National Franchise Mediation Program

Steering Committee Meeting
January 11, 2000


Absent:  Don Hachenberger, Michael W. Haley

Mr. Dixon convened the meeting at 9:00 a.m.  Mr. Phillips gave the case report as of December 31, 1999 (attached), noting activity throughout 1999 and comparing it to the two prior years.  The Committee discussed the likelihood that negotiation/mediation activities were taking place in the industry outside of the Program and therefore not being captured by the CPR report.  Mr. Wolf confirmed that Cendant engages in many mediations outside the Program when (for example) the franchisee is uncomfortable with the local CPR neutral, or CPR does not have a neutral in the region.

The Committee agreed that it was important to change franchisees' perception of the Program as biased towards franchisors.  It also agreed that the AAFD had an important role in this task.  The endorsement should be communicated by Program participants to their franchisees. The AAFD was also available as a resource to its members wishing to inquire about the Program.

The Committee discussed the advantages and disadvantages of putting negotiation/mediation into franchise agreements, and making an ADR process a condition precedent to arbitration.  Mr. Aronson noted that negotiation of some kind nearly always takes place in franchise disputes, and felt that mediation should be voluntary.  Mr. Henry noted that pre-dispute commitments or contract provisions are the most successful way to ensure that mediation will take place despite objections that parties or counsel may have in a particular instance. Some franchisors do not have the resources to mediate every dispute, however, and are reluctant to add ADR as a contractual requirement in every instance. The Committee discussed optional contract language that would feature a threshold dollar amount at issue. It was suggested that franchisors periodically contact their franchisees about the Program. The Committee recommended that CPR draft a model communication that franchisors might use to communicate the Program to their franchisees, including references to the AAFD.
Mr. Aronson reported on the National Franchise Council, which is constituted solely of franchisors and receives referrals from the FTC for non-serious violations of the Disclosure Rules. No significant mediations have occurred to date, though one is expected soon that may involve multiple franchisee claimants. The Committee discussed whether multiple claimants would be consolidated in a single mediation. Mr. Aronson contacted Mr. Simon of the NFC, who confirmed that CPR (as administrator of NFC mediations) would attempt to consolidate claims when appropriate. The Committee acknowledged that franchisors who objected to consolidation would have to make their own decision whether to continue to participate in light of their other options in dealing with the FTC outside the NFC program.

Mr. Wolf reported that it seemed likely that a plenary session might be held at the next ABA Franchise Forum meeting on ADR in the industry. (His proposal is attached.) Mr. Purvin reported on an unsuccessful effort to hold a call-in meeting of AAFD members about the Program.

The Committee discussed several proposals to attract more participants to the Program, and encourage more activity within it. A name change was considered, to avoid the misinterpretation that “National Franchise” meant domination by large and powerful companies. Instead, names like “Franchisee/Franchisor Program” or “Franchise Dispute Resolution Program” were discussed.

The Committee also discussed enlarging the Steering Committee to widen the sense of “ownership” by industry participants. Three specific approaches were approved: (1) Mr. Aronson will talk to Marriott; (2) Mr. Hazlett will talk to Tricon; and (3) Mr. Wolf will discuss with the current Chair of the ABA Forum the prospect of the Chair’s ex officio membership on the Committee. Further new Steering Committee prospects should be discussed by the Committee before they were approached. CPR will supply a list of prospective franchisor targets: either large companies who are not in the Program, or else Program companies who do not participate enough. Messrs. Hazlett, Rosen and Purvin will discuss possible franchisee (or attorney) nominations. Once these suggestions are circulated, the Committee will meet by phone to discuss them.

Mr. Phillips was asked to contact current members of the Program in order to ensure that all of the original participants are still aware of the Program and are accurately listed. He will do so, while consulting with Committee members in particular instances.

The Committee agreed to meet again at 9:00 a.m. Thursday, June 8, at the offices of Cendant Corporation, 9 West 57th Street, New York City. The meeting adjourned at 12:00 noon.