

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 2, 2016

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2016-00025

BFK FRANCHISE COMPANY, LLC
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of BFK Franchise Company, LLC ("Defendant") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

The Defendant registered its franchise with the Division on May 23, 2012. Currently, its application to renew its franchise registration in Virginia is pending. The Defendant is wholly owned by Creative Learning Corporation ("CLC"). The Defendant is a Florida limited liability company that offers and sells franchises that provide enrichment programs for children. The Defendant sells Bricks 4 Kidz franchises. Between June 2012 and June 2015, the Defendant sold 14 Bricks 4 Kidz franchises to be operated in the Commonwealth of Virginia ("Virginia").

It is alleged that the Defendant's franchise disclosure document ("FDD") was provided to 14 Virginia franchisees. The FDD contained no financial representations and stated that any financial representations, either orally or in writing, should be reported to the Defendant's managing director. However, nine franchisees received financial representations in the form of projections prior to their franchise purchase contrary to the representations in the FDD.

In addition, it is alleged that in June of 2012, CLC's former chief financial officer ("CFO") presented a franchisee profitability analysis to CLC's Board. The analysis showed that

only 12% of Bricks 4 Kidz franchises were profitable. The former CFO's analysis also indicated that 30-35% of schools within Bricks 4 Kidz franchise territories did not allow franchisees to conduct any programs because these schools only allow programs conducted by not-for-profit organizations. Offering school programs is often necessary for franchisees to be profitable. It is further alleged that the financial projections provided to potential franchisees in Virginia included revenue from school programs, and therefore misrepresented potential revenues.

Based on the investigation, the Division alleges the Defendant violated § 13.1-563 (2) of the Act by making untrue statements of a material fact or omitting to state a material fact necessary in order to avoid misleading the offeree in connection with the sale or offer to sell a franchise.

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 Defendant 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, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

(1) The Defendant will pay to the Treasurer of Virginia ("Treasurer") within six (6) months of the entry of this Order, the amount of Twenty-nine Thousand Dollars (\$29,000) in monetary penalties.

(2) The Defendant will pay to the Treasurer within six (6) months of the entry of this Order, the amount of Six Thousand Five Hundred Dollars (\$6,500) to defray the costs of investigation.

(3) The Defendant will provide a copy of this Order to all current and former franchisees within ten (10) days of the entry of this Order.

(4) The Defendant will pay restitution and return initial franchisee fees to two (2) former franchisees who received financial projections. These payments will be made in three (3) equal monthly installments with the first payment due within one (1) month of the entry of this Order

(5) The Defendant will make an offer of rescission to five (5) current franchisees who received financial projections pursuant to the following:

(a) Within thirty (30) days of the date of entry of this Order, the Defendant will make a written offer of rescission sent by certified mail to each franchisee, which will include an offer to return the initial franchise fees and a provision that gives each franchisee thirty (30) days from the date of receipt of the offer of rescission to provide the Defendant with written notification of their decision to accept or reject the offer.

(b) The Defendant will provide to the Division a copy of the offer of rescission for its review and comment at least ten (10) days before sending it to each franchisee.

(c) If the rescission offer is accepted, the Defendant will forward the payment to each franchisee within three (3) months of receipt of the acceptance. These payments will be made in three (3) equal, monthly installments with the first payment due within one (1) month of the receipt of the acceptance.

(d) Within six (6) months from the date of the Order, the Defendant will submit to the Division proof of certified mailing of the offer of rescission and an affidavit, executed by the Defendant, which contains the date on which each franchisee received the offer of rescission,

each franchisee's response, and, if applicable, the amount and the date that payment was sent to each franchisee.

(6) The Defendant will not violate the Act in the future.

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

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

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant 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 the Defendant'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:

David W. Oppenheim, Esquire, Greenberg Traurig, LLP, 500 Campus Drive, Suite 400, Florham Park, New Jersey 07932-0677; 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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BFK FRANCHISE COMPANY, LLC,

Defendants

ADMISSION AND CONSENT

BFK Franchise Company, LLC ("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.

BFK Franchise Company, LLC

Date: 5-16-2016

By: Michelle Cote
Michelle Cote, President

Seen and Approved By:

David W. Oppenheim
David W. Oppenheim, Esquire
Greenberg Traurig, LLP