FRANCHISE TRENDS

Franchisor Competency, Video 4

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FANTASTIC SAMS FRANCHISEE ASSOCIATION PROHIBITED FROM SUSTAINING COLLECTIVE JOINT ARBITRATION BASED ON BAN OF COLLECTIVE LITIGATION IN FRANCHISE AGREEMENT

FANTASTIC SAMS FRANCHISE CORP. v. FSRO ASSOCIATION, LTD., United States District Court, D. Massachusetts, October 12, 2011.

Fantastic Sams is the franchisor of a chain of hair salons. Fantastic Sams licenses rights to itsname to regional owners who, in turn, license salon owners to operate the actual salons. In this case, Fantastic Sams brought action against a nonprofit association of regional franchise owners, seeking to stay collective arbitration for declaratory relief against franchisor's alleged breaches of contract and violations of the Massachusetts Consumer Protection Act. The regional franchise owners' association formed in order to promote the interests of Fantastic Sams Regional Owners, and its membership consists solely of those regional owners.

The franchisor moved to stay the arbitration. The United States District Court held that the franchise agreements containing a ban on "class-wide" arbitration included the Regional Franchise Owners' claim for "associational" arbitration of claims on a collective basis. The Court, however, also held that the question of whether class arbitration was forbidden under the franchise agreements that were silent on the issue of class-wide arbitration was to be decided in first instance by arbitrator.

Franchise Law -- Franchise Discrimination 1:2 - Jeff Goldstein: Franchise Lawyer

Jeff Goldstein GOLDSTEIN LAW GROUP Nat'l Franchise Law

Franchise Discrimination - Video 1 of 2

Franchise Discrimination - Video 2 of 2

Franchise Law: Fraud and Good Faith in Franchise Law

Specifically, the Court held that the Franchise agreements' ban on "class-wide" arbitration included the regional franchise owners' claim for "associational" arbitration on a collective basis, even if the franchise agreements did not specifically prohibit collective or consolidated actions,. This is because the agreements allowed for arbitration of the owners' "individual claim only," and the agreements manifested the signatories' clear intent that any particular arbitration proceeding could only address the individual franchise owner's particular grievance.

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MBE FRANCHISEE REQUIRED TO SIGN NEW FRANCHISE AGREEMENT UPON RENEWAL EVEN THOUGH TERMS MORE ONEROUS

G. I. McDougal, Inc., v. Mail Boxes Etc., Inc., Court of Appeal of California, Second District, January 12, 2012.

By requiring a franchisee to renew its expiring franchise agreement for a Mail Boxes, Etc. (MBE) franchise by executing a document extending the term of the franchise agreement on the same terms and conditions as contained in the then-current franchise agreement for the sale of The UPS Store franchises, a former franchisor of mailing services businesses, MBE, Inc., and its parent company, United Parcel Service (UPS), did not breach the renewal provision in the franchisee's expiring agreement.

The renewal provision provided that at the end of the ten-year term, the franchisee would have the option to renew for successive periods of ten years each. Specifically, the renewal provision provided in relevant part: "Such renewal shall be effected by the execution of an appropriate document extending the term of this Agreement on the same terms and conditions as are contained in the then current Franchise Agreement for the sale of new MBE Centers." The quoted sentence refuted the franchisee's argument that the renewal provision required the franchisor to renew the franchise agreement intact and without change so as to preserve the status and economic benefits conferred by its original MBE Center franchise agreement.

Moreover, the Court pointed out that the franchisee could have come out far worse as a result of the litigation. According to the Court, "If 'the then current Franchise Agreement for the sale of new MBE Centers' were interpreted literally, an existing franchisee such as the plaintiff would have no rights of renewal at all. That was because the franchisor no longer offered a franchise agreement for the sale of new MBE Centers."

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Franchise Law – Franchisees' Franchise Termination Damages

FRANCHISOR'S FALSE PROMISES NOT ACTIONABLE UNDER FEDERAL TRADE COMMISSION FRANCHISE RULE

Vino 100, LLC, v. Smoke on The Water, LLC, U.S. District Court, E.D. Pennsylvania, March 30, 2012.

A United States District Court for the District of California upheld the termination of a combined tobacco products and wine store franchisee because it breached its two franchise agreements with two franchisors, a sublease, and a security agreement. Likewise, the Court also found that the franchisee's individual guarantors breached the personal guarantee contracts they made concerning the franchisee's performance under the sublease and franchise agreements. Interestingly, the defendants did not dispute that they breached the contracts. Rather, the defendants argued that the franchisors violated the Federal Trade Commission ("FTC") Franchise Rule by failing to disclose required information in offering the franchises to the defendants. The defendants claimed that such conduct, an unfair business practice under the FTC Act, rendered the resulting franchise agreements void as against the public policy of Pennsylvania.

The Court, however, quickly rejected the defendants' argument. According to the franchisee, the franchisors told the defendants while in negotiations for the two franchise agreements that adding a wine shop franchise to an existing tobacco shop franchise would increase sales for the store by $400,000 and profits by $200,000. The defendants asserted that the franchisors' failure to include this representation of future income was an unlawful omission violating the Franchise Rule. The Court explained that the franchisee's argument lacked merit for two reasons. First, the FTC Act does not permit individual franchisees to sue for violations of the Act. Second, the defendants' invocation of the Franchise Rule was a thinly-veiled effort to establish a claim of fraud in the inducement, which the Court previously ruled was a violation of the parole evidence rule.

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OLD EXPIRED FRANCHISE AGREEMENT RESURRECTS ITSELF TO BAR FRANCHISEE'S RIGHT TO SIGN NEW FRANCHISEE AGREEMENT

Bayit Care Corp., v. Tender Loving Care Health Care Services of Nassau Suffolk, LLC, U.S. District Court, E.D. New York, March 30, 2012.

The United States District Court for the District of New York rejected a home-health care business franchisee's request for a preliminary injunction preventing the franchisor from refusing to recognize the franchisee's attempted extension of the franchise relationship for an additional five years. In 1992, the franchisee and the franchisor entered into their original 10-year franchise agreement. The 1992 agreement's renewal provisions stated that the right to renew the Renewal Agreement at the expiration of the Renewal Term shall be identical to that set forth in the 1992 agreement, which required the franchisee to provide the franchisor with written notice of its intent to exercise its renewal right not more than 240 days prior to the expiration of the initial term of the agreement or the renewal term.

The parties subsequently entered into a "Renewal Franchise Agreement" effective as of April 1, 2002. In pertinent part, the 2002 agreement provided that "[e]xcept as provided herein, the Franchise Agreement and all provisions contained therein shall remain in full force and effect." However, as the 2002 agreement neared expiration, the franchisee did not advise the franchisor of its intent to renew the agreement until it did so in a letter dated January 10, 2012. The date of that notice, was sent over three months beyond the exercise date for renewal specified in the parties' 1992 franchise agreement, which required that notice of intent to renew be sent not less than 180 days prior to the expiration of the agreement or the renewal term. The franchisee's argument that the 1992 agreement's notice provisions were inapplicable to its attempted renewal of the 2002 agreement was without merit.

According to the Court, "[t]he language of the 2002 agreement made it abundantly clear that the notice provisions of the 1992 agreement remained in full force as part of the 2002 agreement. Thus, even though the franchisee demonstrated irreparable harm by showing that unless an injunction issued, its present business would essentially cease to exist, the failure to establish a likelihood of success or serious question going to the merits with a balance of hardship tipping decidedly in its favor required denial of the injunction."

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