Lathrop GPM

BLOGS
Arbitration

Arbitration Venue and Choice of Law Provision in Franchise Agreement Struck Down

The Washington Court of Appeals recently upheld a lower court decision affirming an arbitration award against a franchisor after the trial court refused to enforce the venue requirements in the franchise agreement's arbitration clause. In *Saleemi v. Doctor's Associates, Inc.*, 2012 Wash. App. LEXIS 96 (Wash. Ct. App. Jan. 24, 2012), the defendant-appellant (DAI) was the franchisor of Subway restaurants. Saleemi was a franchisee with three restaurants in the state of Washington. DAI alleged that the plaintiff had breached its franchise agreement by violating its noncompetition clause and demanded arbitration in Connecticut, as the contract provided. The plaintiff then filed a lawsuit in Washington state court alleging that it was not given the opportunity to cure the default. DAI moved to compel arbitration in Connecticut pursuant to the franchise agreement. The trial court compelled arbitration, but found the arbitration venue requirement unconscionable and ordered arbitration to be held in Washington under Washington law.

The franchisee prevailed and was awarded damages in the arbitration proceeding. DAI then moved the trial court to vacate the arbitration award, arguing that its original order to arbitrate in Washington was improper. The trial court refused, relying in part on the franchisor's failure to object to the arbitration order prior to participating in the arbitration. The appellate court affirmed the trial court's decision to confirm the arbitration award, not based on the franchisor's attendance at the arbitration without protest, but because the franchisor was not prejudiced. The appellate court reasoned that the same association conducted the arbitration (AAA), there was no evidence of any advantage DAI would have received by physically arbitrating in Connecticut instead of Washington, and there were no differences between the applicable Connecticut and Washington laws governing the decision.