

Franchise Act Interpretive Statement FIS-04

RE: Arbitration Site

RCW 19.100.180(1)

Questions Presented:

May a franchisor in a franchise agreement require the franchisee to arbitrate in a state other than Washington?

Statutes

RCW 19.100.180(1) requires that the parties to a franchise agreement deal with each other in good faith. Additionally, RCW 19.100.180(2) (h) renders it an unfair act or practice to impose on a franchisee by contract an unreasonable standard of conduct.

Discussion

The franchisor must deal with the franchisee in good faith. Often the franchisor has much greater bargaining power than the franchisee. In such cases, the franchise agreement will require that every arbitration between the parties take place in a state other than Washington. Typically this is the home state of the franchisor and is many times very distant from Washington State. In these instances, the site of the arbitration outside the state of Washington is a non-negotiable contract clause. In which case, the franchisee will be required to arbitrate at a site which is not related to the subject matter of the arbitration and inconvenient to the franchisee and third party witnesses.

Recent court cases demonstrate that an agreement to arbitrate preempts judicial action which might be taken under the Franchise Investment Protection Act of Washington. However, these cases do not prevent the Franchise Investment Protection Act from determining when and under what circumstances it is fair and reasonable to include arbitration in the franchise agreement.

Conclusion

The Securities Administrator finds that it is not in good faith, reasonable or a fair act and practice for a franchisor to require an arbitration clause in a franchise agreement that unfairly and non-negotiably sets the site of arbitration in a state other than the state of Washington. Based on this finding, the Securities Administrator finds acceptable a franchise offering that includes an arbitration agreement that provides for the site of arbitration: (1) in the state of Washington, (2) as mutually agreed upon at the time of arbitration, or (3) as determined by the arbitrator at the time of arbitration.

Adopted January 1, 1991

Replaces Statement of Policy 82-14

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