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BLOGS

Terminations

First Circuit Rejects Claim for Breach of Franchise Agreement Under Massachusetts Dealer's Bill of Rights

In *South Shore Imported Cars, Inc. v. Volkswagen of America, Inc.*, 2011 U.S. App. LEXIS 13715 (1st Cir. July 5, 2011), the First Circuit affirmed a district court's holding that the termination of an automobile dealer's franchise agreement following a manufacturer's refusal to consider the franchisee's eleventh-hour buyout proposal did not violate Massachusetts law. In December 2008, the franchisee's bank cancelled its revolving credit agreement for financing inventory purchases from VW. This cancellation was an undisputed breach of the franchise agreement, causing VW to eventually serve South Shore with a 60-day notice of termination after South Shore's efforts to obtain substitute financing failed. One week before the termination date, South Shore reached a purchase agreement for the dealership and requested that VW consider the prospective buyer's application even if that process went beyond the termination date. VW refused, causing South Shore to seek an injunction to prevent the franchise agreement from being terminated until VW fully considered the purchase agreement. South Shore contended that VW's refusal violated Massachusetts' Dealer's Bill of Rights by allegedly not allowing the dealer to have a "reasonable opportunity" to cure its breach and by not giving it a full 60 days notice.

Participating in the case for the First Circuit was retired Supreme Court Justice David Souter, who wrote the opinion rejecting South Shore's arguments in their entirety. The panel concluded that VW's obligation under the franchise agreement to consider a buyer proposed by one of its dealers did not extend to a purchase agreement submitted only a week before a franchise was scheduled to be terminated. As Justice Souter noted, VW was only required to consider a dealer's proposed buyer "when the remaining duration of the franchise agreement includes sufficient time for the period of enquiry by the manufacturer that the statute and agreement allow." The panel discounted South Shore's argument that its conclusion would allow manufacturers to issue notices of termination as a ploy to thwart dealers from selling their assets to third-parties, noting that the statute protected them from such actions.