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BLOGS

Franchise Sales/Transactions

New Jersey Federal Court Dismisses Franchise Sales Fraud Claims Without Prejudice

In *Robinson v. Wingate Inns Int'l*, Bus. Franchise Guide (CCH) ¶ 15,197 (D.N.J. Dec. 20, 2013), the court held that the owner of two hotel franchises failed to state actionable franchise sales fraud claims against franchisors Wingate and Wyndham. Robinson, the franchisee, entered into separate franchise agreements with each franchisor, and both businesses subsequently failed as a result of Robinson's failure to obtain financing. When Robinson filed suit, the franchisors moved to dismiss his claims that they had violated the FTC Rule, committed fraud in the inducement, and violated the New Jersey Consumer Fraud Act (NJCFA).

The court dismissed the plaintiff's claim under the FTC Rule because the Federal Trade Commission Act does not grant a private right of action. The court then dismissed Robinson's fraud claim against Wingate as barred by the statute of limitations and his fraud claim against Wyndham for failure to allege a material misrepresentation of fact. Finally, the court dismissed Robinson's claim under the NJCFA, holding that "a franchise is a business, not a consumer good or Service contemplated by the act." Although the court stated that it was aware of an intermediate New Jersey state court decision that had held that the NJCFA did apply to the sale of a franchise, it nonetheless held that it was bound to follow prior Third Circuit authority to the contrary. The court dismissed the claims at issue without prejudice.

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