

BLOGS
Transfers

Court Upholds Franchisor's Rejection of Franchisees' Proposed Transfers of Franchises

A federal court in Kentucky has upheld a franchisor's rejection of three separate Asset Purchase Agreements (APAs) that would have transferred the franchisees' restaurants to a third party. As part of a settlement agreement resolving various franchise agreement violations, the franchisee defendants in *KFC Corp. v. Kazi*, 2012 U.S. Dist. LEXIS 180424 (W.D. Ky. Dec. 20, 2012), were obligated to close any sale of their restaurants by November 30, 2012. KFC rejected the first proposed APA because it involved 100% financing, which did not meet KFC's financial requirements. The franchisees submitted a second APA on October 26, but KFC rejected this proposal because one of the two buyers was not an existing KFC franchisee in good standing, and the settlement agreement required any such proposal to be submitted at least 75 days in advance of the November 30 closing date.

The franchisees negotiated a new APA with the first proposed buyer, who was an existing KFC franchisee in good standing, and submitted it on November 14. KFC rejected this third APA because the settlement agreement required the franchisees to submit a proposed APA with an existing franchisee at least 45 days in advance of the November 30 closing date. The franchisees argued that KFC unreasonably withheld approval of the third APA, in violation the settlement agreement. Because the proposed buyer was the same in the third APA as in the first, the franchisees argued that the original submission date of October 15 should have applied to the proposed sale, and that they had met the 45- day requirement. The court concluded, however, that the third APA did not acquire the date of the first proposal simply because the buyer was the same. The court held that when KFC rejected the first APA, it terminated that offer, leaving it as if no APA had ever been submitted. The court therefore treated the second and third APAs as entirely separate offers subject to the timing requirements of the settlement agreement. Because the franchisees did not submit the third APA within the bargained-for time, the court concluded that KFC properly rejected the proposal. Furthermore, because the settlement agreement contained an anti-waiver provision, KFC did not implicitly waive these deadlines by continuing to communicate with the franchisees after October 15 had passed.

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