

# Litigation Victory against ADT

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## A FREEBORN & PETERS LITIGATION VICTORY

Freeborn client Mr. Robert Harris, and NorthStar Alarm Services (of which Mr. Harris is president), recently won significant victories against home security industry leader ADT in Lanham Act unfair competition litigation. A stipulated injunction arising out of a prior Lanham Act case prohibited Vision Security, a company owned and managed by Mr. Harris, from engaging in deceptive sales tactics. After Vision sold assets to NorthStar, and Mr. Harris joined NorthStar as its President, ADT sued both Mr. Harris and NorthStar, seeking to extend the injunction to NorthStar and hold Mr. Harris personally liable for the acts of NorthStar. A Federal magistrate judge recommended that the injunction be extended to NorthStar and that both NorthStar and Mr. Harris be held in contempt for alleged violations of the injunction by NorthStar sales agents. Both these recommendations were ultimately rejected by higher courts.

At an evidentiary hearing, ADT presented no evidence that Mr. Harris was involved in the alleged violations, or even knew of them. Nevertheless, the magistrate judge recommended holding Mr. Harris personally liable by applying a vicarious liability standard to corporate officers, in which the court imputed to Mr. Harris the acts of the NorthStar sales representatives. On appeal, the district court rejected the magistrate judge's recommendation, and held that the vicarious liability standard for officers concerning acts of corporate agents was an outlier that most courts had not adopted, and was contrary to governing Eleventh Circuit law. Citing to several cases in the Eleventh Circuit and elsewhere, the district court held that the correct standard for holding officers liable for Lanham Act violations and unfair competition claims was the "moving force" standard. Under this standard, "liability hinges on proof that an individual officer knowingly and actively furthered the unlawful conduct by inducing it, causing it, or in some other way working to bring it about." Because ADT presented no evidence that Mr. Harris was a moving force behind the alleged violations, the Court dismissed Mr. Harris from the action. See *ADT LLC v. Sec. Networks, LLC*, 2017 U.S. Dist. LEXIS 38877 (S.D. Fla.)

Subsequent to Mr. Harris's dismissal, the Eleventh Circuit vacated the district court's holding that the injunction applied to NorthStar, ruling that that NorthStar was not in privity with Vision (the enjoined company) and that there was no evidence that NorthStar was aware of the injunction prior to the asset purchase. The appellate court ruled that the district court violated Federal Rule of Civil Procedure 65 by applying the state law de facto merger doctrine to extend the injunction to NorthStar in the absence of a finding of privity and notice. *ADT LLC v. NorthStar Alarm Servs. LLC*, 853 F.3d 1348 (11th Cir. 2017) (Both Mr. Harris and NorthStar have attorney fees petitions pending with the court under the injunction's mandatory prevailing party fee shifting provision.)

By ruling in favor of Mr. Harris and NorthStar, the courts in the Eleventh Circuit reaffirmed important due process safeguards for those accused of engaging in unfair competition, particularly with respect to injunctions that are often the by-product of such litigation.

Mr. Harris was represented by John O'Bryan.