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## BLOGS

Jurisdiction and Procedure

# Nevada Federal Court Vacates Entry of Default Against Franchisor

A federal court recently allowed a franchisor to continue defending against a breach of contract case even though it failed to timely respond to the complaint. In *Kyllonen v. GNC Franchising, LLC*, 2019 WL 2492272 (D. Nev. June 13, 2019), Craig Kyllonen brought several breach of contract claims against GNC after four franchises he owned failed due to financial distress. Although the parties were engaged in parallel litigation in Pennsylvania, GNC did not timely respond to the complaint. Kyllonen moved for entry of default, which was granted by the clerk. GNC moved to vacate the entry of default, arguing that a miscommunication between GNC's litigation counsel and in-house legal department led to GNC's failure to timely respond. Kyllonen opposed the motion to vacate, arguing that GNC's failure to timely respond was an intentional strategic decision related to the separate suit between the same parties.

The court considered three factors to determine whether good cause existed to vacate the entry of default: (1) whether GNC engaged in culpable conduct that led to the default; (2) whether GNC had no meritorious defense; and (3) whether reopening the default would prejudice Kyllonen. The court did not find that GNC engaged in culpable conduct because the court could not discern how GNC benefitted from failing to timely respond. The court noted that culpable conduct must be intentional and requires a finding of bad faith by the moving party. In addition, the court found that GNC alleged facts that, if taken as true, would serve as meritorious defenses to Kyllonen's claims. Finally, the court found that Kyllonen would not be prejudiced by setting aside the default judgment, since adjudication on the merits of the claim was the same outcome Kyllonen would have faced if GNC timely responded. As a result, the court granted GNC's motion and set aside the entry of default but conditioned the relief upon GNC reimbursing the fees and costs incurred in obtaining default and opposing the motion.

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