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## BLOGS

Procedure

# Default Set Aside, But Franchisors Reminded Not to Rely on Franchisees to Defend Them

A federal district court in Louisiana overturned a default judgment in a case that serves as a warning to franchisors who are named in lawsuits that should have been brought (if at all) only against a franchisee. *Matthews v. International House of Pancakes, Inc.*, 2007 WL 4591232 (E.D. La. Dec. 28, 2007), was an employment-law action in which both the franchisee and franchisor were named as defendants. The franchisor failed to file an answer or other response, and the court entered a default judgment against it.

In moving to set aside the judgment, the franchisor argued that it did not timely respond to the complaint because it believed that, pursuant to the franchise agreement, the franchisee would undertake the defense. According to the court's ruling, the franchisor "assumed" that the franchisee's undertaking of the defense would include answering the plaintiffs' complaint, which the franchisee had reportedly affirmed it would do. The franchisee let the franchisor down. The court held that the franchisor's incorrect assumption was not "willful misconduct" and, because there was no prejudice to the franchisee, the court granted the franchisor's motion to set aside the default.