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BLOGS

Post-Termination Injunctions

Court Denies Enforcement of Post-Termination Obligations and Awards Franchisee Damages on Counterclaims

A federal court in Virginia recently denied a franchisor's claim that a franchisee of its tax preparation system breached its post-termination obligations and awarded the franchisee \$2,736,896.17 on its counterclaims. *JTH Tax, Inc. v. Aime*, 2017 WL 640092 (E.D. Va. Feb. 15, 2017). The matter arose out of the IRS's revocation of Aime's Electronic Filing Identification Number ("EFIN"), which the franchise agreements required Aime to maintain. Rather than simply terminate the franchise agreements for Aime's nine offices, JTH entered into a purchase and sale agreement that terminated the franchise agreements (except for the post-termination obligations) but gave Aime an opportunity to obtain a valid EFIN and buy back the franchises. Ultimately, JTH neither paid the purchase price for the offices nor accepted a buy back offer from Aime. Aime then changed the locks and continued operation. JTH sued for fees owed and enforcement of Aime's post-termination obligations.

Following a bench trial, the court concluded that Aime had not breached its covenants because JTH had instructed Aime to keep its signs up and operate the offices as company-owned locations. The court also concluded that JTH breached the purchase and sale agreement before Aime changed the locks by, among other things, failing to pay utility expenses, failing to pay the purchase price for the offices, and interviewing Aime's CFO to become the new franchisee despite the purchase and sale agreement. In assessing damages, the court awarded to Aime the offices' profits for 2016 and lost future profits, which the court refused to discount considering Aime's "conservative" estimates. The court refused, however, to award punitive damages or attorneys' fees.

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