

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 6, 2015

SEC-CLERK'S OFFICE
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2015 JUL -6 P 2:45

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2015-00009

SHERRI'S FUN FOODS, INC.
D/B/A SHERRI'S CRAB CAKES
and
KEITH R. BEHNEY,
Defendants

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Sherri's Fun Foods, Inc. d/b/a Sherri's Crab Cakes ("Sherri's Crab Cakes") and Keith R. Behney ("Behney") (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").

Sherri's Crab Cakes, a Pennsylvania corporation, incorporated on January 31, 2001. Behney has been the president of Sherri's Crab Cakes since its inception. Sherri's Crab Cakes is a mobile food service operation, generally serving fairs, festivals and similar events. Neither Sherri's Crab Cakes nor any of its affiliates have ever been registered to offer and sell franchises to be located in Virginia.

Sherri's Crab Cakes entered into a purported Distributor Agreement in December 2010 with a Virginia- based Limited Liability Company ("Virginia Franchisee") for a location in Virginia. Based upon its investigation, the Division alleges that the Distributor Agreement constitutes a franchise which required registration with the Division prior to the offer and sale. Therefore, the Division alleges that an unregistered franchise sale took place.

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Additionally, the Division alleges that Sherri's Crab Cakes failed to provide to the prospective Virginia Franchisee a Franchise Disclosure Document ("FDD") cleared for use by the Division. A cleared FDD provides material information to prospective franchisees in order that they may make an informed decision as to purchase of a franchise. As no FDD was provided, the Division alleges that regulatory oversight was circumvented.

Based on the investigation, the Division alleges the Defendants violated: (i) § 13.1-560 of the Act by selling or offering to sell franchises in Virginia prior to registering under the provisions of the Act; and (ii) § 13.1-563 (4) of the Act by failing to, directly or indirectly, provide franchisees with (i) the franchise agreement and (ii) such disclosure documents as may be required by rule or order of the Commission.

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").

Prior to the entry of this Order, the Defendants, through their affiliate, Sherri's Crab Cakes LLC, submitted a franchise registration application to the Division, to do business as Sherri's Crab Cakes.

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 ("Treasurer") of Virginia, 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, contemporaneously with the entry of this Order, the amount of One Thousand Five Hundred Dollars (\$1,500) to defray the costs of investigation.

(3) The Defendants will provide a copy of this Order to the Virginia Franchisee.

(4) The Defendants (and their affiliates) 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) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendants from their reporting obligations to any regulatory authority.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Keith R. Behney, President, Sherri's Fun Foods, Inc. d/b/a Sherri's Crab Cakes, 1909 State Street, Camp Hill, Pennsylvania 17011; and Michael H. Gladstone, Esquire, McCandlish Holton, P.C., 1111 East Main Street, Suite 2100, Richmond, Virginia 23219; 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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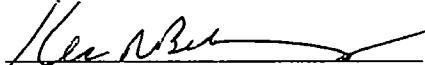
ADMISSION AND CONSENT

Sherri's Fun Foods, Inc. d/b/a Sherri's Crab Cakes and Keith R. Behney (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.

Sherri's Fun Foods, Inc.
d/b/a Sherri's Crab Cakes

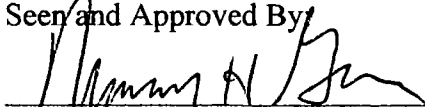
Date: 6-26-15

By:  Pres.
Keith R. Behney, President

Date: 6-26-15

By:  Pres.
Keith R. Behney, President

Seen and Approved By:


Michael H. Gladstone, Esquire
McCandlish Holton, P.C.