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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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IN THE MATTER OF DETERMINING) Order No.: S-11-0712-12-CO01
whether there has been a violation of the)
Franchise Investment Protection Act of) CONSENT ORDER
Washington by:)
)
Fresh Healthy Vending, LLC; Jolly Backer,)
)
Respondents.)
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INTRODUCTION

Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Respondents, Fresh Healthy Vending, LLC and Jolly Backer, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondents, Fresh Healthy Vending, LLC and Jolly Backer, neither admit nor deny the Findings of Fact or Conclusions of Law as stated below.

FINDINGS OF FACT

Respondents

1. Fresh Healthy Vending, LLC (“FHV”), with a place of business at 9605 Scranton Road, Suite 350, San Diego, California 92121, is a California limited liability company that offers and sells vending machine franchises. On February 8, 2010, Jolly Backer formed FHV, which operated under the name Yum Healthy Vending, LLC until March 16, 2010.

2. Jolly Backer (“Backer”), a California resident, is the former CEO of FHV. Backer holds all common shares of FHV. In February 2000, Backer filed a Chapter 7 bankruptcy petition, which resulted in a discharge on May 8, 2000 and terminated on May 16, 2000.

Related Entities

3. FHV Holdings Corp. (“FHVHC”), previously named YoNaturals Incorporated (“YoNaturals”), with a place of business at 4380 La Jolla Village Drive Suite 230, San Diego, California 92122, is a California corporation that is in the business of selling vending machines and finding locations for the vending machines it sells. On August 20, 2010, YoNaturals changed its name to FHV Holdings Corp. (“FHVHC”). FHVHC is a predecessor of FHV, as described in paragraphs 10-11 below.

4. Mark Trotter (“Trotter”), a California resident, is the president, secretary, and sole shareholder of FHVHC, which holds all preferred shares of FHV. FHV consults Trotter before selling FHV vending machine franchises.

1 5. Nicholas Yates (“Yates”), a California resident, is an agent of FHV who has directed the sales of FHV
2 vending machine franchises. Yates was a marketing executive and a registered agent for FHVHC. FHV provided
3 Yates with the following email address: marketing@freshvending.com.

4 **Deficient Franchise Disclosure Document**

5 6. In April 2010, FHV and Backer filed or caused to be filed an application for franchise registration (Securities
6 Division file number 70014569). A franchise disclosure document (“FDD”) accompanied the application and was
7 proposed for use in the offer and sale of franchises in the state of Washington.

8 7. On June 1, 2010, the Securities Division issued a registration permit to FHV which granted the authority to
9 the company to offer and sell franchises in the state of Washington. This permit was renewed on April 1, 2011. This
10 permit expired as of April 1, 2012.

11 8. The FDD disclosures for FHV identified below are on file with the Securities Division and were unchanged
12 in subsequent registration amendment filings made in October and December 2010, as well as March and August
13 2011.

14 *NASAA Guidelines*

15 9. WAC 460-80-315 provides that, in order to implement the disclosure requirements of RCW 19.100.040 for
16 franchise registrations, the Securities Division has adopted the 2008 Franchise Regulation and Disclosure Guidelines
17 promulgated by the North American Securities Administrators Association (“NASAA guidelines”). The NASAA
18 guidelines mandate certain FDD disclosures for predecessors and for principal officers and other agents of a
19 franchisor who will have management responsibility relating to the franchises offered. Each disclosure mandate
20 corresponds to a numbered item.

21 *Inaccurate or Incomplete Disclosure Regarding Identifying the Franchisor and Predecessors and Their Business
22 Experience*

23 10. Item 1 of the NASAA guidelines requires a franchisor to disclose the “prior business experience,” as well as
24 the “name and principal business address of any predecessors during the 10-year period immediately before the close
25 of the franchisor’s most recent fiscal year.” The NASAA guidelines define predecessor as “a person from whom the
franchisor acquired, directly or indirectly, the major portion of the franchisor’s assets.”

11. FHVHC is a predecessor of FHV because FHVHC provided FHV with \$5,000,000 of intangible assets,
which constituted over 75% of FHV’s assets as of December 31, 2010. FHVHC is entitled to the first \$11,000,000 of
cumulative net cash flow from FHV operations. FHVHC is also entitled to the greater of \$10,000,000 or 95% of
proceeds from a change of control transaction. Among other powers, FHVHC must give its prior written consent
before FHV (1) shuts down its business; (2) makes or permits any material change in its business; (3) creates, incurs,

1 assumes, or guarantees any indebtedness for borrowed money; or (4) amends, repeals, or supplements its Articles of
2 Formation.

3 12. The versions of the FDD that Respondents filed or caused to be filed with the Division contained the
4 following disclosure (in Item 1) concerning FHV's parents, predecessors, and affiliates: "We have no parents,
5 predecessors or affiliates."

6 13. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially
7 deficient in failing to disclose, as required by Item 1 of the NASAA guidelines, that FHVHC was previously known
8 as YoNaturals and is a predecessor of FHV. Consequently, Respondents also failed to disclose the name, business
9 address, and business experience of any predecessors during the 10-year period immediately before the close of the
10 franchisor's most recent fiscal year, as required by Item 1 of the NASAA guidelines.

11 *Inaccurate or Incomplete Disclosure Regarding Business Experience Directors and Managers*

12 14. Item 2 of the NASAA guidelines requires a franchisor to "disclose by name and position directors . . . and
13 any other individual who will have management responsibility relating to the sale or operation of franchises offered
14 by [the FDD]." For each of these individuals, Item 2 of the NASAA guidelines also requires the franchisor to
15 disclose "his or her principal positions and employers during the past five years, including each position's starting
16 date, ending date, and location."

17 15. Backer, as CEO, was a director of FHV. Trotter and Yates, as individuals who directed the sales of FHV
18 franchises, were individuals with management responsibility over franchise operations and sales.

19 16. The versions of the FDD that Respondents filed or caused to be filed with the Division contained the
20 following disclosure (in Item 2) concerning the business experience of Jolly Backer: "Mr. Backer became our Chief
21 Executive Officer on February 8, 2010. From October 1, 1995 through December 31, 2009, Mr. Backer served as the
22 Director of Sales at Stern Pinball in [Melrose Park, Illinois]." The FDD did not disclose any information regarding
23 Mark Trotter or Nicholas Yates.

24 17. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially
25 deficient in failing to disclose, as required by Item 2 of the NASAA guidelines, that Trotter was an individual with
management responsibility relating to the sale or operation of franchises offered by the FDD. Consequently,
Respondents also failed to disclose Trotter's principal positions and employers during the past five years, as required
by Item 2 of the NASAA guidelines.

18. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially
deficient in failing to disclose, as required by Item 2 of the NASAA guidelines, that Yates was an individual with
management responsibility relating to the sale or operation of franchises offered by the FDD. Consequently,

1 Respondents also failed to disclose Yates' principal positions and employers during the past five years, as required by
2 Item 2 of the NASAA guidelines.

3 *Inaccurate or Incomplete Disclosure Regarding Litigation History*

4 19. Item 3 of the NASAA guidelines requires a franchisor to disclose whether any individual who will have
5 management responsibility relating to the sale or operation of franchises offered by the FDD (1) is subject to a
6 currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a
7 public agency and relating to a state or federal trade regulation or trade practices law, or (2) has, in the last 10-year
8 period immediately before the disclosure document's issuance date, been held liable in a civil action involving an
9 alleged violation of a franchise law or allegations of fraud, unfair or deceptive practices, or comparable allegations.
10 The NASAA guidelines define "held liable" to mean that, "as a result of claims or counterclaims, the person must pay
11 money or other consideration . . . or must take action adverse to its interests."

12 20. As Trotter and Yates are franchise sales and operations managers, FHV must disclose their relevant litigation
13 history. Trotter's relevant litigation history includes his being the subject of an action involving the alleged violation
14 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, and the Texas Electronic
15 Mail Solicitation Act, and the Deceptive Trade Practices-Consumer Protection Act in connection with sending
16 unsolicited e-mail messages containing false, misleading, or deceptive information. On June 6, 2006, the US District
17 Court for the Western District of Texas entered a Final Judgment and Order for Permanent Injunction and Monetary
18 Relief against Mark Trotter. Yates' relevant litigation history includes a February 2006 judgment involving a
19 monetary penalty that was entered against him by the Federal Court of Australia for misleading and deceptive
20 conduct regarding the operation of pre-paid phone card and vending machine distributorships.

21 21. The versions of the FDD that Respondents filed or caused to be filed with the Division contained the
22 following disclosure (in Item 3) concerning litigation: "No litigation is required to be disclosed in this item."

23 22. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially
24 deficient in failing to disclose, as required by Item 3 of the NASAA guidelines, that Trotter is subject to an order or
25 decree resulting from a concluded action brought by a public agency and relating to a state or federal trade regulation
or trade practices law.

26 23. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially
deficient in failing to disclose, as required by Item 3 of the NASAA guidelines, that Yates has been held liable in a
civil action involving an alleged violation of a franchise law or allegations of fraud, unfair or deceptive practices, or
comparable allegations.

Inaccurate or Incomplete Disclosure Regarding Bankruptcy History

24. Item 4 of the NASAA guidelines requires a franchisor to disclose whether any officer has filed as a debtor or obtained a discharge of debts during the last 10-year period immediately before the date of the disclosure document.

25. Backer's debts were discharged in a Chapter 7 bankruptcy action on May 8, 2000. The action terminated on May 16, 2000. The first two versions of the FDD filed with the state of Washington had an issuance date of April 12, 2010 and May 12, 2010, within 10 years of Backer's bankruptcy discharge.

26. The versions of the FDD that Respondents filed or caused to be filed with the Division contained the following disclosure (in Item 4) concerning bankruptcy: "No bankruptcy information is required to be disclosed in this item."

27. The versions of the FDD that Respondents filed or caused to be filed with the Division were materially deficient in failing to disclose, as required by Item 4 of the NASAA guidelines, that Backer filed for bankruptcy which ended in a discharge within 10 years of the date of the FDD.

Nature of the Offering

28. Between May 2010 and September 2011, FHV solicited approximately 200 Washington residents to become FHV franchisees. FHV solicited at least six Washington residents before the Securities Division first issued FHV a registration permit on June 1, 2010.

29. FHV has offered and sold at least one franchise in the state of Washington. FHV represented to at least one Washington franchisee that Backer bought YoNaturals, that FHV had taken over YoNaturals' franchisees, and that Yates and Trotter were not involved with FHV.

Omissions and Misrepresentations

30. Respondents made material omissions by failing to disclose information pursuant to the NASAA guidelines as described in the "Deficient Franchise Disclosure Document" section above.

31. Respondents misrepresented the relationship of FHVHC, Trotter, and Yates to at least one franchisee who would not otherwise have become a franchisee but for the misrepresentation.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer or sale of franchises as described above constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(4) and RCW 19.100.010(16).

1 2. The offer and/or sale of said franchises were in violation of RCW 19.100.080 because Respondents failed to
2 provide prospective purchasers with an FDD that contained all material information about the franchise as required by
3 RCW 19.100.040 and WAC 460-80-315.

4 3. The offer and/or sale of said franchises were in violation of RCW 19.100.170(1) because Respondents made
5 untrue statements of material facts and/or willfully omitted material facts required to be stated in an application,
6 notice, or report filed with the Securities Division.

7 4. The offer and/or sale of said franchises were in violation of RCW 19.100.170(2) because Respondents, in a
8 written communication to prospective franchisees, made untrue statements of material facts and/or omitted material
9 facts necessary in order to make the statements made in light of the circumstances under which they were made not
10 misleading.

11 **CONSENT ORDER**

12 Based upon the foregoing and finding it in the public interest:

13 IT IS AGREED AND ORDERED that Respondents, their agents and employees shall each cease and desist
14 from violating RCW 19.100.080, the disclosure document section of the Franchise Investment Protection Act of the
15 state of Washington.

16 IT IS AGREED AND ORDERED that Respondents, their agents and employees shall each cease and desist
17 from violating RCW 19.100.170, the anti-fraud section of the Franchise Investment Protection Act of the state of
18 Washington.

19 IT IS FURTHER AGREED AND ORDERED that Respondents shall reimburse the Securities Division
20 \$5,000 for its costs of investigation payable prior to the Securities Division's entry of this Consent Order.

21 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

22 IT IS FURTHER AGREED that Respondents enter into this Consent Order freely and voluntarily and with
23 full understanding of its terms and significance.

24 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents waive their right to a hearing
25 and to judicial review of this matter.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Signed this 24th day of May 2012

Signed by:

Fresh Healthy Vending, LLC

By _____/s/_____
Jolly Backer, CEO

Signed by:

By _____/s/_____
Jolly Backer, Individually

Approved for Entry by:

By _____/s/_____
Gary Duvall, Attorney for Respondents
WSBA No. 7617

Approved for Entry by:

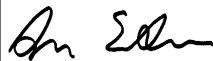
By _____/s/_____
Barry Kurtz, Attorney for Respondents
CA Bar No. 57544

SIGNED and ENTERED this 5th day of June 2012.



William M. Beatty
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Drew Stillman
Enforcement Attorney

Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor