

Jackson Hewitt Fraud Case Breaks New Ground in Franchise Law

By Robert L. Parks, Esq.

A Sarasota jury's recent verdict holding Jackson Hewitt Inc. responsible for failing to oversee the acts of its local franchisee sets a new precedent in agency law. It is also a significant legal victory for more than 100 victims of a fraudulent investment scheme, who otherwise had little hope of recovery for their losses.

In the precedent-setting case, Sarasota attorney Robert E. Turffs, assisted by Orlando attorney James Burgess, Gabrielle D'Alemberte, a trial attorney with our firm, and I, represented Sarasota dentist Frank Kaman and his wife Ellen. The Kamans lost a total of \$575,000 in a series of investments that were promoted by the franchisee from the Jackson Hewitt Tax Service stores in Sarasota. This was the first of more than 100 similar cases filed in Sarasota County by the Turffs team on behalf of clients who collectively lost between \$14 and \$15 million.

The case revolved around the actions of the Jackson Hewitt franchisee, Dan Prewett, who had a criminal history dating back to the 1980s. He had been arrested and convicted of insurance fraud and served time in prison in New York. In the late 1990s, when Prewett applied and became a manager of 15 Sarasota Jackson Hewitt Tax Stores, Jackson Hewitt Inc. had not conducted any investigation as to his fitness or his character.

Operating from those Jackson Hewitt Tax Stores, Prewett soon launched a fraudulent investment scheme. He created a second corporation with a similar name – Jackson Hewitt Investment Services (later changed to J.H. Investment Services) – as an investment group selling securities, real estate, insurance, 401(k) plans and other seemingly solid, long-term investments.

Operating from the tax service storefronts, Prewett then used his position to induce Jackson Hewitt clients to invest their funds with him. Prewett wore a Jackson Hewitt shirt and told investors that Jackson Hewitt was behind his investment operation. As the Kamans testified, investors believed these investments were endorsed by Jackson Hewitt Inc. the publicly traded company based in Parsippany, NJ.

When the case came to trial earlier this year, Mary Cort, one of the investors, testified that she warned Jackson Hewitt's corporate headquarters about Prewett's fraud back in 2002. She spoke with a corporate representative and explained Prewett's solicitation for investments. She later faxed details of the various investment opportunities to the Jackson Hewitt corporate headquarters, where they were given to the company's president and general counsel. However, no one at the corporate office followed up on her information. This was a key factor in the jury's decision in favor of the plaintiffs.

After Cort told Prewett of her conversation with the company's corporate headquarters, Prewett responded to her in writing, explaining that there was a difference between the "southern and northern tier of Jackson Hewitt" (neither of which exists). Cort then contacted the Jackson Hewitt

corporate office with this information. The company's president and general counsel testified that this information had been passed along to them. But once again, the company took no action regarding the franchisee. In fact, Jackson Hewitt's corporate office continued to ignore the situation, although its compliance department had been clearly informed that there was customer confusion and that individuals were making investments based on their reliance of the Jackson Hewitt brand.

After running this fraudulent investment scheme for many years, Prewett was arrested in October 2006 for unrelated illegal conduct. Jackson Hewitt Inc. immediately learned of the arrest and the allegations against Prewett, including money laundering. But the company took no action to stop Prewett's investment operation from continuing out

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of Jackson Hewitt Tax Service locations in Sarasota. During the trial, a series of additional investors told the jury that Prewett continued to operate in the same manner for five months after his arrest, and that additional investors were lured into the scheme. In fact, Prewett continued his operations until he fled the country in late February 2007.

After assessing the merits of the case, the plaintiffs' attorneys filed suit against Jackson Hewitt Inc. on behalf of the Kamans, along with separate filings for additional investors. Dr. Kaman was a dentist in the Midwest who moved to Sarasota with his wife to ease into retirement. They lost their life savings in Prewett's scheme.

On Feb. 10, 2010, an all-female Sarasota jury returned a verdict against Jackson Hewitt Inc. for the full amount of



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damages sought in the case, the value of the Kamans' investments. The jurors also held the national tax preparation company liable for the conduct of its franchisee.

Prior to this case, franchise law has been well settled that the corporate franchisor cannot be held responsible for the actions of its franchisees. The difference in this matter was the unique set of facts, which suggested that Jackson Hewitt Inc. should have conducted some type of oversight and investigation prior to allowing the franchisee to open stores under its brand in Sarasota and continued to monitor during the franchisee's ongoing operations.

This case is precedent setting in that the jury found that apparent agency of the investment services groups did, indeed, exist with Jackson Hewitt, Inc. The agency finding was important for two reasons. First, Prewett was held to be responsible under agency law, even though he was not an officer of the franchisee, and had a "front person" managing the offices. Second, it is usually the franchisor, not the con artist, who has "deep pockets" in a Ponzi scheme or other investment fraud case.

Now, the plaintiff's legal team is seeking to recover pre-judgment interest, post-judgment interest and court costs. Pre-judgment interest was granted in this matter because there was evidence that Jackson Hewitt Inc. had knowledge of the investment scheme and the brand confusion since 2002 when Cort contacted corporate headquarters. That notice served to assist the Kamans' claim because their investments were all made after that date. With the pre-judgment interest, the final verdict on their behalf was \$839,232, which accrues at 6 percent interest as of mid April.

Since Jackson Hewitt Inc. is a publicly traded company, all financial decisions, including settlements, must be brought to the board of directors. Considering the trial court's findings, the remaining investors could potentially all be awarded pre-judgment interest similar to the Kamans', which would nearly double the \$15 million total of their losses. On April 14, Jackson Hewitt Inc. filed a notice of appeal, but has not yet filed a brief.

The next step for the plaintiff's attorneys is to request that the court consolidate the remaining 120 cases and allow the legal team to conduct a liability-only trial. Thereafter, damages and causation would be tried separately — a strategy that is similar to the way tobacco cases were heard in Florida. It is important for victims like the Kamans to recover their losses as quickly and efficiently as possible. ♦