

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RIMA ALBARQAWI)	
BASSAM M. BARQAWI)	
BASIL M. ALBARQAWI)	
Plaintiffs)	Case Number:
)	
vs.)	
)	CIVIL COMPLAINT
NEW YORK BAGEL ENTERPRISES, INC.))	
AND JOE SMITH)	JURY TRIAL DEMANDED
Defendants)	
)	

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiffs, Bassam M. Barqawi, Basil M. AlBarqawi and Rima AlBarqawi by and through their undersigned counsel, Bruce K. Warren, Esquire of the Warren Law Group, P.C., complaining of Defendants, and respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiffs, are adult natural people and bring this action for actual and statutory damages and other relief against Defendants for violations of the New Jersey Franchise Practices Act NJSA §56:10.1 et. seq., breach of contract, unjust enrichment and fraud,

II. JURISDICTION

2. Jurisdiction of this Court arises under 28 U.S.C. § 1332 because diversity of citizenship exists between Plaintiffs and Defendants, and the amount of the damages sought is in excess of \$75,000.00, excluding interest and costs.

3. Venue in this District is proper in that the Defendants maintain a primary location in this District and the cause of action arose within the District.

III. PARTIES

4. Plaintiff, Bassam M. Barqawi is an adult individual residing in Sewell, NJ.
5. Plaintiff, Basil M. AlBarqawi is an adult individual residing in Philadelphia, PA.
6. Plaintiff, Rima AlBarqawi is an adult individual residing in Turnersville, NJ.
7. Defendant, New York Bagel Enterprises, Inc. was a New Jersey Corporation with a principal place of business at 301 Route 17 North, Suite 800, Rutherford, NJ (hereafter, NYB), at all times relevant hereto, is and was a business owned by Defendant Joe Smith that did not have corporate status but still engaged in the business of attempting to sell and accepting money for franchise agreements within the State of New Jersey and the Commonwealth of Pennsylvania.
8. Defendant, Joe Smith (hereafter Smith) is an adult individual and the owner of NYB, residing in New Windsor, NY.

IV. FACTUAL ALLEGATIONS

9. On or about November 2, 2011 Plaintiffs entered into a Franchise Agreement with NYB. See agreement attached hereto as **Exhibit "A"**.
10. Defendant, NYB is not an authorized business entity in any State.
11. NYB was originally formed by Smith on or about March 10, 2008 as a New Jersey Corporation. See Certificate of Inc, (Profit) attached hereto as **Exhibit "B"**.
12. However, New Jersey revoked NYB's corporate status on October 16, 2011. See revocation report attached hereto as **Exhibit "C"**.
13. Smith continued to operate his scheme using the corporate name New York Bagel Enterprises, Inc.

14. Plaintiffs paid the defendants an initial Franchise Fee of \$29,500.00 to own and run a NY Bagel shop that Defendants claimed to be the Franchisors.

15. Pursuant to the Franchise Agreement the Defendants were to open a bagel shop (NY Bagel) for the Plaintiffs.

16. The Defendants sold the Franchise to Plaintiffs without any place to locate the business.

17. The Plaintiffs were not able to have any meaningful contact with the Defendants to set up an actual location for the bagel shop once the Plaintiffs paid the \$29,500.00 Franchise Fee.

18. Defendants failed and refused to respond to the Plaintiffs.

19. Defendants indicated to Plaintiffs that the bagel shop would be in the Philadelphia Area.

20. Defendants are not authorized to transact business within the Commonwealth of Pennsylvania.

21. At the time the Defendants converted the \$29,500.00 from the Plaintiffs they knew that there was no franchise location for the Plaintiffs.

22. Plaintiffs have demanded the return of the \$29,500.00, however the Defendants have failed and refused to return the money or take any other action in furtherance of the franchise agreement.

23. By reason of the lack of authority to transact business in the State of New Jersey the Franchise Agreement has no force or effect.

24. If the court were to find the Franchise Agreement was valid, it was constructively revoked by the Defendants.

25. Had the Defendants not wrongfully revoked the Franchise Agreement, Plaintiffs would have had the opportunity to profit from the operation of a NY Bagel shop.

26. As a result of Defendants' conduct, Plaintiffs have sustained actual damages, including, but not limited to, injury to Plaintiffs' reputation, invasion of privacy, damage to Plaintiffs' credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss and they each will continue to suffer same for an indefinite time in the future, all to their great detriment and loss.

COUNT I – New Jersey Franchise Practices Act

27. The above paragraphs are hereby incorporated herein by reference.

28. At all times relevant hereto, Defendants were attempting to lure the Plaintiffs into a Franchise Agreement that contained unreasonable standards, such as no location for the actual franchise.

WHEREFORE, Plaintiffs respectfully pray that judgment be entered against the Defendants, for the following:

- a. Actual damages including loss of business opportunity;
- b. Statutory damages pursuant to NJSA §56:10-1 et seq.
- c. Reasonable attorneys' fees and litigation expenses, plus costs of suit; and
- d. Such additional and further relief as may be appropriate or that the interests of justice require.

COUNT II Fraud

29. The above paragraphs are hereby incorporated herein by reference

30. By the conduct described above, the Defendants lured and enticed the Plaintiffs into paying a \$29,500.00 "franchise fee" for a franchise that did not and could not exist at the time the Franchise Agreement was signed.

31. As a direct and proximate result of the said actions, Plaintiffs have suffered financial harm and continue to suffer financial harm.

WHEREFORE, Plaintiffs prays this Honorable Court enter judgment in their favor and against Defendants, and Order the following relief:

- a. Actual damages;
- b. Punitive damages;
- c. An award of reasonable attorney's fees and expenses and costs of court; and
- d. Such additional relief as is deemed just and proper, or that the interests of justice require.

COUNT III Unjust Enrichment

32. The foregoing paragraphs are incorporated herein by reference.

33. The Defendants took the \$29,500.00 from the Plaintiffs as a "franchise fee".

34. The Defendants have converted that money for their own use.

35. The Plaintiffs have received no value whatsoever for the \$29,500.00.

WHEREFORE Plaintiffs prays this Honorable Court enter judgment in their favor and against Defendants, and Order the following relief:

- a. Actual damages of \$29,500.00;
- b. An award of reasonable attorney's fees and expenses and cost of suit; and
- c. Such additional relief as is deemed just and proper, or that the interest of justice may require.

COUNT IV Breach of Contract

36. The foregoing paragraphs are incorporated herein by reference.
37. The Defendants entered into a contract with the Plaintiffs; that contract was void at its inception.
38. The Defendants could not, under law, complete the terms and conditions of the contract.
39. Even if the contract was not void, the Defendants contracted for something that did not exist at the time of the signing of the document:
 - a. there was no New York Bagel Enterprises, Inc.
 - b. there was no location obtained for a "Philadelphia area" shop; and
 - c. there was no intent to obtain any such location.

WHEREFORE Plaintiffs prays this Honorable Court enter judgment in their favor and against Defendants, and Order the following relief:

- a. Actual and Consequential damages
- b. An award of reasonable attorney's fees and expenses and cost of suit; and
- c. Such additional relief as is deemed just and proper, or that the interest of justice may require.

V. JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

WARREN LAW GROUP, PC

Date: January 21, 2013

BY: /s/ Bruce K. Warren

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