

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-197

STATE OF MAINE,)
)
 Plaintiff,)
)
 v.)
)
 BOBBY J. MILLER, GIROUX)
 DEVELOPING, INC., and HEATHER)
 MILLER,)
)
 Defendants.)

COMPLAINT

INTRODUCTION

1. The State of Maine brings this action against Bobby J. Miller, Giroux Developing, Inc. (“Giroux”), and Heather Miller for violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A - 214 (2002) (“the UTPA”) and the Regulations of the Sale of Business Opportunities, 32 M.R.S.A. §§ 4691 - 4700-B (1999 and Supp. 2003) (“the Business Opportunities Act”) in that Bobby J. Miller and Giroux have offered for sale, sold, and promoted business opportunities in Maine without complying with the Business Opportunities Act. Furthermore, the corporate veil of Giroux should be pierced to impose liability on Bobby J. Miller and Heather Miller, as owners of Giroux, for Giroux’s conduct.

JURISDICTION

2. This Court has jurisdiction pursuant to 5 M.R.S.A. § 209 (2002) and 32 M.R.S.A. § 4700 (1999).

PARTIES

3. Plaintiff State of Maine (“the State”) is a sovereign state. The State brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209, 32 M.R.S.A. § 4700 (1991), and the powers vested in him by 5 M.R.S.A. § 191 (2002) and the common law as the State’s chief law enforcement officer.

4. Defendants Bobby J. Miller and Heather Miller are adult individuals residing at [REDACTED], and are husband and wife.

5. Defendant Giroux is a Maine corporation with a principal place of business located at [REDACTED]. At all times relevant hereto, Bobby J. Miller and Heather Miller have been the sole owners of Giroux and officers and agents of Giroux.

6. Bobby J. Miller and Heather Miller abused the privilege of a separate corporate identity for Giroux in that they, among other things, thinly capitalized Giroux, entered into the transaction discussed below at a time when Giroux was insolvent, siphoned away Giroux’s assets, used Giroux for transactions of the owners, and used Giroux to promote fraud as discussed below.

7. Bobby J. Miller has sought bankruptcy protection and claims that Giroux has insufficient assets to provide any monetary relief. Permitting Defendants to avoid any financial consequences by recognizing a separate corporate existence for Giroux would be an unjust and inequitable result.

STATUTORY BACKGROUND

The Business Opportunities Act

8. The Business Opportunities Act regulates persons who offer, sell, advertise, or promote business opportunities in the State of Maine. 32 M.R.S.A. §§ 4691 - 4700-B.

9. The Business Opportunities Act prohibits any person from offering to sell, selling, advertising, or promoting a business opportunity in the State of Maine without first registering with the Securities Administrator. 32 M.R.S.A. §§ 4696, 4699 (1999). To register, a business opportunity seller must pay a filing fee and file a detailed disclosure statement meeting statutory requirements. 32 M.R.S.A. § 4696 (1999). The Business Opportunities Act further requires sellers of business opportunities to provide a copy of the detailed disclosure statement to each purchaser. 32 M.R.S.A. § 4692 (1999).

10. In addition to requiring registration and disclosure, the Business Opportunities Act prohibits sellers from making misrepresentations in connection with an offer or sale of a business opportunity. 32 M.R.S.A. § 4699 (1999).

11. A violation of the Business Opportunities Act constitutes a violation of the UTPA. 32 M.R.S.A. § 4700(1).

12. The Attorney General has authority to bring an action seeking to restrain violations of the Business Opportunities Act and to require the return of money obtained from purchasers through means that violate the Business Opportunities Act. 5 M.R.S.A. § 209; 32 M.R.S.A. § 4700(3).

13. In such an action, the Court may issue temporary and permanent injunctive relief and “such other orders or judgments as may be necessary” to restore

investors to the position they occupied prior to investing in the business opportunity. 5
M.R.S.A. § 209.

COUNT I
(Violation of the UTPA)

14. The State repeats and realleges paragraphs 1 through 13 as if set forth fully herein.

15. In or about January and February of 2004, Bobby J. Miller and Giroux offered for sale in Maine a business opportunity, as that term is defined in the Business Opportunities Act. Bobby J. Miller and Giroux referred to their business opportunity as a “franchise agreement,” under which the purchaser would market Giroux’s home construction services and receive commissions.

16. In or about February of 2004, Bobby J. Miller and Giroux sold their business opportunity to two Maine purchasers, [REDACTED] (“the [REDACTED]”), for \$30,000 -- an initial “franchise fee” of \$10,000 and a promissory note for \$20,000.

17. Bobby J. Miller and Giroux did not provide (and have not provided) the [REDACTED] or other potential purchasers with the disclosure statement required by the Business Opportunities Act.

18. Bobby J. Miller and Giroux are not (and have never been) registered with the Securities Administrator to sell business opportunities in the State of Maine.

19. In order to demonstrate his commitment to the business and thus induce the [REDACTED] into purchasing the business opportunity, Bobby J. Miller orally represented to the [REDACTED] in late January of 2004 that he had sold his trucking business and invested the proceeds, approximately \$1,000,000, in Giroux.

20. As part of the business opportunity sale, Bobby J. Miller (on behalf Giroux) and the [REDACTED] signed a written agreement drafted in relevant part by Miller (or by Miller's representative and adopted by Miller). Among other things, the agreement provided that:

a. The [REDACTED] were granted an exclusive territory to market homes built by Giroux;

b. The [REDACTED] would receive commissions based on the number of Giroux homes they sold;

c. Giroux had established a reputation for high quality, which was important to the value of the Giroux franchise;

d. Giroux was in the process of registering the trade name "Best-Built Homes" with State and federal authorities and would register it as a trademark with the Principal Register of the United States Patent Office;

e. Giroux would defend and indemnify the [REDACTED] from any liability related to Giroux's failure to perform its duties, including its home construction duties.

21. These statements impliedly represented that Bobby J. Miller intended to have Giroux meet its obligations under the agreement with the [REDACTED].

22. The representations set forth in paragraphs 19 through 21 above were false when made. Bobby J. Miller made the representations knowing that they were false or recklessly disregarding whether they were true or false. Bobby J. Miller made the representations intending to deceive the [REDACTED], and the [REDACTED] justifiably relied upon the representations to their detriment in purchasing the franchise.

23. Bobby J. Miller offered other potential customers franchise agreements including the same provisions as in the [REDACTED]’ agreement.

24. Bobby J. Miller failed to disclose the following material facts to the [REDACTED] and the other potential franchise customers:

a. Giroux had not taken any steps to register any trade names or trade marks;

b. Giroux had received and had failed to resolve at least two complaints for shoddy workmanship in houses it had constructed; and

c. Giroux had developed and would launch in a matter of days a radio advertising campaign that included the intentional misrepresentation that Giroux “constructs approximately 100 new houses a year,” when Giroux had only constructed a fraction of that number of homes in its entire history and did not have the capability to construct more than a few houses a year.

25. Had Bobby J. Miller disclosed the facts set forth in paragraph 24, above, the [REDACTED] justifiably would have refrained from purchasing the business opportunity.

26. On or about March 4, 2004, after being contacted by the Maine Office of Securities about his unlawful business opportunity activities, Bobby J. Miller admitted to the [REDACTED] that he and Giroux had violated the Business Opportunities Act and offered them rescission. On March 9, 2004, the [REDACTED] accepted the rescission offer. However, despite demand, Bobby J. Miller and Giroux have failed to return the \$10,000 paid by the [REDACTED]

27. By offering for sale and selling a business opportunity in Maine without prior registration with the Securities Administrator, by failing to provide all purchasers

with the disclosure statement required by 32 M.R.S.A. § 4692, and by making misrepresentations in connection with an offer or sale of a business opportunity, Bobby J. Miller and Giroux have violated the Business Opportunities Act and thus the UTPA.

28. Bobby J. Miller and Heather Miller capitalized Giroux with only approximately \$5,000. At the time of the [REDACTED] transaction, Giroux had insufficient assets to meet its obligations. Giroux's financial situation was caused at least in part by the Millers systematically draining the assets of the corporation by paying Heather Miller a salary in excess of \$90,000 for little or no work and by constructing a mansion for the Millers at far below the fair market price for such a project.

29. Because Bobby J. Miller and Heather Miller abused the privilege of a separate corporate identity for Giroux and because recognizing a separate corporate existence for Giroux would lead to an unjust and inequitable result, Giroux's corporate veil should be pierced and the Millers should be liable for Giroux's conduct.

REQUEST FOR RELIEF

WHEREFORE, the State requests that this Honorable Court grant the following relief:

1. An injunction prohibiting Defendants from engaging in any conduct relating to the offer for sale, sale, advertisement, or promotion of business opportunities in the State of Maine without having a prior, currently effective, registration on file with the Securities Administrator and without otherwise complying with the Business Opportunities Act;

2. An order requiring Defendants to account for all monies received by any of them as a result of the offer for sale, sale, advertisement, or promotion of business opportunities in the State of Maine;

3. An order requiring Defendants to return all monies received by any of them as a result of the unlawful offer for sale, sale, advertisement, or promotion of business opportunities in the State of Maine, plus interest; and

4. An order requiring Defendants to pay the State its costs of investigation and suit;

5. An order piercing the corporate veil of Giroux to hold Bobby J. Miller and Heather Miller liable for Giroux's conduct; and

5. Such other and further relief as this Court deems appropriate.

DATED: August 9, 2005

Respectfully submitted,

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