

**BLOGS**

Fraud/Misrepresentation

Court Dismisses Franchisee's Fraud and Statutory Claims

In an action brought by a hotel franchisor against a recently terminated franchisee, a New Jersey federal court dismissed without prejudice several fraud-based counterclaims asserted by the franchisee. In *Wingate Inns International, Inc. v. Swindall*, 2012 U.S. Dist. LEXIS 152608 (D.N.J. Oct. 23, 2012), the court rejected the franchisee's claim that Wingate Inns had fraudulently induced her purchase of the franchise with personal assurances of profitability and support. The court noted that the franchise agreement contained integration clauses in which Swindall agreed and acknowledged that she was not relying on any promises that were not written in the agreement, and the agreement also released Wingate Inns from any claim based on prior representations not specifically included in the agreement. Based on these integration clauses, the court concluded that any reliance on prior representations regarding profits and expectations of support was not reasonable could not support a finding of fraudulent inducement.

The court also rejected two counterclaims brought under the New Jersey and Georgia consumer protection statutes. First, the court ruled that Swindall was not entitled to protection under the New Jersey Consumer Fraud Act because, as a franchisee, she was not a "consumer" of goods or services and her franchise was not "merchandise," both of which are required for application of the Act. Second, the court rejected Swindall's claim that Wingate Inns' alleged misrepresentations violated the Georgia Fair Business Practices Act. Because the Georgia Act is intended to protect the general consuming public, the court ruled that it does not cover allegations of deceptive or unfair acts occurring in private negotiations. Swindall made no argument that the alleged misrepresentations were disseminated to the general public; instead she alleged that the misrepresentations occurred in personal conversations between herself and Wingate Inns. Furthermore, the court noted that the Georgia Act only applies to consumer transactions made "primarily for personal, family, or household purposes." Because the franchisee purchased and operated the hotel as a business, the court held that the Georgia Act did not apply.

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