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Choice of Law

Arizona Federal Court Refuses to Enforce Franchise Agreements' Choice of Law and Forum Selection Clauses

An Arizona federal court declined to enforce choice of law and forum selection provisions in a suit brought by four Ohio franchisees of Zounds Hearing Franchising for violations of Ohio's Business Opportunity Purchasers Protection Act. *Zounds Hearing Franchising, LLC v. Bower*, 2017 WL 4399487 (D. Ariz. Sept. 19, 2017). The suit was initially filed in Ohio state court, and Arizona-based Zounds removed the case to federal court and moved to transfer it to Arizona pursuant to the forum selection clause in each franchise agreement, which included identical Arizona choice of law and venue clauses. The Ohio court transferred the case to the Arizona federal court, which then had to determine whether those clauses precluded application of Ohio's franchise laws, including the prohibition on out-of-Ohio venue provisions.

The Arizona court found in favor of the Zounds franchisees and held that the Ohio statute should apply, thereby invalidating the Arizona venue and choice of law clauses in the franchise agreements. Courts will generally apply the law chosen by the parties in their contract, unless the choice of law clause is contrary to a fundamental policy of the state with the most significant relationship to the transaction. Using this framework, the court found that Ohio had the most significant relationship to the parties because the franchisees were domiciled there and the franchises at issue were located there. Additionally, the court held that the parties could not circumvent by contract franchise laws designed to protect Ohio franchisees. Finally, the court determined that the Ohio franchise statute constituted a fundamental state policy of Ohio. Thus, the court held that Ohio law should govern, transferred the case back to Ohio, and awarded the franchisees attorneys' fees.

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