

FEDERAL APPEALS COURT REVERSES DISTRICT COURT'S DECISION AND RULES IN FAVOR OF GNC FRANCHISEE

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On July 24, 2003, the United States Court of Appeals for the Ninth Circuit reversed a federal district court's ruling against GNC franchisees represented by The Goldstein Law Group, P.C. ("GLG"). In overturning the United States District Court's decision – which held that the franchisees were not entitled to pursue claims for fraud and racketeering against GNC Franchising, Inc., its officers and affiliates ("GNC") – the United States Court of Appeals for the Ninth Circuit also reversed the District Court's order that the franchisees reimburse GNC for its attorneys' fees, which amounted to almost one-half million dollars. Jeffrey M. Goldstein, Esq., who represented the victorious franchisees, commented that "we are extremely pleased with the Ninth Circuit's decision, which will permit the Lees to continue prosecuting their legal claims against GNC."

The California-based franchisees, Kevin and Jeniffer Lee (the "Lees"), asserted in their lawsuit that GNC, a franchisor of health and nutrition retail stores, violated the Racketeer Influenced and Corrupt Organizations ("RICO") Act (as well as other laws) by intentionally carrying out an unlawful scheme to drive its own franchisees, including the Lees, out of business. Specifically, the Lees alleged that GNC has engaged in predatory pricing and other unfair market practices through the operation of company-owned GNC retail shops that directly compete with the Lees. Because GNC sells to its company-owned stores at wholesale prices much lower than those it offers to its franchisees, the Lees claim, GNC enables its company-owned stores to significantly undercut the Lees' own retail pricing. The Lees allege that the sales at their franchise stores – which exceeded \$1 million annually prior to GNC's beginning its predatory pricing program – were decimated due to GNC's unfair market practices.

In July 2002, a federal trial court held that the Lees relinquished their right to sue GNC because the Lees signed a "release" form drafted and required by GNC in connection with the renewal of one of their two stores. In overturning the trial court's decision, the Ninth Circuit accepted the arguments made by GLG's attorneys, and ruled that the "release" operated only as a partial dismissal of the Lees' claim. The Ninth Circuit also overturned the trial court's award of nearly one-half million dollars in attorneys' fees to GNC.

Mr. Goldstein added that "this case is a significant victory for the Lees and for other franchisees throughout the United States, as it places limitations on the ability of franchisors to use broad-sweeping 'release' forms to strip franchisees of their right to obtain compensation, in court, for damage caused to them by the franchisors' wrongdoing."

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