

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 7, 2013

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2013-00002

BROOKLYN WATER BAGEL FRANCHISE CO., INC.

and

DR. JOSEPH WEST,

Defendants

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Brooklyn Water Bagel Franchise Co., Inc. ("Brooklyn Water Bagel"), and Dr. Joseph West ("Dr. West") (collectively, "Defendants") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

Brooklyn Water Bagel is a Florida entity with its principal office located in Boca Raton, Florida. Dr. West is the President of Brooklyn Water Bagel. Harold Kestenbaum of Gordon & Rees, LLP, attorney for Brooklyn Water Bagel ("Attorney"), handled Brooklyn Water Bagel's franchise filings with the Division since their initial registration. Brooklyn Water Bagel registered its food-service franchises with the Division on November 9, 2010, and it remains registered. No offers or sales took place in Virginia.

Brooklyn Water Bagel disclosed it was insolvent as part of its initial registration in November 2010 and reported its deteriorating financial condition during Brooklyn Water Bagel's renewal filing in November 2011. Brooklyn Water Bagel, however, failed to file an Amendment with the Division earlier in 2011 when this material change in its financial condition occurred.

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Brooklyn Water Bagel's auditors' report dated April 18, 2011, covered financial statements showing a decrease in equity of over \$600,000 between the years 2009 and 2010. Pursuant to 21 VAC 5-110-40 of the Retail Franchising Act Rules, 21 VAC 5-110-10 *et seq.* ("Rules"), upon the occurrence of a material change, the franchisor shall amend the effective registration filed at the Commission.

The Attorney for Brooklyn Water Bagel submitted multiple Form E filings to the Division, signed by Dr. West, stating the company was solvent when, in fact, Brooklyn Water Bagel was insolvent. By submitting multiple Form Es when they were not eligible to do so, the Defendants did not file them in accordance with Rule 21 VAC 5-110-60.

Form E is an optional form which is unique to Virginia. A franchisor may submit this form to the Division in order for the franchisor to continue to offer and sell franchises while the Division completes the review of its renewal or amendment. In order to use Form E, the franchisor must not be insolvent or in danger of becoming insolvent, in that its liabilities exceed its assets (determined in accordance with Generally Accepted Accounting Principles).

The Division notified the Attorney in 2011 that the Defendants could not submit a Form E if Brooklyn Water Bagel was insolvent. Despite this, the Attorney had Dr. West sign and notarize a subsequent Form E that the Attorney then submitted to the Division in 2012 while the company was still insolvent.

Based on the investigation, the Division alleges the Defendants violated: (i) Rule 21 VAC 5-110-40 by failing to amend Brooklyn Water Bagel's effective registration with the Commission upon the occurrence of a material change; and (ii) Rule 21 VAC 5-110-60 by failing to file a Form E in accordance with the Rules.

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.

The Defendants neither admit nor deny these allegations 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 pay to the Treasurer of the Commonwealth of Virginia ("Commonwealth"), contemporaneously with the entry of this Order, the amount of Three Thousand Five Hundred Dollars (\$3,500) in monetary penalties.

(2) The Defendants will pay to the Treasurer of the Commonwealth, by June 17, 2013, the amount of Two Thousand Five Hundred Dollars (\$2,500) to defray the costs of investigation.

(3) Dr. West or Jon Morgenstem of Brooklyn Water Bagel will complete the "Franchise Guard" course offered by the International Franchise Association within 120 days from the date of entry of this Order and will provide the Division with a copy of their certificate of course completion.

(4) The Defendants will be enjoined from filing a Form E with the Division for a period of three years from the date of entry of this Order.

(5) 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) Dr. West or Jon Morgenstem of Brooklyn Water Bagel shall complete the "Franchise Guard" course offered by the International Franchise Association within 120 days from the date of entry of this Order and shall provide the Division with a copy of their certificate of course completion.
- (4) The Defendants shall be enjoined from filing a Form E with the Division for a period of three years from the date of entry of this Order.
- (5) 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:
Harold Kestenbaum, Esquire, Gordon & Rees, LLP, 90 Merrick Avenue, Suite 601, East Meadow, New York 11554; Dr. Joseph West, Brooklyn Water Bagel Franchise Co., Inc., 5355

Town Center Road, Suite 702, Boca Raton, Florida 33486; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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ADMISSION AND CONSENT

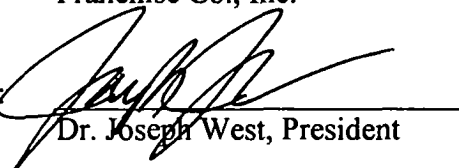
Brooklyn Water Bagel Franchise Co., Inc. and Dr. Joseph West (collectively, "Defendants"), admit to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities 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.

Brooklyn Water Bagel
Franchise Co., Inc.

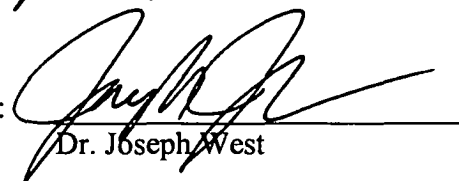
Date: 5/15/13

By:

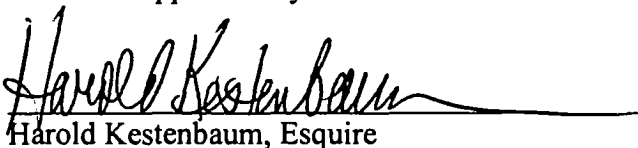

Dr. Joseph West, President

Date: 5/15/13

By:


Dr. Joseph West

Seen and Approved By:


Harold Kestenbaum, Esquire

Meadow, New York 11554; Dr. Joseph West, Brooklyn Water Bagel Franchise Co., Inc., 5355
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