

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 19, 2013

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

2013 DEC 19 P 2:25

131230263

v.

CASE NO. SEC-2012-00041

TENGFEI, INC.,
and
WEI HE ZHANG,
Defendants

JUDGMENT ORDER

On March 12, 2013, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Tengfei, Inc. ("Tengfei"), and Wei He Zhang ("Zhang") (collectively, "Defendants"). The Rule summarized allegations by the Division of Securities and Retail Franchising ("Division") against the Defendants. Specifically, the Division alleged the Defendants violated § 13.1-563 (4) of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by making an unlawful offer and violated § 13.1-563 (2) of the Act by omitting material facts in the offer and sale to Virginia franchisees.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for June 25, 2013. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before April 15, 2013, 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 Rule also advised the Defendants that they may be found in default if they failed to either timely file a responsive pleading or if they failed to appear at the hearing. The Defendants failed to file a response to the Rule and the Division filed a Motion for Default Judgment on May 24, 2013.

Following a request for extension by the Defendants and by Ruling dated June 14, 2013, the Defendants were directed to file a responsive pleading to the Rule on or before July 12, 2013. In addition, the June 25, 2013 hearing was canceled, and the matter was continued pending further ruling by the Hearing Examiner. The Defendants again failed to file a response to the Rule or the Motion for Default Judgment as directed by the Hearing Examiner.

On July 17, 2013, the Division filed a Renewed Motion for Entry of Default Judgment stating that Defendants had failed again to file a responsive pleading or to contact the Division.

On July 25, 2013, Defendants filed another request for an extension of thirty (30) days to find counsel.

By Ruling dated August 9, 2013, the Renewed Motion for Entry of Default Judgment was taken under advisement, and the hearing was rescheduled for September 25, 2013.

An evidentiary hearing was held on September 25, 2013. The Division was represented by Debra M. Bollinger, Esquire. Zhang appeared *pro se* and with an interpreter. Tengfei was not represented by counsel as required by Rule 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* Proof of service was marked as Exhibit 1 and made a part of the record.

The Division presented the testimony of the complainant, Yu Yin Chow ("Mr. Chow"), in the form of an affidavit. Jude Richnafsky, Division Senior Examiner, and Jonathan Hawkins, Division Senior Investigator, testified at the hearing. Zhang was afforded the opportunity to question Mr. Richnafsky and Mr. Hawkins following their testimonies.

On November 12, 2013, the Hearing Examiner issued his report ("Report"), which thoroughly summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the hearing. In his Report, among other things, the Hearing

Examiner found that the Division established by clear and convincing evidence that the Defendants violated the Act, as charged in the Rule, and that the Division's Motion for Default Judgment be granted. In addition, the Hearing Examiner recommended that: (i) Tengfei, Inc., be penalized, pursuant to § 13.1-570 of the Act, the sum of \$250,000 for ten violations of the Act; (ii) Zhang be penalized, pursuant to § 13.1-570 of the Act, the sum of \$250,000 for ten violations of the Act; (iii) the penalties should be waived if the Defendants make restitution to Mr. Chow in the amount of \$32,000 within a reasonable period of time as determined by the Commission; (iv) the renewal application for Tengfei, Inc., currently on file with the Division, should be denied; and (v) the Defendants should be permanently enjoined from any act which constitutes a violation of the Act.

The Report allowed the parties 21 days to provide comments. Zhang timely filed comments to the Report on December 2, 2013. Zhang requested that the \$250,000 in penalties be waived based upon an offer to make restitution to Mr. Chow. Zhang also requested the amount of restitution be lowered and that he be allowed to make payments over a thirty (30) month period. However, Zhang also indicated that as a sign of good faith, he would be willing to make full restitution. In addition, Zhang indicated that he wished to continue to do franchise business in Virginia.

The Division did not file any comments to the Report.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, the comments, 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) Pursuant to § 13.1-570 A of the Act, Tengfei, Inc., shall be fined in the amount of \$250,000, and Zhang shall be fined in the amount of \$250,000 for violations of the Act.

Pursuant to § 13.1-570 of the Act, however, the Commission shall waive the monetary penalties if the Defendants pay restitution in the amount of \$32,000 to Mr. Chow within thirty-six (36) months of the date of the entry of this Judgment Order. The first restitution payment shall be due to Mr. Chow on or before January 31, 2014.

(2) Upon the Defendants' completion of restitution to Mr. Chow, the Defendants will be eligible to apply with the Division for registration of their franchise.

(3) The Commission retains jurisdiction over this matter for all purposes, and this matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: Tengfei, Inc., 2903 Whittington Ave., Suite F-G, Baltimore, Maryland 21230; and Wei He Zhang, Tengfei, Inc., 2903 Whittington Ave., Suite F-G, Baltimore, Maryland 21230; and the Commission's Office of General Counsel and Division of Securities and Retail Franchising.