

BLOGS

Terminations

Franchisor Did Not Waive Its Right to Terminate for Nonpayment

A Florida federal court recently granted an injunction to franchisor Dunkin' Donuts for the franchisee's failure to pay franchise and advertising fees and to comply with the post-termination provisions of the franchise agreements. The case is *Dunkin' Donuts Franchised Rest. LLC v. KEV Enter., Inc.*, 2009 WL 1587983 (M.D. Fla. June 5, 2009). At issue was whether the franchisor had waived the right to terminate based on nonpayment. The franchisee contended that Dunkin' Donuts tolerated late payment and therefore waived the right to terminate it on those grounds. The court disagreed and sided with Dunkin' Donuts that the letters exchanged between the parties concerning nonpayment specifically stated that the franchisor was not waiving any of its rights and claims. This was further bolstered by the franchise agreements, which also contained this anti-waiver language. The court held that the parties' course of dealing was not sufficient to modify the terms of the franchise agreements and was, in any event, not supported by any consideration. The court held that, under Massachusetts law, which requires a showing of "clear, decisive and unequivocal conduct" of waiver, the franchisee had failed to meet its burden. Gray Plant Mooty represented Dunkin' Donuts in this case.