

BLOGS

Post-Termination Injunctions

New York Federal Court Grants Preliminary Injunction to Franchisor Based on Rescission of Franchise Agreement

The United States District Court for the Eastern District of New York last month entered a preliminary injunction against franchisees that diverted profits from their five 7-Eleven convenience stores in violation of their franchise agreements. *7-Eleven, Inc. v. Khan*, 2013 U.S. Dist. LEXIS 146696 (E.D.N.Y. Oct. 10, 2013). 7-Eleven terminated the franchise relationship, without giving the franchisees an opportunity to cure, after an investigation revealed that the franchisees had repeatedly underreported their sales and defrauded 7-Eleven out of royalty payments over a four year period. When the franchisees continued to operate their stores using 7-Eleven's trademarks, 7-Eleven sought a preliminary injunction directing them to surrender their stores and ejecting them from the premises. The franchisees opposed the motion and filed a cross-motion for an order enjoining the termination, asserting that the termination was improper because they did not receive notice and an opportunity to cure their alleged breaches.

The court held that 7-Eleven was within its rights to rescind the franchise agreements and granted its motion for a preliminary injunction. In so ruling, the court relied upon the principles of contract rescission under New York common law. It concluded that the nature of the fraudulent transactions committed by the franchisees were so serious that they went to the "root of the matter or the essence of the contract." At the hearing on the motion, 7-Eleven's witnesses testified in detail regarding the franchisees' rampant failure to properly record sales, suspicious payroll practices, and pattern of inventory shortages. Consequently, the court determined that 7-Eleven was likely to succeed on the merits of establishing that it properly terminated the franchise agreements without providing notice or an opportunity to cure. 7-Eleven also made a clear showing of irreparable harm stemming from the franchisees' continued occupancy of their stores and interference with 7-Eleven's property rights and reputation. 7-Eleven's property rights and reputation.

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