

A yellow right-angled triangle pointing towards the top-left corner.

**BLOGS**  
Arbitration

## Court Allows Franchisor's Action to Force Arbitration Against Individual Member of Franchisee Association

An Arizona federal district court this month ruled that a franchisor could continue to seek to compel arbitration against a member of its franchisee association, even though the association itself had first sued the franchisor in another state. *Cold Stone Creamery, Inc. v. Nutty Buddies, Inc.*, 2012 U.S. Dist. LEXIS 142955 (D. Ariz. Oct. 3, 2012). The Arizona case filed by Cold Stone seeks a declaratory judgment against franchisee Nutty Buddies, Inc. to compel arbitration of the dispute at the heart of a separate state-court action brought earlier in Florida by the Cold Stone franchisee association, the National Independent Association of Cold Stone Creamery Franchisees, Inc. (NIACCF). NIACCF had sued Cold Stone for allegedly failing to provide accounting information regarding third party suppliers to its franchisee members. When the franchisor filed its federal court action to require individual arbitration of those issues, Nutty Buddies filed a motion to dismiss, arguing that the NIACCF lawsuit was the "first-filed," and that NIACCF is not a party to the franchise agreements that contain arbitration clauses, so it cannot be compelled to arbitrate. At the franchisor's request, the Florida action was stayed by the federal court while the Arizona court decided whether to allow the action to force individual franchisees to arbitrate their claims.

The Arizona court sided with Cold Stone and denied Nutty Buddies' motion to dismiss. Although the court did not address whether it would, in fact, compel arbitration eventually, the court found that the arbitration clause in the franchise agreement was broad enough to extend to the dispute involved in the NIACCF action. The franchise agreement required that the parties arbitrate all disputes "related in any way to this Agreement or the relationship between the parties." As for Nutty Buddies' "first-to-file" argument, the court held that the doctrine did not apply because the actions must have identical parties, and Cold Stone had sued Nutty Buddies as an individual franchisee; the association was not a party to the Arizona action.

### Related People

#### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)