

A solid yellow right-angled triangle pointing towards the top-left corner.

**BLOGS**  
Damages

## Court Enforces Terms of Personal Guaranty Attached to Franchise Agreement

In *Howard Johnson Int'l, Inc. v. Inn Development, Inc.*, 2008 WL 5378247 (D.S.D. Dec. 22, 2008), the court granted summary judgment to a plaintiff franchisor on its claim brought under a personal guaranty signed by the corporate franchisee's principals. Howard Johnson had terminated the franchisee's license agreement for failure to comply with quality standards. The franchisee's principals had signed a personal guaranty by which they promised to pay all amounts owed under the license agreement. The parties also executed an addendum that replaced a liquidated damages provision with a separate provision calling for the franchisee and personal guarantors to pay "any and all damages which [Howard Johnson] [has] sustained or may sustain" as a result of a breach of the license agreement.

The franchisor filed suit against the guarantors seeking to recover amounts owed under the license agreement and an accompanying promissory note. The guarantors defended by arguing that the franchisee had not breached the license agreement. The court noted, however, that the franchisee corporation had defaulted in the lawsuit, and thus had admitted the allegations of Howard Johnson's complaint. For that reason, the court found the guarantors liable for all amounts owed under the license agreement and promissory note. By contrast, the court rejected Howard Johnson's argument that it was entitled to liquidated damages, finding the franchisor had agreed through the license agreement to forgo such damages. The court further held that Howard Johnson had presented insufficient evidence in the summary judgment papers to permit the court to quantify the actual damages, so the court ordered an evidentiary hearing at which Howard Johnson could present further evidence.