

LOS ANGELES

Daily Journal

Record O.C. class action settles

*Business owners
claimed company
never met terms of
marketing contract.*

By Ciaran McEvoy
Daily Journal Staff Writer

A final settlement appears imminent in a business litigation case once estimated to be one of the largest nationwide consumer class actions filed in Orange County.

Orange County Superior Court Judge Kim G. Dunning in Santa Ana indicated her approval of a \$41.5 million settlement between a class of more than 3,000 owners of small- to mid-sized businesses and RSM EquiCo Inc., according to attorneys present at a Wednesday hearing.

Plaintiffs' lawyers suing RSM EquiCo, a subsidiary of H&R Block that merged with McGladrey Capital Markets LLC in 2008, had sought approximately \$250 million.

The terms of the settlement call for the defendants to pay up to \$41.5 million — \$28 million for the class members and \$13.5 million for attorney fees and expenses, according to court documents. The plaintiffs' law

firms of Ringler Kearney Alvarez LLP and McNicholas & McNicholas LLP will split the fees evenly, according to terms of the deal.

"Under the settlement, each settlement class member will receive up to \$9,112 upon submission of a valid claim," plaintiffs' lawyer Jerome L. Ringler of Ringler Kearney Alvarez LLP wrote in a July motion for preliminary approval of settlement.

Attorneys in the case declined to comment, citing a clause in the deal barring them from discussing the case publicly.

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— Jerome L. Ringler

But in the July motion, Ringler wrote that RSM EquiCo was "now a shell corporation that employs no one and is effectively judgment-proof for the claims asserted by the class."

"By contrast, while McGladrey has substantial assets, the procedural and factual hurdles plaintiffs

face with their McGladrey claim more than justify the settlement achieved," Ringler wrote.

The law firms O'Melveny & Myers LLP and Rus, Miliband & Smith APC represent RSM EquiCo Inc.

The lawsuit, filed in July 2006, alleged fraud, negligent misrepresentation and breach of contract, as well as violations of California's Unfair Competition Law. *Do Right's Plant Growers v. RSM EquiCo Inc.*, 06CC00137 (Orange Co. Super. Ct., filed July 11, 2006).

The business owners paid between \$37,500 and \$50,000 for appraisals, or "platform agreements," of their companies, according to the complaint. At that point, they could give a second RSM company authority to market the companies to foreign investors and others.

From 1999 to 2007, the plaintiffs contend, only about 15 percent of the companies were marketed, only 3 percent were sold and just 0.3 percent were sold overseas. H&R Block purchased the RSM companies in 2001.

RSM EquiCo "vigorously" denied the allegations, according to documents in the case.

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