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District Court Protects Franchisor Against Anti-Contractual Competition in *Frye*

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On Valentine's Day of 2017, the United States District Court for the District of Maryland gave franchisors the legal equivalent of two dozen roses when it decided *Frye v. Wild Bird Centers of America, Inc.*, 2017 WL 605285 (D. Md. Feb. 14, 2017). *Frye* centered around a dispute between Wild Bird Centers of America, Inc. (WBCA), which franchises Wild Bird Center stores across the United States, and one of its franchises in Boulder, Colorado. The parties' Franchise Agreement provided that the franchisees would operate within a defined geographic area for a period of ten years, at which point the Franchise Agreement would expire unless renewed. The Agreement included a Non-Competition Provision that restricted the franchisees from operating a similar business for "a period of 24 months after termination," and it contained language requiring the franchisees to comply with this Non-Competition Provision "in the event of termination or expiration" of the Agreement "for any reason."

At the expiration of the Agreement's ten-year term, the franchisees neither renewed the Agreement nor discontinued operating the store as a WBCA store. In fact, they continued operating their store as they had before the expiration of the Agreement, including keeping the WBCA sign on the building. Naturally, WBCA insisted that the franchisees comply with the Non-Competition Provision of the Agreement. After unsuccessful attempts at mediation, WBCA filed a demand for arbitration per the terms of the Agreement, primarily seeking enforcement of the Non-Competition Provision. After a hearing, the arbitrator ruled for WBCA and issued an order enforcing the Non-Competition Provision of the Franchise Agreement for two years from the time that the franchisees first complied with his order.

The franchisees then filed an action in the federal district court, seeking to vacate the arbitrator's award on two grounds. First, they argued that the arbitrator should not have enforced the Non-Competition Provision, because the Franchise Agreement was not terminated – the franchisors maintained that it merely "expired," and by its terms the Non-Competition Provision only applied "after termination." Second, they argued that, even if the Non-Competition Provision applied, the arbitrator should not have ordered the two-year period to run from the time of compliance with the Order, but rather from the expiration date of the Franchise Agreement. Their argument was based on the language of the Non-Competition Provision itself, which stated that it was to run "[f]or a period of 24 months after termination of this Agreement."

To determine whether the Non-Competition Provision should have been enforced, the court considered whether the arbitrator's decision drew from the "essence" of the Franchise Agreement. The court looked to the Effects of Termination provision, which provided for enforcement of the Non-Competition Provision in the event of termination *or expiration* of the Agreement. The District of Maryland determined that, despite the fact that the Non-Competition Provision appeared to apply only in the event of a termination, the Effects of Termination provision specifically provided for enforcement of the Non-Competition Provision upon expiration of the Franchise Agreement's term. Therefore, the court upheld the arbitrator's Order on that point.

The court then took up the question of whether the Non-Competition Provision should have been enforced for two years from the time the franchisees complied with his order or from the expiration of the Franchise Agreement. In upholding the arbitrator's order, the court found that it is reasonable for a franchisor to expect the full period of non-competition to which it is entitled under an agreement. Important to the court's decision was the fact that the franchisees had openly operated their store in violation of the Non-Competition Provision since the Franchise Agreement had expired. At the time of the arbitrator's order, the franchisees had been operating in that manner for one year and eight months, which would have left only four months of the non-competition period if it had run from the date the Franchise Agreement expired. The court observed that the arbitrator's ruling ensured that the franchisees would be subject to the Non-Competition Provision's requirements "for the length of time originally agreed to by the parties," and noted that other courts had extended non-competition periods for the same reason. As a matter of equity, therefore, the franchisees should not be rewarded for their blatant disregard of the terms to which they had agreed. The court noted that failure to enforce the full period of non-competition would reward breach of contract and encourage protracted litigation.

Frye represents strong support for and protection of contractual non-competition clauses in franchise agreements. To take advantage of this particular judicial valentine, franchisors should ensure that the triggering language in their non-competition clauses is specific and clear.