

Right to Arbitrate Not Waived by Franchisee When Previous Claim for Arbitration Withdrawn for Good Cause

In June the United States District Court for the Eastern District of Louisiana held that a franchisee who had initiated an arbitration and later withdrew the proceeding had not waived his right to compel another arbitration after the franchisor filed an action against him in federal district court. The case is *Planet Beach Franchising Corp. v. Richey*, 2008 WL 2598907 (E.D. La. June 25, 2008).

The franchisee in this action initiated the arbitration proceedings pursuant to the arbitration clause in the franchise agreement three years into the relationship with Planet Beach Franchising Corporation, a tanning salon franchisor, alleging that Planet Beach had fraudulently induced him to enter into the franchise agreement and that it had later breached the agreement. Planet Beach answered the claims in arbitration and filed its own counterclaims alleging breach of contract for nonpayment, failure to submit business reports, and failure of the franchisee to upgrade his computer system. In accordance with the terms of the arbitration clause in the franchise agreement, each party chose one arbitrator for the panel, and the two arbitrators jointly selected a third. The franchisee objected to Planet Beach's choice because of the arbitrator's relationship with a former Planet Beach director. The panel formed despite the franchisee's objection and directed that the hearing take place within 60 days. The franchisee then formally withdrew his claims, citing both lack of time to prepare his case and the conflict of interest between Planet Beach and one of the members of the arbitration panel. After the withdrawal, the American Arbitration Association (AAA) agreed with the franchisee that there actually was such a conflict, but by then the franchisee had already withdrawn. Planet Beach thereafter filed suit in federal court against the franchisee for nonpayment of fees, trademark law violations, and for violating the franchise agreement's post-term covenant not to compete by opening a new tanning salon in the same location. In response, the franchisee moved to compel arbitration.

The court granted the motion, finding that the franchisee had not waived his right to arbitrate Planet Beach's claims despite the fact that he had withdrawn his previous arbitration. The Court held that the franchisee had validly withdrawn from the earlier arbitration due to the conflict of interest and unreasonable schedule and gave considerable weight to the fact that the AAA had found that Planet Beach's original arbitrator had a conflict of interest. Therefore, the court concluded, the franchisee did not default on the arbitration and had not waived his rights under the arbitration clause. The court further noted that the franchisee's withdrawal from the earlier arbitration had not prejudiced Planet Beach because the parties had not engaged in any pretrial activity with respect to any of the arbitrable claims and the motion to compel had been filed shortly after the case had commenced.