

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 28, 2010

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

LOG CABIN BBQ, LLC

and

FRANK W. BURKS,

Defendants

CASE NO. SEC-2009-00088

CASE NO. SEC-2010-00007

FINAL ORDER

On February 16, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Log Cabin BBQ, LLC ("Log Cabin") and Frank W. Burks ("Burks") (collectively, "Defendants"). The Rule alleged various violations of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia. Specifically, it alleged that the Defendants offered and sold a franchise in the Commonwealth of Virginia without being registered in violation of § 13.1-560 of the Act, and failed to provide a Virginia franchisee with the appropriate disclosure documents in violation of § 13.1-563 (4) of the Act.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for March 25, 2010. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before March 10, 2010, in which the Defendants were required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert. The Defendants were advised that they may be found in default if they failed to either timely file a responsive pleading or other appropriate pleading, or if they filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendants were advised that they would be deemed to have waived all objections to the admissibility of

evidence and may have entered against them a judgment by default imposing some or all of the sanctions permitted by law.

On March 16, 2010, the Division of Securities and Retail Franchising ("Division") filed a Motion to Continue based upon the belief that proper service had not been obtained on the Defendants. The Division requested the Hearing Examiner continue the scheduled hearing to permit proper service. By Hearing Examiner's Ruling dated March 18, 2010, the Motion to Continue was granted.

On May 12, 2010, the Division filed a Motion to Set Case for Hearing. The Division stated that on March 18, 2010, the return receipt from the certified mailing of the Rule was delivered but returned refused. The Division contended the Defendants were properly served and requested that the hearing in this matter be scheduled for June 4, 2010. Also on May 12, 2010, the Division filed a Motion for Relief in which it requested a change in the filing requirements. In a Hearing Examiner's Ruling dated May 13, 2010, among other things, the hearing was scheduled for June 23, 2010.

An evidentiary hearing on the Rule was convened on June 23, 2010. The Defendants failed to appear after receiving notice of the hearing. The Division presented proof of notice that the Defendants were served with the Rule and the Hearing Examiner's Ruling of May 13, 2010.

At the hearing, the Division, by counsel, moved for the entry of default judgment against the Defendants. The affidavit of Jonathan Hawkins, investigator with the Division, together with attachments, was accepted into the record in support of the Division's motion.

The Division requested that the Hearing Examiner: (i) grant its motion for entry of default judgment; (ii) recommend to the Commission that the Commission enter a judgment order against the Defendants imposing a Twenty-five Thousand Dollar (\$25,000) monetary penalty, the maximum amount under the Act, for each violation of the Act committed by the

Defendants; (iii) recommend to the Commission that Defendants pay for the costs of the Division's investigation; (iv) recommend rescission and restitution to the Virginia franchisee in the amount of Twenty Thousand Dollars (\$20,000); and (v) the Defendants be permanently enjoined from violating the Act.

On August 6, 2010, the Hearing Examiner issued his Report. In his Report, he found that: (i) the Division's motion for entry of default judgment should be granted; (ii) the testimony and documentary evidence submitted by the Division proved by clear and convincing evidence the Defendants' violations of the Act; (iii) each Defendant should be fined Fifty Thousand Dollars (\$50,000); (iv) Log Cabin be assessed Nine Thousand Two Hundred Sixteen Dollars and Twenty-five Cents (\$9,216.25) to pay the actual costs of the Division's investigation; (v) Burks be assessed Seventy-five Dollars and Seventy-five Cents (\$75.75) to pay the actual costs of the Division's investigation; and (vi) the Defendants be permanently enjoined from violating the Act.

The Report allowed the parties twenty-one (21) days in which to provide comments. Neither the Defendants nor the Division filed comments to the Report.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with the Commission's regulatory duties and powers pursuant to § 13.1-570 of the Act, judgment is entered for the Commonwealth against Defendant Log Cabin in the amount of Fifty Thousand Dollars (\$50,000).

(2) In accordance with the Commission's regulatory duties and powers pursuant to § 13.1-570 of the Act, judgment is entered for the Commonwealth against Defendant Burks in the amount of Fifty Thousand Dollars (\$50,000).

(3) In accordance with the Commission's regulatory duties and powers pursuant to § 13.1-567 of the Act, Defendant Log Cabin shall pay Nine Thousand Two Hundred Sixteen Dollars and Twenty-five Cents (\$9,216.25) to the Division for its costs of investigation.

(4) In accordance with the Commission's regulatory duties and powers pursuant to § 13.1-567 of the Act, Defendant Burks shall pay Seventy-five Dollars and Seventy-five Cents (\$75.75) to the Division for its costs of investigation.

(5) The Defendants are permanently enjoined from violating the Act in the future.

(6) This case is dismissed and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: Frank W. Burks, President, Log Cabin BBQ, LLC, 425 Lakeview Drive, Fairfield Glade, Tennessee 38558; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.