

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Jurisdiction and Procedure

Franchise Agreement Waiver of Jury Trial Upheld

A franchisor's motion to strike a franchisee's demand for jury trial was granted after a California federal district court found a contractual jury waiver to be enforceable. In *Century 21 Real Estate LLC v. All Professional Realty, Inc.*, 2012 U.S. Dist. LEXIS 93895 (E.D. Cal. July 6, 2012), the court considered Century 21's motion to strike the demand for a jury trial made by its former franchisee, All Professional Realty, Inc. Century 21 had filed an action based on All Professional's use of Century 21's trademarks after the parties' real estate brokerage franchise agreements were terminated for unpaid fees. All Professional subsequently filed a demand for jury trial, although it had contractually waived that right in the franchise agreements.

By All Professional's own admission, it did not "carefully review" the agreements, even though it signed statements to the contrary. The court also noted that the jury waiver provision was located directly above the signature line, and it was distinguishable from surrounding terms because it was in bold print and capital letters. The court looked to federal law standards in its determination that Century 21 fulfilled its burden to prove the jury waiver clause was entered into knowingly, voluntarily, and intelligently. The court found that there was not a drastic disparity in bargaining power, the parties were educated, experienced professionals, All Professional had the ability to negotiate, and the waiver was readily visible. Consequently, the court refused to invalidate the waiver.