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CALIFORNIA COURT STRIKES DOWN MANDATORY ARBITRATION CLAUSE IN FRANCHISE AGREEMENT

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On November 17, 2003, a court in California handed down a precedent-setting decision, striking down as unconscionable a mandatory arbitration clause in a RE/MAX real estate franchise agreement. In the case, RE/MAX had sought to have the Court enforce against a RE/MAX franchisee an unfair, inequitable and unconscionable arbitration provision contained in a 26 page single-spaced franchise agreement. In stark contrast to the California court's ruling, decisions by other federal and state courts throughout the country have regularly upheld mandatory arbitration provisions in franchise agreements.

The case arises out of Richard Byerrum's ("Byerrum") claims that RE/MAX has, over the last several years, intentionally stripped him of valuable exclusive territory rights that he claims he has under his RE/MAX franchise agreement. When Byerrum raised the territorial encroachment claims with RE/MAX, it responded by threatening Byerrum that it would refuse to renew his franchise and terminate him as a franchisee. After having spent more than 17 years of his life and significant sums of money in building his business in California, Byerrum refused to "knuckle under" to what he viewed to be oppressive demands and threats by RE/MAX. Instead, Byerrum brought suit in court against RE/MAX to prevent RE/MAX from taking his exclusive territory and terminating his franchise.

Jeffrey M. Goldstein, Esq., Founding Partner of The Goldstein Law Group, PC, who represented Byerrum, stated that "this decision is groundbreaking in that it has the potential to reallocate, to some degree, the existing unfair 'balance of power' in disputes between franchisors and franchisees." Goldstein explained that franchisors regularly attempt to force franchisees to arbitrate their disputes with the franchisors rather than litigating the claims in court, since franchisees in arbitration are usually stripped of their rights to obtain adequate pre-trial discovery, a jury trial, and an appeal of the underlying decision – all rights they would normally have in court.

Goldstein added that "today's decision shows that the doctrine of unconscionability is not dead; those franchisors and their attorneys who had sealed the coffin on the doctrine of unconscionability will now need to exhume the body." Goldstein indicated that this decision will require franchisors operating in the United States to "go back to the drawing board" and reevaluate whether the mandatory arbitration clauses in their current franchise agreements can pass muster under the unconscionability doctrine.

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