BLOGS

Arbitration

California Court Compels Arbitration but Strikes Portions of Arbitration Clause as Unconscionable

In *IJL Dominicana S.A. v. It's Just Lunch Int'l, LLC*, 2009 WL 305187 (C.D. Cal. Feb. 6, 2009), the United States District Court for the Central District of California this month enforced an arbitration clause in a franchise agreement and granted in part a franchisor's motion to compel arbitration, but severed a significant portion of the clause on unconscionability grounds in accordance with the Ninth Circuit *Nagrampa* decision, which continues to have broad implications for franchisors.

In the new case, the plaintiff franchisees filed suit against the defendant-franchisor, It's Just Lunch. The franchisor then filed a motion to compel arbitration based on an arbitration provision in the franchise agreement. The franchisees, in turn, contended that the arbitration clause was unconscionable and unenforceable under California precedent, namely *Nagrampa*. In compelling arbitration, the court first acknowledged the general validity of arbitration clauses, and the liberal federal policy favoring them. The court then evaluated the arbitration clause to determine whether it was procedurally or substantively unconscionable. The court found that the clause was substantively unconscionable in that it barred punitive damages, exemplary damages, class action arbitration, and consolidated arbitration. As in *Nagrampa*, these provisions favored the franchisor. This court, however, noted that the arbitration clause was not procedurally unconscionable because the clause was "set out in the same manner" as every other provision in the franchise agreement, the arbitration was identified in the index to the franchise agreement, and the franchisee admitted that she had read the entire contract.

The court then evaluated the other provisions of the franchise agreement to determine whether to sever the unconscionable portions or strike the entire arbitration clause. The franchisee pointed to clauses that set out a one-year limitations period on virtually all claims and granted the franchisor exclusive rights to bring certain claims. Although the court agreed that these clauses were one-sided, it found that the franchise agreement was not "permeated" with unconscionability. Concluding that it would uphold the arbitration clause while severing the unconscionable portions, the court granted in part the franchisor's application to compel arbitration.