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## BLOGS

Personal Liability

# Court Refuses to Impose Liability on Franchisor's Officer

In *@Wireless Enterprises, Inc. v. AI Consulting, LLC*, 2011 U.S. Dist. LEXIS 51973 (W.D.N.Y. May 16, 2011), a New York federal district court granted summary judgment in favor of the franchisor and its corporate officer dismissing the former franchisee's counterclaims for breach of contract, breach of the covenant of good faith and fair dealing, actual fraud, constructive fraud, and tortious interference, among others. The franchisor had terminated the franchise agreement for a retail cell phone store and sued the franchisee for monies owed. The franchisee countersued based on a series of alleged statements made by the franchisor's president during the term of the agreement.

One important issue was whether the franchisee could pierce the corporate veil to maintain claims against the franchisor's president in his personal capacity as the franchisor's alter ego. In addition to other adverse evidence, the court noted the franchisee's acknowledgment in the franchise agreement that, "in all of their dealings with you, our officers, directors, employees and agents act only in a representative, and not in an individual, capacity." The court viewed the franchisee's assertion that he thought he was dealing with the president in his personal capacity to be a "subjective belief," which was insufficient to create a triable issue of fact. Without any evidence that the president abused the corporate form or was a party to the contract in his individual capacity, the court determined that the franchisee's contract claims against the president could not withstand summary judgment. The court noted, however, that officers acting on behalf of a corporation can be held individually liable for tortious conduct, but the court then went on to dismiss all of the tort claims, as well.