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BLOGS

Noncompetes

Fourth Circuit Affirms Injunction Enforcing Noncompete From Date of Compliance

The United States Court of Appeals for the Fourth Circuit recently affirmed an arbitration award entered in favor of Wild Bird Centers of America, Inc. enforcing a covenant not to compete against a former franchisee. *Frye v. Wild Bird Centers of Am., Inc.*, Case No. 17-1346 (4th Cir. Nov. 27, 2017). Gray Plant Mooty represented Wild Bird Centers in this case. Upon expiration of the parties' franchise agreement, the franchisee, Frye, continued to operate the franchise without renewing the agreement. Wild Bird Centers filed an arbitration action for violation of the agreement's twoyear noncompete provision. Applying Maryland law, the arbitrator found in favor of Wild Bird Centers and imposed an injunction prohibiting Frye from violating the terms of the noncompete provision for two years from the date on which Frye was first in compliance with the provision. The district court confirmed the arbitration award, and Frye appealed.

Frye first claimed that the arbitrator manifestly disregarded the law, exceeded his powers, and failed to draw the award's essence from the agreement, because the noncompete purportedly only applied upon the agreement's "termination," not expiration. The court disagreed, noting that while the noncompete clause itself stated that it applied "after termination," a later section stated that the noncompete clause applied in the event of "termination or expiration" of the agreement for any reason. The court reasoned that the provisions were at worst ambiguous and at best supported Wild Bird Centers' interpretation, and therefore the arbitrator's application of the noncompete clause was permissible. Frye also claimed that even if the noncompete clause applied, the arbitrator's extension of its terms to twenty-four months from the first date of compliance should be vacated because it did not draw from the essence of the agreement, manifestly disregarded the law, and exceeded the arbitrator's authority. The court again disagreed, noting the existence of precedent under Maryland law that supported the decision to begin the permanent injunction on the date of first compliance. The court further reasoned that it was reasonable for Wild Bird Centers to expect the full twenty-four months of noncompetition to which it was entitled under the agreement.

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