

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 21, 2013

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SECURITIES DIVISION
2013 NOV 21 P 3: 51

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2012-00025

FOODNET FRANCHISING, INC.,
Defendant

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of the Defendant, FoodNet Franchising, Inc. ("FoodNet"), pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code"). Based on its investigation, the Division alleges as follows:

(1) FoodNet, on more than one occasion violated, § 13.1-560 of the Act by offering unregistered franchises in the Commonwealth of Virginia ("Virginia"). FoodNet also violated § 13.1-563 (2) of the Act by making materially untrue statements or omissions in connection with the offer and sale of a franchise by: (i) failing to disclose potential conflicts of interest in a franchise transaction when it acted as an escrow agent for a financial transaction between an existing franchisee and new franchisee; and (ii) misrepresenting that a franchise could not be terminated without cause in the franchise agreement by simultaneously entering into a sublicensing agreement that allowed FoodNet to effectively terminate a franchise without cause.

(2) FoodNet is a franchisor incorporated under the laws of Virginia that offered franchising opportunities in the food services industry. FoodNet franchises in Virginia included Dominic's of New York sandwich shops.

(3) FoodNet registered its franchise to be offered and sold in Virginia beginning in 1997. On October 31, 2007, FoodNet's franchise registration expired, and it did not become registered again until July 24, 2008. During this time period, FoodNet offered unregistered franchises to three Virginia locations in violation of § 13.1-560 the Act.

(4) One of these transactions involved the offer and sale of an existing franchise to a new purchasing franchisee. The existing franchisee brokered the sale of the franchise and the sale was effected by and through FoodNet with the purchasing franchisee entering into a new franchise agreement with FoodNet. Separately, the purchasing franchisee agreed with the existing franchisee to pay an agreed-upon price for the existing franchise, which was owned in its entirety by the existing franchisee.

(5) In effecting the transaction on behalf of the existing franchisee, FoodNet agreed with the existing franchisee to act as an escrow agent for both parties in the transaction, the existing franchisee, and the purchasing franchisee. FoodNet failed to inform the purchasing franchisee that it intended to act as an escrow agent in the transaction. FoodNet then instructed the purchasing franchisee to pay the entire sum for the purchase of the franchise to FoodNet directly as opposed to the existing franchisee directly.

(6) FoodNet was, in fact, not a disinterested third party to the transaction. FoodNet had potential conflicts of interest with the purchasing franchisee as the franchisee was contractually and financially obligated to FoodNet under the terms of a newly executed franchise agreement. Furthermore, the existing franchisee owed FoodNet money, creating an additional conflict of interest for FoodNet in the transaction.

(7) FoodNet failed to disclose these potential conflicts of interest to the purchasing franchisee in violation of § 13.1-563 (2) of the Act.

(8) Additionally, FoodNet maintained a master license agreement to operate food service facilities in certain government buildings and at certain designated locations within such buildings. FoodNet entered into site sublicensing agreements with certain franchisees permitting them to occupy these locations to operate a FoodNet franchise.

(9) Under the terms of the sublicense agreement, FoodNet had the right to unilaterally terminate, for convenience, a franchisee's sublicense without cause upon 30 days' notice. By exercising its right to terminate without cause a franchisee's sublicense agreement, FoodNet could preclude a franchisee from operating its franchise in accordance with the franchise agreement at the designated site.

(10) Consequently, the termination provision of the sublicense agreement conflicted with the termination provisions of FoodNet's disclosure document and franchise agreement which precluded a franchise from being terminated without cause by FoodNet. As a result, FoodNet misrepresented that a FoodNet franchise could not be terminated without cause in violation of § 13.1-563 (2) of the Act.

If the standards of the statute are met, 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.

FoodNet neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

As a proposal to settle all matters arising from these allegations, FoodNet has made an offer of settlement to the Commission wherein it will abide by and comply with the following terms and undertakings:

(1) Within ten (10) months from the date of entry of this Order, FoodNet will pay to the Treasurer of the Commonwealth ("Treasurer") the amount of Ten Thousand Dollars (\$10,000) in monetary penalties.

(2) Within ten (10) months from the date of entry of this Order, FoodNet will pay to the Treasurer the amount of Two Thousand Five Hundred Dollars (\$2,500) to defray the cost of investigation.

(3) Within fifteen (15) days from the date of entry of this Order, FoodNet will provide a copy of this Order to all current Virginia franchisees and to the franchisees referenced in this Order and identified by the Division to FoodNet prior to the entry of this Order.

(4) Within thirty (30) days from the date of entry of this Order, FoodNet will provide to the Division an affidavit, executed by FoodNet, attesting to its compliance with its obligations in undertaking paragraph (3).

(5) FoodNet's registration is hereby suspended for a period of one (1) year ("suspension period") from the date of entry of this Order. Accordingly, FoodNet is enjoined from offering and selling franchises within Virginia during the suspension period.

(6) FoodNet will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of FoodNet.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of FoodNet, and the recommendation of the Division, is of the opinion that FoodNet's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of FoodNet in settlement of the matter set forth herein is hereby accepted.
- (2) FoodNet shall fully comply with the aforesaid terms and undertakings of this settlement.
- (3) 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 FoodNet's 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:

Robert Henley, Esquire, Hirschler Fleischer, PC, 2100 East Cary Street, Richmond, Virginia 23223; 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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STATE CORPORATION COMMISSION

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STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2012-00025

FOODNET FRANCHISING, INC.

Defendant

ADMISSION AND CONSENT

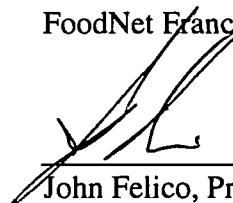
FoodNet Franchising, Inc. ("Defendant") admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states 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.


FoodNet Franchising, Inc.

Date: 11/18/13

By:


John Felico, President

Seen and Approved By:


Thomas J. Dillon III, Esquire
Hirschler Fleischer, PC