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BLOG

Successfully Fighting Plaintiffs’ RICO Claims Alleging an Illegal Pyramid Scheme

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A recent Memorandum Opinion and Order from the Northern District of Texas in *Ranieri v. AdvoCare* illustrates the challenges plaintiffs may face in alleging a RICO claim against a direct selling or multi-level marketing (MLM) company. In that Order, the Court dismissed the plaintiffs’ RICO claim against AdvoCare for failure to state a claim based on the argument in AdvoCare’s motion to dismiss—filed by Winston attorneys on behalf of AdvoCare—that the plaintiffs had failed to properly plead a RICO “enterprise.”

For background, in recent years, direct sellers or MLMs have been under increasing attack through class actions filed by former distributors represented by class action plaintiff attorneys. Most of these class actions have similar allegations, including that the direct selling company at issue is a pyramid scheme. Not all jurisdictions have a cause of action that directly addresses an alleged pyramid scheme, so class action plaintiffs have attempted, for example, to bring the pyramid scheme allegations through a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO). But RICO claims are complicated and include specific proof, which is often lacking or difficult to obtain.

RICO makes it unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of such enterprise’s affairs through a pattern of racketeering activity. An “associate-in-fact” enterprise, which was pled by the plaintiffs here, requires (1) a common purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit associates to pursue the enterprise’s purpose. AdvoCare challenged that the alleged enterprise, which consisted of all distributors in AdvoCare, did not include members with a common purpose.

As the Court explained in its Order, the facts pled by the plaintiffs showed that the alleged members of the enterprise were at “cross-purposes.” This is because the plaintiffs alleged that certain high-level distributors (which the complaint called Scheme Beneficiaries) were seeking to profit at the expense of the vast majority of the other distributors in AdvoCare. The Court explained, therefore, that the “lower-level distributors could not have shared a common purpose with higher-level distributors.” As such, the Court rejected the plaintiffs’ RICO claim and stated that “it defies logic to argue that new and lower-level Distributors have interests in common with the Scheme Beneficiaries and other higher-level Distributors.”

This Order illustrates the tension that plaintiffs face when pleading a RICO claim based on pyramid scheme allegations. To plead a pyramid scheme, plaintiffs must inherently make allegations that certain higher-level distributors or associates in the organization are seeking to profit off of lower-level distributors. But such allegations are at odds with an enterprise containing members with a “common purpose,” and therefore, such RICO claims should be challenged in order to require the plaintiffs to plead a different enterprise—which the plaintiffs may not have sufficient facts to plead.

The motion filed by AdvoCare illustrates how to use such tension to successfully challenge a plaintiffs’ pleadings at the 12(b)(6) stage. The case at issue is *Ranieri v. AdvoCare Int’l*, Civ. No. 3:17-CV-0691-S, in the United States District Court for the Northern District of Texas.

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