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## BLOGS

Franchise Sales/Transactions

# Second Circuit Upholds Arbitration Award Pursuant to Business Opportunity Law

An arbitrator's finding that a real estate brokerage franchisor violated the Connecticut Business Opportunity Investment Act has been upheld in *GMAC Real Estate, LLC v. Fialkiewicz*, 2012 U.S. App. LEXIS 26480 (2d Cir. Dec. 27, 2012). Franchisor GMAC Real Estate had sought to vacate the award in a Connecticut federal district court, which refused. The United States Court of Appeals for the Second Circuit affirmed late last month, finding that the arbitrator did not "manifestly disregard the law" in applying the state's business opportunity statute.

The appeals court gave two reasons for upholding the arbitration award. First, the court was unwilling to hold the arbitrator had failed to apply the statutory exception for franchises sold involving licenses of registered trademarks, because "arguably" one of the trade names used in the franchise was not federally registered, and another name may not have been licensed in conjunction with the parties' franchise agreement. Given the perceived lack of clarity and precedent on these points, the Second Circuit would not hold that the arbitrator intentionally defied the law. Similarly, the appeals court found that whether the franchise was sold to "start a business"—another statutory requirement—was "inherently a fact bound question" that gave the arbitrator latitude. Even though the franchisee had been in the real estate business prior to buying the franchise, the business opportunity sale law still could apply to the continuation of the business in certain circumstances, the court held.

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