



Welcome to the Firm



Eric Sigman joins Laredo & Smith, focusing on business law, with a concentration on franchise law, corporate formation, capitalization,

succession planning, commercial leasing, and mergers and acquisitions.

Chapter 93A Claims Against Corporate “Outsiders” Who Aid-and-Abet Insiders

Massachusetts businesses and their owners are by now familiar with the rule that General Laws chapter 93A, a statute that bars unfair competition and unfair or deceptive acts or practices and provides for the possibility of double or triple damages plus attorneys’ fees, is inapplicable to intra-corporate and employment disputes. But could a claim under chapter 93A be brought against an outsider who aids and abets an insider’s breach of fiduciary duties? The Appeals Court recently addressed that question in *Beninati v. Borghi*, 90 Mass. App. Ct. 556 (Oct. 24, 2016).

In *Beninati*, one of several owners of a chain of fitness clubs was alleged to have colluded with an outside consultant to access proprietary and confidential information from the original clubs to open a series of competitor health clubs. These competitive acts allegedly were carried out without the knowledge of the remaining, disinterested owners of the original clubs. Moreover, the consultant allegedly actively encouraged the corporate insider to negotiate and execute a series of agreements that gave the competitor the exclusive right to use

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Marc Laredo spoke to an undergraduate class on Entrepreneurship at Northeastern University in a program entitled, “Why Every Business Needs

a Lawyer: What Your Lawyer Can Do For You.”



Jose Sierra was a panelist for the Hispanic Bar Association’s program, “Compliance Officers in a New Era: Navigating Increased Risk, Enforcement and Personal Liability.”



Mark Smith was a panelist for the Boston Bar Association’s program, “Public Corruption and Government Prosecutions.”



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the original clubs' trademark in New England, superseding any other licensing agreements. One of the disinterested owners brought suit on behalf of herself and derivatively on behalf of the original clubs against the disloyal shareholder and the outside consultant on theories of breach of fiduciary duties and violation of chapter 93A. Following a bench trial, the trial court found in the disinterested owner's favor on the claims of breach of fiduciary duty, but held that the consultant could not be liable for unfair competition under chapter 93A because the consultant's misconduct only involved aiding and abetting the corporate insider in the breach of his fiduciary duties.

“The fact that chapter 93A claims could not be brought against the corporate insider did not bar the chapter 93A claims against the consultant, who was neither a corporate insider nor a corporate employee.”

The Appeals Court reversed. The court first reaffirmed that the statute does not apply to intra-corporate disputes. Next, the court reasoned that, while chapter 93A was not intended to cover employment disputes, the consultant was never an employee. The fact that chapter 93A claims could not be brought against the corporate insider did not bar the chapter 93A claims against the consultant, who was neither a corporate insider nor a corporate employee.

Thus, while a corporate insider cannot be liable under chapter 93A for breaches of fiduciary duty, an outsider who aids and abets the insider's breach can be liable under the statute and face the possibility of being liable for multiple damages and attorneys' fees.

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