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BLOGS
Arbitration

Court Holds That Advertising Cooperative May Arbitrate Claims Against Franchisor and Litigate Claims Against Franchisees

The Ohio Court of Appeals recently ordered an advertising cooperative to arbitrate its claims against a franchisor, while simultaneously permitting the cooperative to litigate its related claims against individual franchisees. In *Cleveland-Akron-Canton Advertising Cooperative v. Physician's Weight Loss Centers of Am., Inc.*, 2009 WL 3490756 (Ohio Ct. App. Oct. 29, 2009), the cooperative brought suit against the franchisor to recover mandatory advertising contributions owed by franchisees pursuant to an agreement between the franchisees and the cooperative. The cooperative claimed that the franchisor had a duty to collect the fees. The franchisor moved to dismiss the complaint, arguing that the cooperative's claim arose under the franchise agreements, which contained mandatory arbitration clauses. The cooperative argued that its claim actually arose under a separate agreement between itself and the individual franchisees, which agreement did not contain an arbitration clause. The cooperative also argued that it could not be bound by the franchise agreements' arbitration clauses, because the cooperative was not a signatory to those agreements.

While the trial court denied the franchisor's motion to stay pending arbitration, the court of appeals reversed. The court of appeals held that the cooperative was bound by the franchise agreements' arbitration clauses, because the cooperative's claim against the franchisor arose from those agreements. The court held that the cooperative could not simultaneously seek to enforce the franchise agreements' obligation for franchisees to contribute to the cooperative while maintaining that it was not bound by the agreements' arbitration requirement.

Interestingly, in a companion case, the same court of appeals reached an opposite conclusion with respect to the cooperative's claims against the franchisees. In *Cleveland-Akron-Canton Advertising Cooperative v. Physician's Weight Loss Centers of Am., Inc.*, 2009 WL 3681391 (Ohio Ct. App. Nov. 5, 2009), the court considered whether the cooperative was also required to arbitrate its claims against those individual franchisees who had failed to make advertising contributions. The court concluded that arbitration of those claims was not necessary, because the cooperative's claims against the individual franchisees arose under the separate cooperative agreement, not the franchise agreements. While the cooperative's only claim against the franchisor was that the franchisor had failed to collect amounts owed by its franchisees under their franchise agreements, the cooperative had an independent claim against the franchisees for failure to pay amounts owed under the separate agreement between the franchisees and the cooperative. The cooperative agreement did not contain an arbitration clause, and the cooperative was therefore not required to arbitrate its claims against the franchisees.