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

IN THE MATTER OF DETERMINING) Order No. S-17-2159-17-SC01
Whether there has been a violation of the)
Franchise Investment Protection Act of) STATEMENT OF CHARGES AND NOTICE OF INTENT
Washington by:) TO ENTER ORDER TO CEASE AND DESIST
)
New York Bagel Enterprises, Inc.; Joseph V.)
Smith; and Dennis K. Mason,)

Respondents.

THE STATE OF WASHINGTON TO: New York Bagel Enterprises, Inc.; Joseph V. Smith; and Dennis K. Mason

STATEMENT OF CHARGES

Please take notice that the Securities Administrator for the state of Washington has reason to believe that Respondents New York Bagel Enterprises, Inc., Joseph V. Smith, and Dennis K. Mason have each violated the Franchise Investment Protection Act of Washington and that, pursuant to RCW 19.100.248, their violations justify the entry of an order against each to cease and desist from these violations. The Securities Administrator finds the following:

TENTATIVE FINDINGS OF FACT

Respondents

1. New York Bagel Enterprises, Inc. is a New Jersey corporation formed in 2008 for the purpose of operating a bagel and deli franchise. New York Bagel Enterprises, Inc. does business under the trademark New York Bagel Café & Deli, a trademark that the company does not own. New York Bagel Enterprises alternatively uses the names N.Y. Bagel Enterprises, Inc., N.Y. Bagel Café & Deli, and NY Bagel Café & Deli. The company is located in Rutherford, New Jersey.

2. Joseph V. Smith is a resident of New York and acts as the principal of New York Bagel Enterprises.

3. Dennis K. Mason is a resident of New Jersey and arranges for the offer and sale of New York Bagel Enterprises. Dennis K. Mason has offered and sold franchises for other companies in the past, through his company Franchises Unlimited, Inc., a New Jersey corporation. Dennis K. Mason uses aliases, including Keith Samuels and Brian Schofield, in his solicitation of New York Bagel Enterprises franchises.

Offer of Franchises in Washington

4. From approximately January 2017 through March 2017, New York Bagel Enterprises advertised through Craigslist the sale of New York Bagel Café & Deli licenses in King, Kitsap, and Snohomish counties.

5. Dennis K. Mason paid for the posting of these Craigslist advertisements, which he ran every few weeks.

6. For an initial fee of \$27,500, New York Bagel Enterprises offered prospective licensees the right to own and operate New York Bagel Café & Deli stores in Washington under the New York Bagel Café & Deli trademark. Dennis

STATEMENT OF CHARGES AND NOTICE
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1 K. Mason represented that prospective licensees could operate these New York Bagel Café & Deli stores within
2 protected territories.

3 7. As part of the fee, New York Bagel Enterprises also offered prospective licensees assistance in opening new
4 stores and performing financial analyses. Additionally, New York Bagel Enterprises claimed that it would provide
5 prospective licensees with training on the operation and management of the licensee's new store.

6 8. These Craigslist advertisements directed prospective licensees to call New York Bagel Enterprises listed
7 telephone number or to visit the company's website, where the company continues to generally offer the sale of New
8 York Bagel Café & Deli franchises.

9 9. In their online advertisements, New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason
10 represented that New York Bagel Enterprises had a history of successful operations, however, New York Bagel
11 Enterprises, Joseph V. Smith, and Dennis K. Mason failed to disclose their lengthy legal and financial history
12 described below.

13 Respondents' Legal and Financial History

14 10. New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason have at least the following legal and
15 financial history:

- 16 a. From 1987 to 2009, Dennis K. Mason filed for bankruptcy twice. He was also named as a defendant in
17 at least ten commercial lawsuits, nearly all alleging fraud in connection with the offer and sale of
18 franchises. The Superior Court of New Jersey destroyed the records for three of these cases, but the
19 defendants were found liable or settled the claims in the other seven lawsuits.
- 20 b. In 2011, an arbitrator ruled against New York Bagel Enterprises, ordering the company to fully refund
21 the franchisee's \$29,500 franchise fee.
- 22 c. In 2011, an arbitrator awarded a franchisee a \$22,000 judgment against New York Bagel Enterprises,
23 Joseph V. Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel
24 Enterprises franchise.
- 25 d. In 2011, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in
connection with his purchase of a New York Bagel Enterprises franchise. In 2013, a court ruled that
New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated the New Jersey
Franchise Practices Act and the New Jersey Consumer Fraud Act and entered a judgment against the
defendants.
- e. In 2011, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for
fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the
Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of contract in

1 connection with the sale of a New York Bagel Enterprises franchise in Pennsylvania. In 2012, the
2 parties settled the lawsuit.

- 3 f. In 2012, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for
4 violations of the North Carolina Deceptive Trade Practices Act in connection with the defendant's sale
5 of a New York Bagel Enterprises franchise. In 2013, a court entered default judgment of \$839,976.96
6 against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason, finding that the
7 defendants willfully violated the North Carolina Deceptive Trade Practices Act.
- 8 g. In 2012, franchises sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for
9 violations of New York State General Business Law in connection with the sale of a New York Bagel
10 Enterprises franchise in New York. In 2014, a judge ruled that New York Bagel Enterprises, Joseph V.
11 Smith, and Dennis K. Mason violated New York State General Business Law.
- 12 h. In 2013, an arbitrator issued a franchisee an award against New York Bagel Enterprises, Joseph V.
13 Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises
14 franchise.
- 15 i. In 2013, franchisees sued New York Bagel Enterprises and Joseph V. Smith for violations of the New
16 Jersey Franchise Practices Act, fraud, unjust enrichment, and breach of contract in connection with the
17 sale of a New York Bagel Enterprises franchise in New Jersey. A default judgment was entered
18 against New York Bagel Enterprises and Joseph V. Smith that same year.
- 19 j. In 2015, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for
20 fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the New
21 Jersey Franchise Practices Act, breach of contract, and unjust enrichment in connection with the sale
22 of a New York Bagel Enterprises franchise. In 2016, a default judgment was entered against New
23 York Bagel Enterprises.
- 24 k. In 2015, the Securities Division of the Office of the Attorney General of Maryland issued an Order to
25 Show Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason alleging
fraud in connection with the sale of a New York Bagel Enterprises franchise in Maryland. In 2015, the
Maryland Securities Commissioner issued a Final Order against New York Bagel Enterprises, Joseph
V. Smith, and Dennis K. Mason after they failed to respond to the Order to Show Cause. The Final
Order ordered that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason permanently
cease and desist from violations of the Maryland Franchise Law.
- l. In 2016, the State Corporation Commission of the Commonwealth of Virginia issued a Rule to Show
Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis Mason alleging fraud in
connection with the sale of New York Bagel Enterprises franchises in Virginia. In 2017, the State

1 Corporation Commission issued a Judgment Order against New York Bagel Enterprises, Joseph V.
2 Smith, and Dennis K. Mason after they failed to appear at a hearing on the Rule to Show Cause. The
3 Judgment Order assessed a total of \$675,000 in fines and \$20,899.33 in costs against New York Bagel
4 Enterprises, Joseph V. Smith, and Dennis K. Mason, ordered restitution for New York Bagel
5 Enterprises franchises in Virginia, and permanently enjoined New York Bagel Enterprises from
6 operating any franchises in Virginia.

7 11. Many of the franchisees involved in the lawsuits described above first learned about the opportunity to
8 purchase a franchise through online advertisements.

9 12. In the lawsuits described above, in many instances, the plaintiffs have been unable to collect on their
10 judgments, and the defendants are not current in many of their settlement payments.

11 Registration Status

12 13. New York Bagel Enterprises and Joseph V. Smith are not currently registered to offer or sell franchises in the
13 state of Washington and have not been previously registered to do so.

14 14. Dennis K. Mason is not currently registered as a franchise broker with the state of Washington and has not
15 been previously registered to do so.

16 Based upon the above findings of fact, the following conclusions of law are made:

17 **CONCLUSIONS OF LAW**

18 1. New York Bagel Enterprises', Joseph V. Smith's, and Dennis K. Mason's offer of New York Bagel Café &
19 Deli licenses in Washington constitutes the offer of a franchise as defined in RCW 19.100.010(6) and RCW
20 19.100.010(12).

21 2. New York Bagel Enterprises' and Joseph V. Smith's offer of franchises violated RCW 19.100.020 because
22 New York Bagel Enterprises and Joseph V. Smith were not registered to offer or sell franchises at the time of their
23 online advertisements described above.

24 3. Dennis K. Mason's violated RCW 19.100.140 by offering franchises for sale in Washington without
25 registering with the state to do so.

1. New York Bagel Enterprises and Joseph V. Smith violated RCW 19.100.140 by employing an unregistered
franchise broker to offer the sale of franchises in Washington.

5. In violation of RCW 19.100.170(2), New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason
offered franchises in online advertisements which included untrue statements of a material fact or omissions of a
material fact necessary in order to make the statements made in light of the circumstance under which they were made
not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

1 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends
2 to order that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason each shall cease and desist from
3 violations of RCW 19.100.140 and RCW 19.100.170 and that New York Bagel Enterprises and Joseph V. Smith each
4 shall cease and desist from violations of RCW 19.100.020.

AUTHORITY AND PROCEDURE

5 This Order is entered pursuant to the provisions of RCW 19.100.248 and is subject to the provisions of Chapter
6 34.05 RCW. New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason may each make a written request for
7 a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
8 accompanying this order. If a respondent does not request a hearing within the time allowed, the Securities
9 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and enter an order
10 to permanent cease and desist as to that respondent.

Signed and Entered this 28th day of July 2017.



William M. Beatty
Securities Administrator

15 Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Eric Palosaari
Financial Legal Examiner

21 Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor