

BUSINESS FRANCHISE GUIDE

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Restaurant Operator and Recruiter Was New Jersey Franchisee

In an action brought by a former restaurant operator and franchise recruiter against the franchisor, a forum selection clause was unenforceable because the arrangement constituted a franchise for purposes of the New Jersey Franchise Practices Act (NJFPA) the federal district court in Trenton, New Jersey, has decided. The franchisor was unable to show that the NJFPA's presumption against the enforceability of forum selection clauses did not apply—any forum selection clause in a contractual relationship between a franchisor and a franchisee under the NJFPA was presumed invalid, the court explained.

The NJFPA specified three factors that must be met for an arrangement to be considered a franchise under the statute: (1) there was a community of interest between the franchisor and the franchisee in the marketing of goods or services; (2) the franchisor granted a license to the franchisee; and (3) the parties contemplated that the franchisee would maintain a place of business in New Jersey. In the present case, these factors were met.

The arrangement satisfied the community of interest factor, which required that the distributor's investments were substantially franchise specific and were required to be made by the parties' agreement or the nature of the business, because the agreement referred to the initial franchise fee in its payment clause, and because numerous other provisions in the agreement concerned the marketing of goods at wholesale or retail, according to the court. The arrangement met the license factor, which required the franchisor to have given its approval for the franchise to use its trademark or other identifying characteristics, because the agreement explicitly granted the plaintiffs a right to use a trade name, trademark, service mark, or related characteristics. Finally, the arrangement satisfied the place of business factor because the agreement specified that the franchisee would at all times during the agreement's term own and operate at least one franchised restaurant within the specified territory.

Navraj Restaurant Group, LLC v. Panchero's Franchise Corp., DC N.J., ¶ 15,099

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