguard the interests of those who invest in such a business. Under the consumer protection law, a company cannot use deceptive practices such as misrepresenting the benefits of doing business with it or it can be liable to pay its customer three times the amount of money that the customer lost.

In addition, Massachusetts' independent contractor law, signed by Governor Mitt Romney last September following complaints from trade unions, could provide protection to future franchisees. By hiring tradesmen as independent contractors rather than as employees, some companies save money by avoiding employee benefits such as mandated minimum wages,

workers' compensation, unemployment insurance, or health insurance.

But the new law requires that a three-part test be met before an individual can be considered an independent contractor.

The first part of that test mandates that the person be free of the control and direction of the employer. Liss-Riordan contends that her clients had little independence because they could only clean buildings provided by the company, and Coverall negotiated any changes in their contracts with the building owners. They also had to use Coverall products and their billing and bookkeeping were done by the firm.

Still, Coverall maintains that it does not exercise enough control over franchisees to have them qualify as employees. It points to an IRS opinion issued in February that classified Rhina Alvarenga, a Latina franchisee, as an independent contractor.

However, the Massachusetts Division of Unemployment Assistance ordered the company to pay Alvarenga jobless benefits, finding that she was an employee because the company exercised extensive control over her work. Coverall has appealed.

The office of Attorney General Thomas F. Reilly is responsible for enforcing this state's consumer protection and independent contractor laws. Sarah Nathan, a spokeswoman for Reilly's office, declined to say whether it had received complaints concerning Coverall or is reviewing the company's practices.

However, Liss-Riordan said she would not be surprised if no complaints have been filed with Reilly's office or other prosecutors. The cleaning industry, both commercial and industrial, is dominated by immigrants, and they are often reluctant to seek government help.

"Many immigrants are unfamiliar with the courts and our legal system," Liss-Riordan said. "Also, many may not have [immigration] documentation and that would make them more nervous about vindicating their rights, even though the law in this country is clear that if you have worked, you are entitled to be paid appropriately for it."

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