

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, OCTOBER 16, 2015

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2014-00005

CRAIG MADANS
and
HOCOA FRANCHISING CO., LLC,
Defendants

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of HOCOA Franchising Co., LLC ("HOCOA"), and Craig Madans ("Madans") (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"). Based on its investigation, the Division alleges as follows:

(1) The Defendants violated § 13.1-560 of the Act by offering and selling unregistered franchises in the Commonwealth of Virginia ("Virginia") to Virginia franchisees. Additionally, although the Defendants provided Virginia franchisees with a disclosure document, such document had not been cleared by the Division in violation of § 13.1-563 (4) of the Act.

(2) The Division also alleges that the Defendants violated § 13.1-563 (2) of the Act by omitting material information and making material misrepresentations in connection with the offer and sale of a franchise by: (i) omitting from the disclosure document information relating to litigation involving a dispute over the ownership of the "Home Owners Clubs of America" trademark granted for use by HOCOA to Virginia franchisees; (ii) omitting from the disclosure document that the "Home Owners Clubs of America" trademark registration granted to them to

use was surrendered by HOCOA under a settlement agreement arising from the trademark litigation; (iii) failing to provide on-site training in using the HOCOA system; (iv) failing to disclose to a Virginia franchisee that HOCOA was required by statute to defer any franchise fees until it had met its pre-opening obligations under the franchising agreement; and (v) failing to defer any franchise fees for a Virginia franchisee until it had met its pre-opening obligations under the franchising agreement.

(3) Based upon its investigation, the Division alleges that HOCOA is a company organized under the laws of South Carolina. Madans is the President and CEO of HOCOA and at all times as alleged herein acted as an agent of HOCOA. HOCOA's franchise was registered with the Division from August 9, 2007, until August 9, 2008. Before the franchise was registered, however, the Division determined that HOCOA sold a franchise to a Virginia franchisee. Additionally, HOCOA sold a franchise to a Virginia resident after HOCOA's registration expired.

(4) The Division further alleges that HOCOA operated as a home repair network for homeowners and contractors and used the "Home Owners Clubs of America" trademarked name in its offering documents provided to franchisees during the relevant period of time. HOCOA franchisees connected homeowners seeking to have repair or remodeling done on their homes with licensed contractors that had been vetted through HOCOA to ensure that the contractors were qualified, licensed and bonded, among other things.

(5) As part of its investigation, the Division alleges that in January of 2007, the Defendants sold a franchise to a Virginia franchisee despite the franchise not being registered with the Division in violation of § 13.1-560 of the Act. In July of 2009, the Defendants sold

another franchise to a Virginia franchisee also without the franchise being registered in violation of § 13.1-560 of the Act.

(6) In both of these transactions, the Division alleges that the Defendants supplied disclosure documents to the franchisees. A franchise disclosure document ("FDD")¹ contains material and current information relating to the franchisor and the franchise being offered. This document is required to be provided to a potential franchisee under the Act in order for the franchisee to make an informed decision regarding the purchase of the franchise.

(7) The Division alleges, however, that since HOCOA was not registered as a franchise at the time of the offer and sale of these franchises, the FDDs provided to the franchisees had not been cleared by the Division for use in violation of § 13.1-563 (4) of the Act. The Division further alleges that the FDDs supplied to Virginia franchisees omitted material information as described below.

(8) In February of 2004, a petition was filed in the United States Patent and Trademark Office ("USPTO") seeking to cancel the "Home Owners Clubs of America" trademark, which HOCOA purportedly owned and granted the right to use to its franchisees. Litigation ensued between HOCOA and the USPTO petitioner, ultimately leading to HOCOA surrendering the trademark in April of 2007.

(9) Based on the investigation, HOCOA granted the use of the trademark to the two Virginia franchisees in a licensing agreement as part of the HOCOA franchise agreement despite surrendering the "Home Owners Clubs of America" trademark. The Defendants failed to disclose the prior litigation associated with this trademark to these two franchisees and also

¹ The first franchisee was supplied with a Uniform Franchise Offering Circular ("UFOC"), the precursor to the FDD. In July of 2008, the Act was amended and the FDD replaced the UFOC as the standard offering document. For consistency, the term "FDD" and "UFOC" are used interchangeably in this Order.

this training would take place at the franchisee's location. The Division alleges that the Defendants did not provide the on-site training to the franchisee and that their misrepresentations regarding such training are 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.

The Defendants admit to the Commission's jurisdiction and authority to enter this Settlement Order ("Order"). Without admitting or denying any other allegations made by the Division, the Defendants further admit that they offered and sold two unregistered franchises in Virginia in violation of § 13.1-560 of the Act. Additionally, both the Division and the Defendants acknowledge that the Commission has made no findings of fact or rulings on the Division's allegations as set forth above.

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

(1) Within eighteen (18) months from the date of entry of this Order, the Defendants will pay to Treasurer of the Commonwealth ("Treasurer") the amount of Twelve Thousand Dollars (\$12,000) in monetary penalties.

(2) The Defendants, unless otherwise ordered by the Commission, shall be permanently enjoined from: (i) offering or selling HOCOA franchises in the Commonwealth of Virginia; and (ii) registering the HOCOA franchise in the Commonwealth of Virginia. In the

event that HOCOA is sold to an independent buyer, the buyer may petition the Commission to dissolve this injunction as to the franchise.

(3) Within thirty (30) days of the date of entry of this Order, the Defendants will mail a copy of this Order via certified mail to the Virginia franchisees. Within forty-five (45) days of the date of entry of this Order, the Defendant will provide proof of such certified mailing to the Division.

(4) 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 and finds 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) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or take 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:

Gerald A. Cook, Esquire, Counsel for the Defendants, P.O. Box 1444, Pittsburgh, Pennsylvania

15230; 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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