Rick and Tami Fugo joined Starlight International as distributors in April 1996. On August 14, 2000 they received a fax from the company telling them they were terminated. The only explanation given was that they had violated the "ethics" clause of the company's Policies & Procedures.

After several failed attempts to discover what they had done that was unethical, and having a formal appeal of their termination curtly denied, they hired attorney David Eisenstein and sued Starlight for wrongful termination.

In four years the Fugos had achieved the rank of Emerald and were close to qualifying for the top rank of Diamond. In spite of this their monthly earnings were grossing about $2,450, trending upwards only slightly. Their monthly net income was essentially zero.

Little evidence was provided by the defendant as to the Fugo's lack of ethics. Circumstantial evidence was presented to suggest an ulterior motive for the Fugo's termination. Their upline sponsor, who was close to Starlight's founder and CEO, benefited significantly by the "roll up" of the Fugo organization. Ultimately the jury found for the plaintiff and ruled the Fugo's were, in fact, wrongfully terminated.

As the plaintiff's expert it was my responsibility to explain to the court what was "standard procedure" within the network marketing industry in regards to distributor terminations, and to educate the jury as to the workings of MLM compensation plans. This included a technical explanation of the benefits of an organization "rolling up" specifically within the Starlight plan. However, the primary focus of my testimony applied to damages.

The Starlight expert – a CPA and Certified Fraud Examiner with 35 years experience and an MBA from Stanford, who had served as an expert in over 150 cases – testified that the Fugo distributorship was worthless. He appraised its value at "zero" primarily due to the absence of any net income. I then testified that the conventional business appraisal methods he used were not even remotely applicable. To wit:

1) Unlike conventional business, where the discontinuance of all expenses is essentially the discontinuance of the business, the only expense required to maintain the Fugo's monthly $2,450.00 income was the monthly "Personal Volume" requirement in the Starlight compensation plan of $150.00. Otherwise this $2,450.00 in overrides was "residual income". I offered as evidence the fact that 21 months after the Fugos were terminated, even after having not spent a single penny or minute of effort during that entire time, a significant portion of their commissionable downline sales volume still existed.

2) The Fugos would expect to earn this $2,300.00 net income for the life of their distributorship, which I estimated to be 48 years based on the average lifespan of Tami Fugo, a healthy, 32 year old, non-smoking Caucasian woman (I also made the Jury aware that I rightfully *could* have factored in the ongoing income paid to the Fugo heirs who would, per Starlight policy, inherit their distributorship). The company's only counter to this would have been to offer a case, in open court well attended by their leading distributors, as to why they did not expect to survive for 48 years. No such rebuttal was offered.

3) My valuation of $1.3 million was also challenged by Starlight's expert based on his assumption I had not applied any present value calculation, which he then stated renders the amount down to $209,000. I countered that the Fugo's income was not based on a set dollar amount, such as a fixed annuity, but rather on a percentage of the *product sales volume* of the Starlight products sold within their downline. Thus, to apply present value to my evaluation was tantamount to claiming that Starlight will never raise the price of a single product by *any* amount over the next 48 years! I did, indeed, consider present value, but then I further calculated the $1.3 million figure by (among other things) increasing the product price basis for the Fugo's income by a conservative estimate of future annual inflation rates.

The jury found the 48 year projection to be overly optimistic and arbitrarily cut the number by half, to 24. Otherwise, they understood and accepted my valuation of lost income and awarded the Fugos $650,000.

Len Clements
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