

DAILY REPORT

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Moe's Founder Seeks \$1.8M in Attorney Fees From Franchisees

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MOE'S SOUTHWEST GRILL founder Martin Sprock III spent eight years in federal court fighting fraud and racketeering allegations. Now that a federal judge has found no evidence to back up those claims, Sprock and the companies that were his co-defendants are asking the restaurant franchisees who sued them to reimburse them for more than \$1.8 million in attorney fees.

But the legal battle between Sprock, Moe's—known for the 'Welcome to Moe's' chorus with which its staff greet customers—and its franchisees may not be over yet. Miami attorney Robert Einhorn, one of the lawyers representing the franchisees, said the legal team is "evaluating an appeal" of U.S. District Judge Richard Story's findings exonerating Sprock and Moe's of any



JOHN DISNEY

Steven Hill successfully defended Moe's Southwest Grill and founder Martin Sprock III against claims by some franchisees of overcharging for supplies and taking kickbacks.

civil wrongdoing.

Following a weeklong bench trial in January, Story this month issued a 61-page opinion absolving Sprock, Moe's and parent company Raving Brands of claims by Moe's franchisees

that Moe's overcharged them for restaurant supplies and took kickbacks from the suppliers with whom Sprock had invested.

The defendants acknowledged the payments but said they were com-

missions or dividends paid as part of a broader plan to expand the number of franchises as quickly as possible by giving them substantial price breaks on food that would otherwise be unavailable to fledgling franchises.

Einhorn told the Daily Report that the franchisees “are disappointed in the ruling. They believe the evidence of damages was overwhelming. There was no question that Mr. Sprock did receive kickbacks from the supply chain.”

However, he added, “The court concluded the plaintiffs were unable to show those kickbacks resulted in higher prices to them. ... We respect the decision, but we disagree with it.”

Steven Hill, a partner at Atlanta’s Hill Kertscher & Wharton who defended Sprock and the Moe’s companies, said that 54 franchisees made an appearance during the course of the litigation. “The genesis of their common complaint was that Martin Sprock ... had entered into a side agreement with a food services broker to charge commissions ... to Moe’s franchisees whereupon the brokerage commission would be split between official brokers for Moe’s and Mr. Sprock.”

The franchisees, he said, “were complaining about all of the payments because they were hidden from them, according to their testi-

mony. ... We certainly argued that it didn’t matter. It didn’t need to be disclosed.” But he added, “We showed that the franchise documents did not make any false representations with regard to food purchasing.”

Hill also said there was “a great amount of misinformation that was circulated from 2005 up to the time of trial about supposed facts associated with how franchises were being charged for things.”

Story’s order, he continued, “was a long time in coming for Moe’s and Mr. Sprock,” who he said “never wavered” in his belief that the third-party vendors who supplied Moe’s franchises would negotiate with food producers “the lowest rock-bottom prices for high quality food.”

The evidence showed that the vendors succeeded, Hill added. “They got pricing a small growing franchise system had no right to get ... because of the additional purchasing power” that Moe’s third-party suppliers brought to the table.

In seeking more than \$1.8 million in attorney fees, Hill accused Einhorn, Robert Casey of Atlanta’s Casey Gilson (the franchisees’ lead Atlanta counsel), and other members of the legal team of engaging in “bad faith litigation tactics” in an effort to force

Sprock and Moe’s into a settlement.

Hill claimed that Casey had “hosted recruitment meetings whereby he sought to increase the number of claimants in [his] stable of clients. More clients meant more lawsuits, more claims, more economic power and larger settlement potential.”

Casey could not be reached.

The motion also accuses the franchisees’ legal team of filing suits “despite the individual flaws of each plaintiff’s case” and, “when it became obvious that evidence of damages was lacking,” of loading the proceedings with “frivolous claims” that were soon thrown out by the judge.

“The formula from the outset appears to have been: more plaintiffs plus inflated damages claims equals more costly proceedings (and more economic pressure to settle),” Hill said in the motion for attorney fees. Sprock and Moe’s had to spend hundreds of thousands of dollars to defend the restaurant chain against “the most suspect of damage claims.”

“Now,” he concluded, “There should be accountability for the decisions which multiplied the proceedings and contributed to an eight-year blemish on the reputations of the defendants.”