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## Alternative Options to Resolve Disputes in Franchised Restaurants

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## **Alternative Option to Resolve Disputes in Franchised Restaurants**

The number of lawsuits filed by aggrieved parties in franchising contracts indicates that conflicts are not always preventable. This report presents findings from data analyzed from New York State court records arising from franchising contracts from the year 1956 to 2016. Acknowledging the importance of Alternative Dispute Resolution (ADR) in mitigating the tension in franchisor-franchisee relationship, this Research Report recommends that franchising regulations should consider the mandatory inclusion of ADR clauses in franchising contracts. This move will provide a fair balance between the power of the franchisor and the interests of the franchisees.

### ***Conflict Happens***

Given the fact that the operation of a restaurant franchise depends on the fulfillment of various contracts throughout the business' lifetime, conflicts arising out of alleged breaches of such contracts are inevitable. Therefore, managing the conflicts before the parties advance to litigation stage is important to prevent, at the earliest available opportunity, the disintegration of the franchisors-franchisees relationship. In this regard, Alternative Dispute Resolution (ADR) is a very useful mechanism, which is commonly stipulated in franchise contracts, though not always resorted to in practice. This is because the parties in franchise contracts do not usually make the ADR option mandatory. The findings reported are indispensable to the franchising stakeholders including franchisees or potential franchisees, franchisors, franchise experts, and policymakers.

### **Franchised restaurant disputes**

This report uses New York State court records retrieved online as the primary data. Only lawsuits initiated either by the franchisors or the franchisees were selected for this study. After a thorough data cleaning process a saturation point was attained. A total of 23 court records were used to investigate the types of conflicts in restaurant franchising that are being filed in courts, the prevalent causes of action, and the court's opinion. From the content analysis, it was found that non-compliance of various kinds of agreements and procedural law appeared to dominate the types of conflicts that occurred between the franchisors and franchisees. Non-compliance was reported in 13 cases out of 23 restaurant franchising cases. The next type of conflict, allegation of unfair competition, was found to occur in four cases. For three other cases, each contained one or more of the elements of the following conflicts: misrepresentation, interference, and unauthorized use of trademarks and tradename. The remaining three cases arose out of conflict in duress, fraud, and disruption in products supply and services respectively. Each case had a unique factual background that constitutes its own causes of action.

### **Alternative dispute resolution can help**

The findings indicate that issues relating to the provisions in the agreements were the most prevalent, appearing in 19 out of the 23 cases. From those 23 cases, 17 cases arose out of breach or violation of agreements, three cases arose out of termination of agreements and

three cases were filed for violation of franchise regulations and arbitration awards. Out of the 17 cases alleged for breach or violation of agreements, 12 cases were initiated by the franchisees against the franchisors whereas five cases were initiated by the franchisors against their franchisees. It was the court's duties to determine whether every lawsuit filed has a valid cause of action as alleged by the case initiator. From the analysis, three lawsuits filed by the franchisees were dismissed or reversed by the courts due to jurisdictional reasons. The courts also found 13 cases as having no merit in their causes of action and thus, the courts denied the motions filed. Out of these 13 cases, eight lawsuits were filed by the franchisees. Only seven cases had their motions granted by the courts: three and four lawsuits were initiated by the franchisees and franchisors respectively.

While the Federal Arbitration Act favors arbitration as part of ADR in many commercial disputes, whether the parties will resort to ADR depends on the provisions of the franchise contract in question. Though the requirement for the inclusion of ADR clauses in franchise contract varies from state to state, most franchisors did not include the arbitration process in their franchise agreements as a dispute resolution mechanism. Based on the findings, all franchisees had opted for lawsuits without resorting to arbitration process first. Unfortunately, most of the lawsuits filed by the franchisees were dismissed by the courts due to insufficient evidences and non-compliance with the court procedures.

#### **Arbitrate first, not lawsuits**

In one case, a franchisor which had been in business for almost 50 years faced similar type of conflicts with a number of its franchisees throughout the years in which it was in operation. No arbitration process took place between the franchisor and its franchisees. This situation indicated that the franchisor had no intention to resolve the disputes amicably. Therefore, franchisees had to go to court for solutions. Based on the recurring conflicts, which were of the same type, it can be concluded that the franchisor manipulated the absence of the arbitration clause by repeating the same mistake over time. In another case, a franchisor refused to arbitrate over a dispute despite being requested by its franchisee on the ground that the franchise agreement contained no arbitration clause. This case suggested that in the absence of arbitration clauses in the franchising agreement, the franchisees' option was limited to filing a lawsuit.

#### **Reference**

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