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BLOGS

Franchise Associations

On Reconsideration, Court Declines to Dismiss Franchisee Association Case Challenging Franchisor's Rules and Practices

A Connecticut federal court has declined to dismiss a complaint filed by a franchisee association against Edible Arrangements alleging breach of contract, breach of a duty of good faith and fair dealing, and violation of the Connecticut Unfair Trade Practices Act after the franchisor filed a motion for reconsideration. *EA Independent Franchisee Association v. Edible Arrangements, International, Inc.*, Case 3:10-cv-01489-WWE (D. Conn. Sept. 21, 2011). The original ruling was the topic of a special edition of *The GPM Memorandum* in August 2011 (Issue 145). Edible Arrangements brought a motion to dismiss the complaint, alleging that the franchisee association lacked standing to bring claims on behalf of its members and that the association's complaint was a blatant attempt to circumvent the individual arbitration clauses in each member's franchise agreement. The court denied the motion to dismiss.

On reconsideration, Edible Arrangements argued that the court overlooked "extensive authority" holding that an association cannot pursue claims on behalf of its members when the members have agreed to mandatory arbitration of those claims. In rejecting this argument, the court held that none of the authority cited was controlling and that most of the decisions involved motions to compel arbitration, not motions to dismiss for lack of standing. The court reiterated that it relied on a Third Circuit opinion, *Penn. Psychiatric Society v. Green Spring Health Services, Inc.*, 280 F.3d 278 (3d Cir. 2002), in which an association survived a motion to dismiss for lack of standing even though an arbitration provision was also at issue. In citing *Penn. Psychiatric*, the court held that dismissal is premature when an association represents that it will be able to meet its burden of proof with minimal participation of its members, even if it appears that it has a questionable chance of success. The court did note, however, that its decision did not preclude Edible Arrangements from seeking to compel individual arbitration.