



Statement of Deborah Williams

Coffee Beanery Franchise Owner

Annapolis, Maryland

**Before the
House Subcommittee on Commercial and Administrative Law**

October 25, 2007

I want to thank Chairwoman Sanchez and the members of the subcommittee for giving me the opportunity to share my story.

My name is Deborah Williams. I am 54, bankrupt and on the verge of being homeless, all because of a binding mandatory arbitration clause. In February 2004, my partner and I opened a Coffee Beanery franchise in Annapolis, Maryland. In the small print of our franchise contract hid a binding mandatory arbitration agreement.

Within three months, our dream of owning our own small business was becoming a nightmare. The franchise rapidly fell apart through no fault of our own. The Coffee Beanery had sold us a failed business concept that generated massive losses. We were required to buy expensive, faulty equipment, such as a discontinued lighting system that cost \$14,000, and a defective display case that cost \$8000, a \$2000 mark-up from what it normally sells for.

We were forced into illegal third-party contracts which required ongoing fees and additional equipment such as a Gift Card program, a required DMX music and security system, and a Pepsi contract. The DMX music and security system was listed in our contract as already paid for, but the Coffee Beanery forced us to pay an additional \$8000 for the system. The gift card program and Pepsi contract were not disclosed in our initial contract as required by law, but we had invested so much money that we had no choice but to accept the exorbitant additional fees. We would have never bought the franchise if these contracts had been disclosed.

We conducted more research and discovered over 73 other failed Coffee Beanery franchises, and that the Coffee Beanery was being investigated in other states. We also learned that a Coffee Beanery cafe had an average life span of three years – that's pretty unbelievable considering the average cost to open one of these cafes is over \$375,000.

We immediately alerted the Maryland Attorney General of our situation. The Attorney General's office conducted an investigation and, based on Maryland franchise law and the Federal Trade Commission franchise rule, they concluded that the franchisor committed fraud in the sale of our small business. When someone commits fraud then they should be held accountable. In December 2005, we filed our civil case in Maryland district court, but despite Maryland Attorney General's finding, we were forced to resolve our dispute through binding mandatory arbitration.

The arbitration company that the Coffee Beanery used in our case is called the American Arbitration Association (AAA). The AAA arbitrator was selected without our input and without our consent at a fee of \$200 an hour. We had no information about her history as an arbitrator – if she had been hired by the Coffee Beanery before for arbitration or how often she had ruled in their favor.

We also discovered that our arbitrator shared an accounting firm with The Coffee Beanery, an obvious conflict of interest. We tried to get her replaced but were

unsuccessful. If a judge had a similar connection to the defense in a court case it would have been thrown out immediately, but not in the kangaroo court known as arbitration. We also found out later that the Coffee Beanery's attorney also doubled as an arbitrator for the AAA.

Because discovery is very limited in arbitration, we had difficulty obtaining copies of the Coffee Beanery's illegal third-party contracts to use as evidence in our case. The Coffee Beanery did not respond to our discovery requests dragging out the process for seven months, knowing that we couldn't afford the exorbitant costs that accompany a long arbitration process. We later obtained some of these contracts from another franchisee, and not the Coffee Beanery.

The arbitration took place in Michigan, 500 miles from our home. We flew back and forth with our attorney three times for a total of 11 days of proceedings. We felt that we had a great chance of prevailing since the Attorney General had already found the franchisor had committed fraud.

Our cost of the arbitration proceedings totaled over \$100,000 - hardly a cheaper alternative to litigating locally in Maryland. In the end, the arbitrator ruled that contrary to the findings of the Maryland Attorney General's office, we were at fault. In addition to our costs, we were required to pay the Coffee Beanery \$150,000, plus their attorneys' costs and fees. That's a total of over \$250,000.

We are trying to appeal our decision, but we have been told by several attorneys that it is a lost cause. It's virtually impossible to overturn a decision of an arbitrator on appeal.

It's been four years since we have opened our franchise. We haven't made a profit. We haven't paid ourselves wages. We are in enormous debt. We've invested over \$1.5 million in this failed business and every year, we owe the Coffee Beanery more money in royalties. Since we signed a 15 year franchise agreement with the Coffee Beanery, our only options have been to sell this business to another unsuspecting person which we refuse to do, or to file for bankruptcy.

Recently, our landlord terminated our lease due to our inability to pay rent and the doors to our Coffee Beanery cafe will be locked as of next Wednesday, October 31. We are borrowing money from our family so that we can file for bankruptcy; however, we may still owe the Coffee Beanery royalties for the remaining 11 years on our franchise even if our cafe is no longer open.

Losing our right to a trial by a jury has crippled us, but we are not alone. Binding mandatory arbitration has harmed the livelihoods of thousands of others. The Arbitration Fairness Act of 2007 would ensure that all Americans have access to the courts and trials by juries to resolve disputes. It would still permit arbitration in cases like ours, but only if both parties voluntarily agree to it.

Please do not force more consumers into a privatized system that has no oversight and almost no opportunity to appeal. That kind of power is dangerous and too easily abused. We never knew how precious our constitutional rights were until they were stolen from us by a binding mandatory arbitration clause.

It is the American dream to own your own business. Our dream was trampled upon by binding mandatory arbitration. I hope hearing our story will make a difference and you will protect hardworking Americans across the country by eliminating these abusive clauses.