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No sure thing

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Point Pleasant resident Michael T. Troncone thought he was buying a little piece of nostalgia when he decided to invest and open a Horn & Hardart Bakery Cafe in Atlantic Highlands.

He remembered the old Horn & Hardart's Automat, a self-serve style restaurant, and its famous rice pudding. "It was an American icon," Troncone said.

The original restaurant chain is long gone, but Horn & Hardart Systems LLC., of Bala Cynwynd, Pa., which has licensed the name, is selling franchises and trying to recreate that lore.

Now, more than a year after he opened, Troncone and two other franchisees are suing Horn & Hardart Systems, accusing the company and its representatives of fraud, making false promises and misrepresenting their stores' financial prospects.

Last year, Troncone's shop, now called Horn & Hardart Coffee Co., lost $196,000, and he may go out of business.

"My big beef is not that I lost money in business," said Troncone, 44. "My big beef is that I lost money to fraud and a lack of an attempt by anyone to carry out the promises they made."

People often look to franchises as a way to open a business quickly using another company's proven system and marketing plan. Why try to start your own hamburger joint when you can open up a McDonald's or a Burger King?

But franchises still fail. And in some cases, such as Troncone's Horn & Hardart franchise, the failure can lead to lawsuits and accusations between the franchisor and franchisee.

Terry Hill, a spokesman for the International Franchise Association, said people turn to franchising during economic downturns. "When the economy drops off or gets into the doldrums, people start to look around for alternatives to the 9-to-5 job they are afraid they are going to lose."

But it's important to note that not every franchise is a winner.

"One of the biggest myths of franchises is that all franchises are automatically McDonald's," said Robert L. Purvin, chairman of the American Association of Franchisees and Dealers, a San Diego, Calif.-based franchisee advocacy group.

So if you're going to get involved in franchising, Purvin suggests you "practice safe franchising." Get involved with franchises that have strong owners' associations that have some leverage with the franchise company, he said.

Red Bank lawyer Gerald A. Marks, whose practice includes franchise law, said people should follow their heads and not their hearts. "Keep your feet on the ground and don't look to the next Colonel Sanders."

It's important to know what you are getting into to avoid pitfalls. It's due diligence work you do yourself and is not something left to accountants or lawyers, Marks said.

"Do you want to spend $200,000 plus on the basis of what someone who is in sales is going to tell you?" Marks asks.

First, look at the failure rate of the industry you are thinking about going into, Marks said. "Food services traditionally have a very high mortality rate."

You can find out information by talking to existing franchisees, Marks said.

Look at the franchisor's disclosure statement, which the company is required by law to give you 10 days before you sign any agreement. It will tell you, among other things, who has sued them or if they have terminated any franchisees.

"Call those people. Find out why they left," Marks said.

How many hours a week will you have to work to make the money you desire? Generally, franchisors won't make any income projections, he said. So the only way to really find out is to speak to other franchisees about their sales.

When things go wrong, it can result in debts and lawsuits. Back in 2000, Troncone, a full-time hospital administrator, thought it was time to make an investment. That's when he learned about Horn & Hardart.

Horn & Hardart was originally founded in Philadelphia in 1888. The company introduced the Automat in 1902, a system using coin-operated vending machines where people could select their food. It eventually became a chain with more than 180 locations in Pennsylvania, New York and New Jersey before going bankrupt.

Horn & Hardart Systems tried to revive the chain in 1999 by franchising coffee shops using the blue-chip name. The company's lawyer said it has 13 locations.

Troncone signed a franchise agreement in 2001, paying a $57,500 fee for a territory that covered Monmouth County. He also took out a U.S. Small Business Administration loan for $247,000. He had the rights to open five stores, plus one in Grant Central Station in New York City, when it became available, he said. He opened his first -- and only shop -- in March 2002.

Although the company was not trying to revive the Automat, Troncone said he expected to open a store with that old-time Horn & Hardart feel, featuring many of the company's old recipes such as its unique coffee blend, creamed spinach, baked beans and chicken pot pies.

He was told his store would become profitable in three months and operate at a 35 percent profit margin, the lawsuit states. But the cost of his food supplies turned out to be 75 percent of sales, he said.

Troncone and the other franchisees basically opened "generic coffee shops," states Troncone's lawsuit, which was filed in Freehold. Promised menu items were never supplied.

"We were promised high quality (items) that would give us a brand identity, that would allow us to compete with the Starbucks and the Dunkin Donuts," Troncone said.

Troncone said he was told his shop in Atlantic Highlands would pull in $600 to $800 a day. In his first few months of business, sales were about $300 a day, and subsequently dropped to about $200 a day, he said.

Customers started going elsewhere for lunch because of the limited menu selection, Troncone said.

Horn & Hardart also failed to deliver on promised training programs, the lawsuit states.

The company also changed its stores' name in 2001 to Horn & Hardart Coffee Co. without telling franchisees, the lawsuit said.

Prior to buying a franchise, Troncone said he asked to see the company's strategic plans and marketing plans, but said he was told he would have to wait until he signed up. He still has not seen them, he said.

Horn & Hardart has filed a lawsuit to force Troncone and the other franchisees to resolve their disputes through arbitration as required in the franchise agreement.

The owners received what they were promised according to their franchise agreements, said Jeff Zucker, a Philadelphia lawyer representing Horn & Hardart. They received a license to use the name, a business system and the company's knowledge, he said, adding the company tried to help them.

"If these people would have listened and would have followed procedures they would be better off than they are now," Zucker said. "We have a litigious society where people fail and look for others to blame."

He also criticized owners who try to operate their stores from out-of-state. Troncone's full-time job is working for Calvary Hospital in the Bronx as an administrator. "You have to give a business attention and respect and make it part of your life," Zucker said.

Troncone said he monitors his store using cameras and the Internet, drops by the business on his way to and from work, does the bookkeeping and works there on weekends. He also has a store manager, and his fiance works there.

"I didn't buy a coffee shop because I wanted to pour coffee for people," he said. "I bought a system and an investment."

Troncone is not the only franchisee seeking restitution.

In 1998, Middletown resident Nancy Casey gave her husband, Brian, money from a $35,000 inheritance to become a dealer for Snap-on Tools, a franchise where tools are sold to mechanics and other businesses out of a truck.

Now Casey owes Snap-on more than $220,000 and Marks is preparing a class-action lawsuit on behalf of dealers and another lawsuit representing dealers' wives.

Casey said Snap-on managers encouraged him to buy more tools -- which he would try to sell to his customers -- extending his credit even though his limit was only supposed to be $15,000.

"I was always told don't worry about your bill. You are on track to sell half a million dollars in tools this year," said Casey, who was terminated as a franchisee last year because of the big bill.

In a statement, Snap-On spokesman Richard Secor said the business is growing and respected. "While a very small number of individuals may not be successful as franchisees, we believe that the vast majority of our dealers are pleased with the franchise proposition," he said.