

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, NOVEMBER 20, 2019

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2018-00041

DENTAL FIX RX, LLC
and
DAVID LOPEZ,
Defendants

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Dental Fix Rx, LLC, formerly known as Dentalfix Rx, LLC ("Dental Fix"), and David Lopez ("Lopez") (collectively, the "Defendants") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

Dental Fix is a Florida limited liability company with a last known address of 4380 Oakes Road, Suite 800, Davie, Florida 33314, that was originally organized in New Jersey on June 26, 2009. Lopez is the chief executive officer and co-founder of Dental Fix. Dental Fix offers and sells franchises providing dental equipment repair services to dentists in specific geographic territories and sells new dental equipment.

Dental Fix was registered as a franchise under the Act in 2013. The Division alleges that from 2013 through 2016, Dental Fix and Lopez offered and sold six franchises to be operated in Virginia to six Virginia residents ("Virginia Franchisees"). The Division alleges the Defendants failed to disclose in the franchise disclosure document that Lopez was chief executive officer of

a franchise that entered into a settlement with the Commission (SEC-2008-00105)¹ as required under § 13.1-563 (2) of the Act.

The Division further alleges that from 2013 through 2016, Dental Fix's website contained misrepresentations of franchise revenue forecasts that the Virginia Franchisees relied upon when purchasing the franchise in violation of § 13.1-563 (2) of the Act.

Additionally, the Division alleges that Dental Fix further violated § 13.1-563 (2) of the Act when certain employees of Dental Fix made untrue statements of material facts or omitted material facts in the offer and sale of franchises to the Virginia Franchisees by making representations about the potential monthly franchise revenues that failed to include: (1) the number of customers, (2) the number of competitors within the franchise territories, (3) the level of sales and service experience needed, and (4) the level of training and dental experience needed to make the franchise successful.

Based on the investigation, the Division alleges the Defendants violated § 13.1-563 (2) of the Act by making untrue statements of material facts or omitting to state a material fact necessary in order to avoid misleading the offerees in the sale or offer to sell a franchise.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-562 of the Act to revoke a defendant's registration, by § 13.1-568 of the Act to issue temporary or permanent injunctions, by § 13.1-570 of the Act to impose certain monetary penalties and to request a defendant make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

¹ *Commonwealth of Virginia, ex rel., State Corporation Commission v. Froots Franchising Companies, Inc.*, Case No. SEC-2008-00105, 2009 SCC Ann. Rept. 587, Settlement Order (Jan. 9, 2009).

The Defendants neither admit nor deny the allegations made herein but admit to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will make an offer of rescission ("Offer") to the Virginia Franchisees within seven (7) days of the entry of this Order. The Virginia Franchisees will have thirty (30) days to accept the Offer. If the Virginia Franchisees accept the Offer, the Defendants will pay each Virginia Franchisee who accepts the Offer the particular amount referenced for such Virginia Franchisee on a previously agreed upon payment schedule within thirty (30) days of such acceptance and the execution by each accepting Virginia Franchisee of a legal release using a form release ("Release"). The maximum amount of restitution that shall be owed by Defendants is One Hundred Twenty-two Thousand Five Hundred Dollars (\$122,500) if all five current Virginia Franchisees accept the Offer. In addition, the Defendants shall pay Twelve Thousand Five Hundred Dollars (\$12,500) in restitution to a former Virginia Franchisee within thirty (30) days of the execution of a Release by this former Virginia Franchisee.

(2) Within thirty (30) days of each of the potential payments identified in paragraph (1) above, the Defendants will submit to the Division a copy of the payment transmittal or other proof of payment to the Virginia Franchisees containing the date in which payment was made, the payment amount, and the date the payment was sent to the Virginia Franchisees;

(3) The Defendants will not direct any current franchisee to have contact with prospective Virginia franchisees prior to a franchise sale, and current franchisees' revenues will

not appear in or be referenced in any online or other solicitation advertisement that is accessible by prospective Virginia franchisees;

(4) The Defendants will pay to the Treasurer of Virginia, within five (5) days after the entry of this Order, the amount of Twelve Thousand Dollars (\$12,000) in monetary penalties;

(5) The Defendants will pay to the Treasurer of Virginia, within five (5) days after the entry of this Order, the amount of Five Thousand Dollars (\$5,000) to defray the costs of investigation in this matter; and

(6) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein is hereby accepted.

(2) The Defendants shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Robert M. Einhorn, Zarco Einhorn Salkowski & Brito, P.A., 2 South Biscayne Boulevard, Suite 3400, Miami, Florida 33131; and a copy shall be delivered to the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.

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DAVID LOPEZ,
Defendants

ADMISSION AND CONSENT

Dental Fix Rx, LLC and David Lopez ("Defendants") admit to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, without admitting or denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consent to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendants further state that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Date: 11/6/19

Dental Fix Rx, LLC

By: 

Its: CEO

David Lopez



Date: 11/6/19

Seen and Approved By: 

Robert M. Einhorn, Esquire