Terminating a franchise can pose several potential pitfalls and expose a franchisor to significant liability. A franchisor may not simply cancel, terminate, or refuse to renew a franchisee for just any reason. In most situations, there must be “good cause,” timely notice, and proper documentation to support the decision. Failure to understand and follow these rules may violate the New Jersey Franchise Practices Act, N.J.S.A. § 56:10-1 et seq. (“Act”) and expose a franchisor to liability for monetary relief and an award of attorney fees and costs to the franchisee.

**Good Cause**

What constitutes good cause to terminate a franchise in New Jersey is generally a question of fact for a judge or arbitrator. Good cause is defined as the “failure by the franchisee to substantially comply with the requirements imposed upon him by the franchise.” N.J.S.A. § 56:10-5. Accordingly, a franchisor cannot terminate a franchise even if acting in good faith for a legitimate business reason if the franchisee is not in substantial breach of its obligations under the franchise agreement.
An alleged violation of the franchise agreement must be substantial to constitute good cause. For example, if a franchisee violates an express or implied requirement of the franchise agreement repeatedly, the franchisor will likely have good cause to terminate the franchise agreement. To the contrary, minor infractions, especially ones that are not reoccurring, will likely not be sufficient to establish good cause.

In determining whether good cause exists, a franchisor should consider whether the violation goes to the heart of the franchise agreement or relationship, whether it significantly impacts the franchise operation or risks the franchise’s reputation.

The following are examples of what has been considered a violation that supports a for-cause termination:

- Where an automobile manufacturer granted a franchise to operate a dealership and the franchisee attempted to transfer its obligations to a third party without the franchisor’s consent.

- When a franchisee failed to complete construction for its business in the manner contractually agreed to with the franchisor.

- Where a franchisee violated payroll tax law obligations, the court found that it materially breached the terms of the franchise agreement.

**Proper Notice**

The franchisor must also provide timely written notice of the intention to terminate, cancel or refuse to renew the franchise. The notice must specifically set forth the alleged violations under the franchise agreement and provide 60 days’ notice before cancellation, termination, or nonrenewal is permitted. N.J.S.A. § 56:10-5. A franchisor cannot contract around the terms of the Act. For instance, a 30-day notice requirement in the franchise agreement will not be enforceable.

**Documentation**

Detailed documentation is essential to support the decision to terminate and to provide a record should the franchisee later challenge the franchisor’s decision to terminate the franchise agreement. The franchisor needs to be specific, naming every alleged violation supporting its decision to terminate, cancel or refuse to renew the franchise. Franchisors should make sure they have protocols in place to meticulously detail any violations of their franchise agreement so that if a franchisee challenges its decision to terminate, the franchisor will be well prepared with the information needed to support its decision.

**Risks**

Terminating, canceling, or refusing to renew a franchise without just cause is a violation of the New Jersey Franchise Practices Act and can result in litigation. If the court finds against the franchisor, it may impose monetary damages to compensate the franchisee for economic loss. The court may also award attorneys’ fees and court costs to the franchise.
If you are a franchisor who is considering terminating a New Jersey-based franchisee, who is not complying with your franchise agreement, Stark & Stark’s franchise lawyers can help.

**FOOTNOTES**

[1] There are two exceptions to this notice requirement. If the alleged grounds are:

1. the franchisee’s voluntary abandonment of the franchise, only 15 days advance notice is required, and

2. court conviction of the franchisee of an indictable offense directly related to the business conducted pursuant to the franchise, termination, cancellation, or failure to renew may be effective immediately on delivery and receipt of written notice following the conviction.

COPYRIGHT © 2022, STARK & STARK

National Law Review, Volume XII, Number 216

**Source URL:** https://www.natlawreview.com/article/how-when-and-why-franchise-termination-new-jersey