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BLOGS

Bankruptcy

Reference From the Bankruptcy Court is Denied

In *Doctor's Associates, Inc. v. Jesal Desai*, 2010 Bankr. LEXIS 86454 (D.N.J. August 23, 2010), the franchisor ("DAI") sought to remove pending litigation from the bankruptcy court to federal district court. The procedural history of the case includes litigation in arbitration, state court, federal district court, and bankruptcy court. DAI's motion to withdraw the reference was brought after it was unsuccessful in asking the bankruptcy court to remand the pending litigation back to the district court. A motion to withdraw the reference is very similar to a motion to remand, except that the motion is heard by the district court and not the bankruptcy court. All bankruptcy matters, in theory, are within the jurisdiction of the district court.

In the case, the underlying facts involve four terminated franchises, the confirmation of an arbitration award, and potential Lanham Act violations. Withdrawing the reference from a bankruptcy court can either be mandatory or permissive. The district court found that mandatory withdrawal was not warranted because the underlying issues did not involve substantive and material consideration of federal law outside of the Bankruptcy Code. Any involvement of the Federal Arbitration Act or the Lanham Act was deemed not to be sufficiently substantive or material to warrant mandatory withdrawal. Likewise, the district court found that permissive withdrawal was not warranted because several factors (uniformity in bankruptcy administration, reducing forum shopping and confusion, judicial economy, conserving estate assets, and expediting the bankruptcy process) weighed in favor of keeping the matter in the bankruptcy court. Therefore, the court denied DAI's motion.