

(c) Copyright Élise Billy 2007. All copyright and rights reserved. You may not copy, distribute or use this article or any of the material in any derivative works without prior written consent from Élise Billy. Visit www.exbdirect.com for contact.

If my new franchise does not achieve the guaranteed earnings my franchisor claimed it would before I signed the agreement, do I have any recourse?

This is always a difficult issue, and the most common complaint from franchisees is misrepresentation. It would be very rare for a franchisor to promise “guaranteed earnings”. Instead, they normally give projections and forecasts or examples from existing franchisees. They usually however include disclaimers that set out that you can not rely on the earnings forecasts and that your own earnings depend on you alone. In particular, you should be aware that most franchise agreements contain clauses called “entire agreement” clauses that set out in detail that you may not rely legally on anything that is not in the franchise agreement itself.

Therefore unless there is a guarantee in the franchise agreement, it may be difficult to bring a claim (unless, which is very rare, the agreement did not contain the entire agreement clauses, or the projections were indeed presented as “guarantees”).

However, if the misrepresentations were fraudulent, you can bring a claim for them even if there are “entire agreement” clauses. You need to consider however the costs and uncertainty of bringing legal action, and the assets of the franchisor (to see whether it could pay any damages awarded).

Each case depends on its merits so if an issue arises you should take specialist legal advice, but I recommend that you do as much research before you enter a franchise as possible, in particular checking accounts and finances (to make sure that the franchisor is profitable and financially stable) and asking to see proof of actual franchisees or pilots who have earned the forecasted amounts in a similar sized territory.