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BLOGS

Terminations

Termination of Franchise Upheld by the Seventh Circuit

The United States Court of Appeals for the Seventh Circuit has affirmed the dismissal of RICO claims and a variety of other charges brought by a franchisee in *Rao v. BP Products North America, Inc.*, 2009 WL 4640634 (7th Cir. Dec. 9, 2009). The case was filed by a gas station franchisee alleging that the termination of his operating agreements by franchisor BP violated the Petroleum Marketing Practices Act and the Racketeer Influenced and Corrupt Organizations Act, and was a fraud and a breach of contract. The record in the case, however, showed that the franchisee had, over the course of a decade, paid a BP manager approximately \$100,000 in cash and gifts (including a computer, big-screen television, and other electronics) in an attempt to influence decisions regarding the award of franchises in the Chicago market. The franchisee also secretly gave the manager an interest in two of his downtown Chicago stations, one of which was sold within 18 months for a profit of over \$1 million. In addition, the franchisee purchased a location with a BP area representative (violating a company ban on this kind of transaction) and, when he tried to sell his share of the business to the representative, overstated the value of the location so that BP would be dissuaded from exercising its right of first refusal. BP eventually discovered these transactions and terminated the franchisee's operating agreements.

The franchisee filed the lawsuit in federal district court against BP and its ex-employees. The district court denied the franchisee's motion for preliminary injunction to enjoin BP from terminating the agreements on the grounds that the franchisee had "actively engaged in bribery and fraud" and that BP had "acted in good faith in terminating [the franchisee] as a BP dealer." The court subsequently dismissed all of the franchisee's claims against BP.

The Seventh Circuit affirmed the lower court's rulings in full. The franchisee contended on appeal that the termination was without good cause and was arbitrary, discriminatory, and retaliatory. The appeals court, however, noted that the operating agreements contained a specific provision allowing BP to terminate the contracts if the franchisee engaged in "any deceptive, fraudulent, illegal, immoral, or other improper act relevant to the operation [of the BP station] which is detrimental to [BP] Products." The court concluded that there was undisputed evidence that the franchisee engaged in such activities by "paying off [the BP manager] in exchange for favorable treatment."