

Lubbock County Judge Grants Falcon Healthcare a "Counter-Supersedeas Bond"

Rare use of counter-supersedeas bond allows Falcon to de-franchise from its franchisor

01.10.2024

In yet another victory for Falcon Healthcare ("Falcon") in its two-year dispute with Interim Healthcare ("Interim"), a Lubbock County state district judge granted Falcon a counter-supersedeas bond allowing Falcon, a \$70+ million company, and its affiliates to de-franchise from its franchisor, Interim, and chart its own course while Interim pursues an appeal of the final judgment rendered and damages ordered against it in November 2023.

Falcon is the largest home healthcare and hospice franchisee under the Interim brand. Interim is one of the largest home health and hospice franchisor in the world and franchises across the United States.

In 2022, Interim wrongfully terminated its franchise agreements with Falcon accusing it of numerous breaches under the agreements. Thereafter, Interim physically "stepped into" Falcon's headquarters to take control of Falcon and its affiliates. After having the Lubbock Police Department physically remove Interim from its headquarters, Falcon obtained a temporary restraining order prohibiting Interim from trying to step into the business or communicating with Falcon's employees including management that had been commandeered by Interim and ordered not to communicate with the "prior owner." Falcon sought and received a lightning quick trial in the fall of 2022. Falcon asked the court to grant it a complete business divorce from Interim by "canceling" all of the parties' franchise agreements because of Interim's wrongful termination of the franchise agreements and "step-in." In the first of a string of victories for Falcon, the court granted Falcon this business divorce and canceled the franchise agreements. The court then heard Falcon's bifurcated damages case, ultimately awarding Falcon roughly \$850,000 in damages and, as an alternative to cancellation should that ruling be later reversed, lost profits damages of \$30 million. The court also awarded Falcon over \$6.8 million in attorneys' fees and expenses. This was all memorialized in the court's recent final judgment issued in November.

Contemplating an appeal, Interim asked the court to allow it to post a bond to "supersede" the judgment while it appealed the case during a bond hearing last week. Were the Court to have granted the supersedeas bond, the court's cancellation ruling would have been stayed pending appeal. In response, Falcon asked for a rarely considered, much less granted, "counter-supersedeas" bond to allow it to move forward with cancellation of the franchise agreements even though Interim was appealing. On Monday, January 8, 2024, the court denied Interim's request and granted Falcon's request to post a counter-supersedeas bond – another unprecedented victory for Falcon. The ruling paves the way for Falcon to de-franchise from its franchisor, another rare occurrence, at least in the franchise world, and to move forward with the much-needed business divorce.

The Sheppard Mullin team representing Falcon was led by Dallas partner Bill Mateja and San Diego Partner Elizabeth Balfour. Dallas senior counsel and associates Jason Hoggan, Jonathan Clark and Kate Rumsey ably assisted.

Ladd Hirsch and Brian Gillett of Bradley Arant's Dallas office along with Jody Jenkins of Jenkins & Young in Lubbock were critical members of the trial team. Warren Harris and Tracy Temple of Bracewell LLP led the Falcon appellate team and were also instrumental at trial.

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