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BLOGS

Procedure

Federal Court Denies Protective Order to Stop Deposition of Counsel, But Grants Franchisor's Motion to Strike Jury Demand

In a franchise termination case, the United States District Court for the Eastern District of Pennsylvania recently denied AAMCO's motion for a protective order to stop the deposition of its in-house counsel who signed the termination letter, but granted the franchisor's motion to strike the franchisee's jury demand. *AAMCO Transmissions, Inc. v. Baker*, 2008 WL 509220 (E.D. Pa. Feb. 25, 2008).

AAMCO sought the admission of its vice president and general counsel, James Goniea, to practice before the court for the purpose of the case. The franchisee opposed the admission of Mr. Goniea solely on the grounds that he was or likely would be a trial witness, and sought the deposition of Mr. Goniea. The court granted the pro hac vice motion, but found that while a deposition of opposing counsel can be troublesome, there is nothing in the federal rules that precludes it. Thus, the court denied AAMCO's motion for a protective order to stop the deposition, concluding that it would be inappropriate to deny the questioning of Mr. Goniea concerning his involvement in the decision to terminate. This is why some franchisors do not have potential trial counsel sign letters to franchisees.

The court did grant AAMCO's motion to strike the franchisee's jury demand, relying upon the jury trial waiver provision set out in the franchise agreement. The court found that the right to a jury trial can be waived as long as that waiver is properly deemed to be knowing and voluntary. Here, the court stated that the franchisee had a high level of sophistication, had carefully vetted the business opportunity, and it was an opportunity he wanted to pursue. The court determined that the franchisee knowingly and voluntarily waived a trial by jury.