

BLOGS

Breach of Contract

Federal Court in Indiana Rejects Underreporting Claim Based on Estimated Gross Sales

A federal court in Indiana recently granted a franchisee's motion for summary judgment on the franchisor's underreporting claim. *Noble Roman's, Inc. v. Hattenhauer Distrib. Co.*, 2018 WL 1566812 (S.D. Ind. Mar. 30, 2018). At issue in the case were two gas stations and convenience stores owned by Hattenhauer that contained Noble Roman's pizza franchises. Each location was required to pay a royalty fee on its gross sales. Noble Roman's alleged that Hattenhauer breached its franchise agreement by underreporting those sales by more than 20% and failing to pay the appropriate royalties. In concluding that Hattenhauer underreported its sales, Noble Roman's used an audit of Hattenhauer's purchases from its distributor and assumptions as to Hattenhauer's rate of waste, product mix, and pricing to estimate Hattenhauer's gross sales. Noble Roman's argued that its method was appropriate because, where food purchases are made at the same register as purchases of convenience-store items, there is significant possibility of error in recording the sale. Further, the franchise agreement required Hattenhauer to keep a variety of records for audit by Noble Roman's, including distributor purchase records, so Noble Roman's reasoned that it could use those records to estimate gross sales. Hattenhauer responded that the audit failed to calculate its actual gross sales, and ignored its actual rate of waste, product mix, and pricing.

The court sided with Hattenhauer, observing that the franchise agreement called for royalty payments based on actual gross sales. It granted Hattenhauer summary judgment on Noble Roman's claim, as well as Hattenhauer's counterclaim that Noble Roman's improper calculation method represented a breach of the franchise agreement. The court additionally granted summary judgment to Hattenhauer on its counterclaim that Noble Roman's breached the franchise agreement by attempting, without authorization, to withdraw from Hattenhauer's bank account the royalty payments Noble Roman's claimed were owed. It further found that Noble Roman's successful unauthorized withdrawal constituted conversion, creating civil liability under the Indiana Crime Victim's Relief Act.

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com