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## BLOGS

Fraud/Misrepresentation

# Court Grants Franchisor's Motion to Dismiss Claims for Breach of Contract, Promissory Estoppel, and Misrepresentation

The United States District Court for the Eastern District of Kentucky has dismissed a complaint raising claims for breach of contract, promissory estoppel, and misrepresentation in connection with a franchisor's refusal to grant a franchise. *859 Boutique Fitness LLC v. CycleBar Franchising, LLC*, 2016 WL 2599112 (E.D. Ky. May 5, 2016). Following negotiations between the parties about a ten-year franchise, Boutique Fitness signed a franchise agreement during a closing call with CycleBar's representatives. Two days after Boutique Fitness signed the agreement, however, CycleBar's general counsel informed Boutique Fitness that CycleBar had decided not to grant Boutique Fitness a franchise, offered to refund Boutique Fitness's initial franchise fee, and attached a voided copy of the franchise agreement signed only by Boutique Fitness's members. Although CycleBar never countersigned the franchise agreement, Boutique Fitness alleged that CycleBar's representatives had represented during the closing call that the agreement had been executed by its directors.

The court granted CycleBar's motion to dismiss Boutique Fitness's claims. First, the court held that the contract claim was barred by the Kentucky statute of frauds because the franchise agreement, which was to be carried out over a period of time greater than one year, was never signed by CycleBar. Based on precedent from the Kentucky Supreme Court, the court further held that a promissory estoppel claim could not be used as an alternative means to enforce an agreement that was otherwise barred by the statute of frauds. Finally, the court held that Boutique Fitness failed to allege with reasonable particularity a nexus between the alleged misrepresentation and any injury it suffered as required by Federal Rule of Civil Procedure 9(b). The only act that Boutique Fitness claimed it was induced to take as the result of CycleBar's alleged misrepresentation was to wire an initial franchise fee to CycleBar. However, Boutique Fitness also alleged that CycleBar immediately offered to refund that fee, which eliminated any nexus between the alleged misrepresentation and the harm Boutique Fitness claimed to have suffered.

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