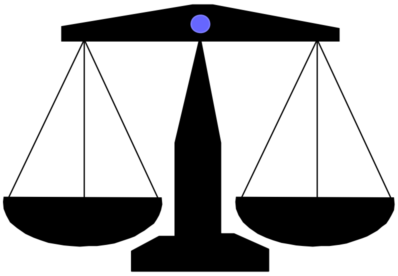

General Counsel Corner

By Peter H. Gunst, Esquire

PMPA News From Miami

Two decisions entered two days apart in December of last year by the federal district court in Miami interpret the Petroleum Marketing Practices Act as protecting independent dealers from overreaching and arbitrary supplier conduct. They are worthy of note.

In *Amoco Oil Co. v.* Gomez, 2000 WL 1872690 (S.D. Fla. 2000), Ms. Gomez had purchased an existing service station business in Miami, and had entered into a franchise lease agreement with Amoco.

According to Ms. Gomez, Amoco failed to advise her that the station premises suffered from significant environmental deficiencies. In fact, as the court found, "the record establishe[d] that Amoco knew that environmental problems (such as soil contamination by leaking gasoline and vapor recovery problems) had existed on the site" for eight years prior to Ms. Gomez's purchase of the station business.

Less than a month after Ms. Gomez began operating the station, local environmental officials advised her of the problem. Amoco then acknowledged that the station would have to be closed in order to install a vapor recovery system.

Amoco's "repairs" only compounded Ms. Gomez's problems. When they were completed and the station was reopened, the pumps would pump gas slowly or stop pumping altogether. This, not surprisingly, angered her customers and caused her to lose business and money.

Despite her repeated complaints to Amoco the pumps were never fixed, and Ms. Gomez was forced to close the station after two years of operation.

In the interim, Amoco had persuaded Ms. Gomez that if she agreed to terminate her franchise agreement and enter into a consignment arrangement, it would fix the problems at her station and not increase her rent.

Although Amoco failed to satisfy its repair obligation, it sued Ms. Gomez for breach of contract for closing down and abandoning the station.

When Ms. Gomez defended Amoco's lawsuit by contending that she was justified in closing down the station because of Amoco's failure to satisfy its repair obligations, the refiner advanced an argument that only a lawyer could love.

Amoco emphasized that when Ms. Gomez converted to commission operation, she signed two separate agreements — a commission lease agreement and a commission marketer agreement. Only the lease agreement, said Amoco, contained an obligation that Amoco maintain the pumps.

Amoco stressed that it was suing not under the lease agreement, but under the marketing agreement that contained the operations obligation. Hence, according to Amoco, its breach of its repair obligation under the lease agreement did not provide any defense to Ms. Gomez under the parties' supposedly independent marketing agreement.

The court was neither convinced nor amused. Its December 19, 2000 opinion concluded that both agreements had to be read as "a single contract." Indeed, Amoco itself had written the contracts so that each would automatically terminate upon the termination, non-renewal or expiration of the other.

In addition, Ms. Gomez argued that Amoco had violated the PMPA by not giving her ninety days to consider the conversion of her original, independent franchise relationship to a commission marketer relationship. Amoco responded that she was not entitled to PMPA protection because the statute does not extend to commission relationships.

Again, the court agreed with Ms. Gomez and disagreed with Amoco. It held that, although commission agreements normally do not enjoy PMPA protection, Amoco was required to provide Ms. Gomez the ninety-day period mandated by §2804 of the PMPA before terminating the parties' preexisting franchise relationship.

Hazara Enterprises, Inc. v. Motiva Enterprises, LLC, 2000 WL 1911398 (S.D. Fla. 2000), decided two days later on December 21, 2000, also rejected an excessively legalistic rationale advanced by the refiner to justify its purported termination of a PMPA franchise.

Hazara Enterprises subleased a station from Shell, which had exercised its final option extending the term of its underlying lease through calendar year 2004.

Shortly after Motiva advised Hazara Enterprises of its intent to extend the dealer's sublease, Shell utilized the termination provision in its underlying lease to terminate that agreement on 180 days notice, effective November 30, 1999. Motiva then advised Hazara Enterprises that it was terminating the sublease because of Shell's impending loss of the underlying lease.

Hazara Enterprises was left with no alternative other than to negotiate a new lease with the landowner at a substantially higher rent, and to obtain a new supplier. It then sued Motiva and Shell for damages under the PMPA.

In its suit, Hazara Enterprises pointed to the 1994 amendment to the PMPA found in §2802(c)(4)(B), which requires a terminating franchisor to offer to assign to the franchisee "any option to extend the underlying lease. . . ." it argued that Shell's mid-term cancellation during the final option period was in clear violation of the PMPA amendment, which was intended to protect the dealer's rights throughout all option periods.

Again advancing an argument that only a lawyer could love, Motiva and Shell argued that they had not withheld from the franchisee any "option to extend the underlying lease" because Shell had already exercised its final option, which it then decided to terminate in mid-term.

Rejecting that argument outright, the court said:

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> To interpret [the PMPA provision] in the restricted fashion urged by the defendants would permit the franchisor to arbitrarily forfeit its remaining interest in an existing leasehold without offering to assign this benefit to its franchisee upon the termination of their relationship where the underlying lease had a fixed future expiration date with no additional extension options, while it would be required to offer to assign its interest in continuing the underlying lease where it did hold an option to further extend the lease past its scheduled expiration date. The Court will not adopt an interpretation of the Act which would foster such arbitrary conduct on the part of the franchisor and the economic waste it is apt to engender.

These Miami decisions are significant because they reject efforts by refiners to avoid their obligations under the PMPA and under their own franchise agreements, through resort to hypertechnical arguments. In both decisions, the court rightly considered the true import of the parties' relationship and the full extent of the PMPA's intended protection. Both decisions are to be applauded.

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