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STATE OF VERMONT  
CHITTENDEN COUNTY,

SUPERIOR COURT  
Docket No. S142-93 CnC  
S141-93 CnC

NORTH AMERICAN ENTERPRISES, ]  
INC., NUTRITYME OF UTAH, ]  
INC., and NUTRITYME OF ]  
NEVADA, INC. ]

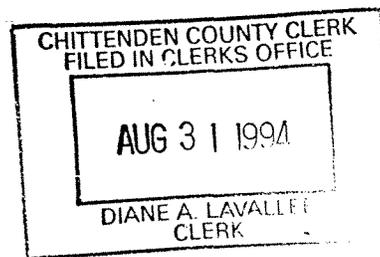
V. ]

STATE OF VERMONT ]

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V. ]

NORTH AMERICAN ENTERPRISES, ]  
INC., NUTRITYME OF UTAH, ]  
INC., NUTRITYME OF NEVADA, ]  
INC., and ROBERT GARGANESE ]



ENTRY

The State of Vermont sues Robert Garganese for unfair and deceptive acts and practices in violation of Consumer Fraud Act, 9 V.S.A. §2451 et seq. These alleged unfair practices were part of a telemarketing promotion by North American Enterprises, Inc. (NAE), which involved contacting Vermont consumers and informing them that they were selected to win a "bonus" if they purchased a certain product. Robert Garganese moves that these matters be dismissed against him based upon lack of personal jurisdiction, alleging no contact whatsoever with the state of Vermont. The State of Vermont opposes this motion, arguing that Robert Garganese knew or should have known of the allegedly fraudulent business activities as owner and president of NAE.

Vermont's long-arm statute, 12 V.S.A. §855, "expresses a policy to assert jurisdiction over foreign corporations to the full extent permitted by the Due Process Clause of the Fourteenth Amendment." Bard Bldg. Supply Co., Inc. v. United Foam Corp., 137 Vt. 124, 127 (1979). Acting in pursuit of a corporate purpose or a single act, purposefully performed in Vermont, will place the actor within this state's sovereignty, as will active participation in Vermont's market. O'Brien v. Comstock Foods, Inc., 123 Vt. 461, 464 (1963).

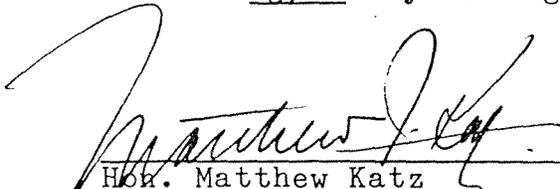
The initial question is whether there exists clear intent or affirmative action by the defendant to participate in the Vermont market. The record establishes this threshold level of participation. Whether or not the plaintiff will be successful

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at obtaining officer liability is not determinative at this juncture. The level of defendant's personal involvement, <sup>alleged</sup> does however provide the minimum contacts necessary to support personal jurisdiction over Robert Garganese. We therefore hold that the required minimum contacts are present and that personal jurisdiction is obtained through 12 V.S.A. §855.

For the foregoing reasons, the defendant's motion to dismiss is DENIED.

Dated at Burlington, Vermont on this 31 day of August, 1994.

  
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Hon. Matthew Katz  
Superior Court Judge