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Belize High Court Finds Ex-Franchisor Executive Guilty of Defamation, Questions His Integrity

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In a non-franchise litigation brought by Belizean property owners of a tropical development, the Belize Supreme Court found former franchisor executive Thomas Kevin Herskowitz guilty of defamation with malice. But the judge did not stop there. In his scathing decision, he also questioned Herskowitz's integrity, stating the evidence in the case found Herskowitz to be "evasive, and neither forthright nor credible."



Photo: Sanctuary Belize Development

Herskowitz is a former franchisor executive of I Can't Believe It's Yogurt (Brice Group) and Mail Boxes Etc. (United Parcel Service). Herskowitz's time at both companies ended in litigation and controversy, all while he and colleagues James H. Amos, Jr. and Peter D. Holt were in "control" positions of the corporate executive teams.

One MBE class action lawsuit, *Morgate LLC, et al. vs. Mail Boxes Etc., et al.*, filed in 2003, is ongoing today. The complaint alleges that when UPS acquired Mail Boxes Etc. in 2001 for \$185 million, it engaged in the "systematic destruction" of the business model the MBE franchisees had bought into.

Last year approximately 3,000 MBE franchisees were cleared to go forward with their case. A Los Angeles, California judge determined that discovery in the lawsuit should continue, according to a Law360 article.

In the March 30, 2017 decision, the **Belize Supreme Court** ruled Herskowitz and his Independent Owners of Sanctuary Belize guilty of defamation with malice. The Honorable Mr. Justice Courtney A. Able explained in his ruling that the court "has specifically found the evidence of Thomas Herskowitz to be evasive, and neither forthright nor credible, wherever and whenever it conflicted with the evidence of the Claimants (the SB Developer)." Furthermore, Herskowitz failed to even disclose anywhere that the Institute of Chartered Accountants of Belize (ICAB) had fully exonerated the Sanctuary Belize Developer and their PKF accountant. Instead, by not publishing the letter from the Institute and not removing the initial letter of complaint to the ICAB, he crossed a red line described by the judge as "... a further spiteful, malicious omission."

The owner-funded Sanctuary Belize project had been immersed in litigation for two years with Herskowitz, who was also a property owner in the development, dealing with the damaging social media tirades and bad publicity he caused in an effort to take over the project from the current developers.

The Belize judge ordered Herskowitz to pay \$30,000 in general damages, and his homeowners association, IOSB, to pay \$60,000 plus \$30,000 in aggravated damages. In addition, they were ordered to pay an additional six percent interest from the date their claim was filed until judgment and interest are paid. Both were also held liable for the fees and costs of the two attorneys who represented Sanctuary Belize. The court then demanded that Herskowitz and the IOSB were to immediately take down the offending words and statements published on Facebook pages and other internet sites that were under their control.

After the court decision, Herskowitz freely admitted in a letter, not imposed by the court, to Sanctuary Belize property owners that he had attempted to "wrest control of the project and receivables from the developer and put it in IOSB." He also confessed that he might have "exaggerated many concerns in an effort to incite owner dissatisfaction in order to drive support to his independent owners' association, and its pursuit of litigation for IOSB to become the developer."

Once they raised the funds through IOSB, Herskowitz said they filed the lawsuit in Belize and "started down a path of litigation and conflict supported by very acrimonious posts on Facebook and IOSB web site." As a result, they were sued for defamation, and in the course of litigation he learned many of his social media postings were incorrect. Because of that, the Supreme Court found him guilty of defamation with malice, and he was "under an injunction and risked contempt of court (possibly jail) in Belize" if he continued to post any defamatory statements.

After the judgment, Herskowitz voluntarily recommended that the Independent Owners Sanctuary Belize board be disbanded, and that all Facebook and websites be removed for the association he formed. He also resigned as president of the IOSB and said he would no longer be active, saying he regretted posting the negative dialogues they had engaged on social media, admitting the public venues had caused a lot of strife and rancor, which in the end caused harm to the Sanctuary Belize Development.

In closing his letter, Herskowitz said he was pleased with the new direction the Belize management firm was now taking.

Tom Herskowitz's damage to the Belize development project did not end there. Prior to the judgment, he had manipulated the *Wall Street Journal* into perpetuating his damaging narrative. When the judgment came down against him, Herskowitz personally wrote a letter directly to the WSJ reporter stating, "I must further apologize that I attempted to use you and The Wall Street Journal for leverage for my own ends of advancing the Independent Owners of Sanctuary Belize's (IOSB) position. My goal was to promote the IOSB in becoming the developer. I also instructed the IOSB members (owners in the Development) to contact you to further build a case for the IOSB, and thereby create the image of a dissatisfied community."

Today, in spite of the damage Thomas K. Herskowitz perpetrated over a two-year period, Sanctuary Belize Development remains. However, due to the harm he caused investors, the development now is off to a fresh start under **The Reserve Belize**, which just published its August 2017 **newsletter**.

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ABOUT JANET SPARKS



Public Profile

Janet Sparks is the former publisher of the Continental Franchise Review, an industry newsletter that covered the franchise community for over 30 years. She has also been a columnist for a leading franchise magazine for the past 13 years. Today she is an independent journalist who engages in investigative reporting, tackling complex issues that impact the franchise industry.

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