



MATT DICKSTEIN

Business Attorney

Making legal matters easy and economical for your business

39488 Stevenson Place, Suite 100, Fremont, CA 94539
510-796-9144. matt dickstein@hotmail.com matt dickstein.com

Newsletter, June 2011 Termination and Non-Renewal of a Franchise

All franchise relationships end sometime, usually by the franchisee selling the franchise, dropping out of the franchise system or getting kicked out. In this article I briefly summarize what happens when a franchisee sells, leaves or quits a franchise system, or when the franchisor terminates or refuses to renew the franchise.

Franchisee's Sale or Quit of the Franchise

The best way for a franchisee to get out of a franchise system is to sell the franchised business. In California, there is no special law that protects a franchisee's right to sell a franchise. The matter is governed by the Franchise Agreement, which usually requires the franchisor's consent, said consent not to be unreasonably withheld.

If the franchisee can't sell the franchised business, then sometimes all he can do is walk away from it. Here the franchisee's biggest worry is that the franchisor will sue to recover liquidated damages that are specified in the Franchise Agreement, or to recover the franchise royalties and fees that the franchisee would have paid had he stayed in the system until the end of the term.

I cannot give generalized advice that covers all scenarios for the end of a franchise relationship. Instead you must look at a range of issues, including the precise language of your Franchise Agreement, the franchisor's claim for lost franchise fees, the franchisee's counter-claims and defenses, and more. My article in next month's newsletter is entitled "Legal Claims and Defenses when a Franchise Ends," and it will discuss possible liability, claims and defenses when a franchisee leaves a franchise system (whether voluntarily or involuntarily). Call me if you want that article right now.

Franchisor's Termination or Non-Renewal of the Franchise

A franchisor terminates a franchise if she cancels the franchise before the end of the term. Non-renewal occurs if the franchisor refuses to renew the franchise at the end of the term. The result is the same for both termination and non-renewal – the franchisee loses the franchise. Be aware that under California law, a non-renewal might occur if the franchisor makes unreasonable changes in the

royalties, fees and terms of the franchise, where the changes have the effect of inducing the franchisee not to renew.

In California, a franchisor must have good cause to terminate or to refuse renewal of the franchise. Good cause includes failure by a franchisee to cure a breach of the Franchise Agreement within a reasonable cure period after written notice of default (up to 30 days), except for certain non-curable defaults which justify termination immediately upon written notice. Failure to pay franchise fees gets a 5 day cure period.

When faced with a possible termination or non-renewal, it is extremely important that the franchisee take action before the termination or non-renewal happens: First, it is easier to keep a franchise than to get it back. Second, if the franchisee loses the franchise, he might lose the cash flow needed to pay for the fight. Third, California franchise law does not provide much by way of statutory damages for an illegal termination or non-renewal. In brief, as soon as the franchisor gives notice of the possibility of termination or non-renewal, the franchisee must respond quickly and cut-off the dispute before it gets too far along.

Once the dispute gets a little momentum, then the two sides must prepare for war. I'll cover that topic in my next newsletter. As always, I only glossed over the outlines of franchise termination. Call me if you need to talk more.

Aristotle:

Character may almost be called the most effective means of persuasion.

The worst form of inequality is to try to make unequal things equal.

To avoid criticism say nothing, do nothing, be nothing.

Happiness is a state of activity.

Men acquire a particular quality by constantly acting a particular way... you become just by performing just actions, temperate by performing temperate actions, brave by performing brave actions.

We are what we repeatedly do. Excellence, then, is not an act but a habit.

Funny Papers:



"Your problems make my fee seem insignificant."