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System Standards/Change

Massachusetts Federal Court Narrowly Interrupts The Meaning of an Operational Default

Last month a Massachusetts federal court narrowly interpreted a settlement agreement and determined that KFC was required to provide a notice and opportunity to cure for each separate operational deficiency under that agreement. *KFC Corp. v. Springfield Food Sys.*, 2011 U.S. Dist. LEXIS 14218 (D. Mass. Feb. 14, 2011). At issue was the language in the settlement agreement that said that after KFC provided written notice of default to the franchisees, they “shall have ten (10) days from the date of the notice to cure the default. PROVIDED, HOWEVER, that KFC shall not be obligated to give more than one (1) such notice during any 120 day period during the Reinstatement Period.” Shortly after the settlement agreement was signed, KFC inspected the franchisee’s premises on two separate occasions and defaulted them for failing to maintain adequate food and hot water temperatures. At the third reinspection of the premises for standards compliance, KFC found a separate default concerning improper handwashing procedures, and it declared the franchisees in breach of the settlement agreement. KFC also moved to reinstate the litigation.

In its motion to lift the litigation stay, KFC argued that it was only required to provide the franchisees with an opportunity to cure a first operational default within a 120-day period. The court disagreed, holding that the settlement agreement required KFC to provide a notice to cure for improper handwashing procedures because that violated a different operational standard than inadequate food and hot water temperatures. In essence, the franchisees were entitled to a notice to cure each time they committed a new operational deficiency, which meant that KFC could terminate the agreement for an operational default without giving a notice to cure only if the franchisees committed the exact same operational deficiency (*e.g.*, improper handwashing procedures) a second time within a 120-day period. Thus, the court concluded that the franchisees had not breached the settlement agreement and denied KFC’s motion.