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Contracts

New York Appellate Court Dismisses Royalties Claim Because of Franchisor's Breach Under Preliminary Injunction

A state appellate court in New York recently held a franchisor was not entitled to unpaid royalty fees because of its own breach of a franchise agreement reinstated by preliminary injunction. *Integrity Real Estate Consultants v. Re/Max of New York*, 2023 WL 2000464 (N.Y. App. Div. Feb. 15, 2023).

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The appellate court reversed, holding that Re/Max breached the franchise agreement by removing Integrity from its advertising at a time when the preliminary injunction required it to perform under the franchise agreement. While Integrity's breach in moving would ordinarily have excused Re/Max from performing, the fact that the court reinstated the franchise agreement in its injunction removed that excuse. Accordingly, it was Re/Max's breach that excused Integrity's royalty payments. The court also reversed the trial court's award of attorney's fees, finding that Re/Max was not the prevailing party. Although the trial court's determination that Integrity breached the franchise agreement by relocating was not appealed, the court held that the award of preliminary relief against Re/Max and the reversal of the award of royalties were sufficient to deprive Re/Max of its entitlement to fees.

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