



BLOGS
Arbitration

District Court Upholds Arbitration Finding of Constructive Termination Under Wisconsin Statute

The United States District Court for the Central District of California recently upheld an arbitrator’s finding that a franchisor had constructively terminated a franchise agreement in violation of the Wisconsin Fair Dealership Law (WFDL), when, among other things, the franchisor cut off the franchisee’s access to the franchise system’s record-keeping and management web portal and its external website. In *Budget Blinds Inc. v. LeClair*, 2013 U.S. Dist. LEXIS 7463 (C.D. Cal. Jan. 16, 2013), two neighboring Budget Blinds franchisees became embroiled in a dispute regarding extraterritorial sales activity. One of the franchisees complained to the franchisor that the other franchisee (LeClair) was making sales into its territory. Budget Blinds confirmed the extraterritorial activity through its franchisee system portal, and then initiated arbitration against LeClair. The arbitration demand sought a declaration that Budget Blinds was entitled to terminate LeClair’s franchise agreement based on the extraterritorial sales activity. Budget Blinds allegedly filed the demand without contacting LeClair to discuss the dispute or to provide any notice of the claims. After the arbitration demand was filed, LeClair could only communicate with its franchisor by speaking with its lawyer. The arbitrator found that Budget Blinds, by cutting LeClair off from access to the portal and the external website, initiating arbitration, and referring internet and telephone leads to other franchisees, had constructively terminated LeClair’s franchise agreement. In doing so, Budget Blinds violated the WFDL by failing to provide the required cure period.

Budget Blinds appealed the arbitrator’s decision to the district court. Under the Federal Arbitration Act, the standard for a court’s review of an arbitrator’s decision is limited to determining if the arbitration award was procured by fraud or if the arbitrator has exceeded his or her power. An arbitrator exceeds his or her power when the award “is completely irrational, or exhibits a manifest disregard for the law.” Under the facts of this case, the court declined to find that the arbitrator had manifestly disregarded the law or that her decision was completely irrational. Budget Blinds argued that its initiation of arbitration in order to seek a declaration that it was permitted to terminate the franchise agreement by definition meant that it had not terminated the franchise agreement, constructively or otherwise. The court disagreed, finding that a franchisor could constructively terminate a franchise agreement in violation of the WFDL without formally terminating it, and that the arbitrator’s findings could be read as being consistent with an appropriate application of the law.

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