

New Jersey Law Journal

Judge Won't Bite on Dismissal Motion in Snack Food Class Action

Michael Booth 08/30/2017



A federal judge in New Jersey has declined to dismiss a putative class action against the Snyder-Lance snack food company alleging that it wrongfully terminated independent distributors' franchise rights.

In an order dated Aug. 25, U.S. District Judge Madeline Cox Arleo, sitting in Newark, declined to dismiss the lawsuit, *Scheuer v. S-L Distribution*.

The lead plaintiff is Jonathan Scheuer, who had been a distributor of Snyder snacks from October 2008 to November 2012, when, after the merger that created Snyder-Lance, the agreement was suddenly ended, according to the order.

Scheuer sued S-L Distribution, a subsidiary of Snyder-Lance, which makes Lance and Cape Cod snacks, and Archway and Stella D'oro cookies, as well as pretzels.

Scheuer alleges in the lawsuit that the abrupt termination of his distribution agreement was a violation of the New Jersey Franchise Practices Act.

In its motion to dismiss, S-L Distribution said there could be no violation of the act since Scheuer did not have a fixed "place of business," as required by the act.

Arleo, however, said Scheuer operated out of a warehouse in Rockaway and that, since he was a wholesale distributor rather than a retail distributor, that warehouse qualified as a place of business under the act.

Arleo also disagreed with S-L Distribution's claim that Scheuer's lawsuit should be dismissed because he failed to abide by the agreement's one-year statute of limitations. An original lawsuit was [filed by another plaintiff, Joseph McPeak](#), in January 2012, but was dismissed in January 2016, Arleo said.

Scheuer, who had been a member of that putative class action, filed his timely lawsuit in November 2016, she said.

Lastly, S-L Distribution said Scheuer's lawsuit should be removed to a federal court in Pennsylvania, in accordance with a forum-selection clause in the agreement. Again, Arleo disagreed with the company.

"Forum selection clauses are presumptively invalid in an agreement subject to the NJFPA," the judge said.

Scheuer's attorney, Justin Klein, issued a brief statement regarding the ruling.

"We are pleased with the decision. We look forward to proceeding to class certification and vindicating the rights of all of the franchisees that were wrongfully terminated in violation of the New Jersey Franchise Practices Act," said Klein, of Marks & Klein in Red Bank.

S-L Distribution's attorney, Keith Smith of the Philadelphia office of Eckert Seamans Cherin & Mellott, was not immediately available for comment.

The lawsuit claims the company terminated the franchises of at least 100 distributors without compensating them for the value of their distributorships, in violation of the act.