

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, MARCH 3, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2020-00036

F.C. FRANCHISING SYSTEMS, INC.,
d/b/a FRESH COAT,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of F.C. Franchising Systems, Inc. ("F.C. Franchising") d/b/a Fresh Coat (the "Defendant") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

F.C. Franchising is an Ohio corporation incorporated on January 1, 2005. The principal business address for F.C. Franchising is 4755 Lake Forest Drive, Suite 100, Cincinnati, Ohio 45242. F.C. Franchising offers and sells franchises under the tradename Fresh Coat which provide interior and external painting as well as wallpapering services to residential and commercial clients.

Bernard J. Brozek ("Brozek") was President of F.C. Franchising from January 2011 through December 2014. F.C. Franchising has continuously registered its franchise, Fresh Coat, with the Division since 2006.

The Division alleges that from September 2012 to May 2013, F.C. Franchising offered and sold four (4) franchises which were to be operated in Virginia to four (4) Virginia residents ("Virginia Franchisees"). The Franchise Disclosure Document ("FDD") provided to the Virginia

Franchisees prior to the sales did not disclose Brozek's 2012 bankruptcy. F.C. Franchising, and Brozek, as President of F.C. Franchising, also omitted Brozek's 2012 bankruptcy from the FDD filed with the Division.

The Division alleges that F.C. Franchising, and Brozek, as President of F.C. Franchising and having signed the franchise agreements, violated § 13.1-563.2 of the Act by failing to disclose Brozek's bankruptcy, a material fact, in the franchise agreements made with the four (4) Virginia Franchisees.

The Division alleges that F.C. Franchising also violated 21 VAC 5-110-40 of the Retail Franchising Act Rules of the Virginia Administrative Code, 21 VAC 5-110-10 *et seq.* ("Rules") by failing to file an amendment with the Division to amend its 2012 FDD on file with the Division to include Brozek's bankruptcy under Item 4 of the FDD. The Division further alleges that F.C. Franchising also violated 21 VAC 5-110-50 of the Rules by making certifications in Form A filed with the Division in connection with F.C. Franchising's 2013 and 2014 renewal applications which failed to disclose Brozek's bankruptcy.

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 the allegations made herein 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 make a rescission offer ("Rescission Offer") to one current Virginia Franchisee, to include an offer to refund the initial franchise fee. The Rescission Offer will be made as follows:

- (a) Within thirty (30) days from the date of entry of this Order, F.C. Franchising will draft a Rescission Offer and provide the Division with a copy of the Rescission Offer for review and approval at least ten (10) days prior to sending it to the Virginia Franchisee;
- (b) F.C. Franchising will include a copy of this Order with the Rescission Offer;
- (c) The Virginia Franchisee will have thirty (30) days from the date of receipt of the Rescission Offer to provide F.C. Franchising written notice of their decision to accept or reject the Rescission Offer;
- (d) If F.C. Franchising does not receive written notice of the Virginia Franchisee's decision to accept or reject the Rescission Offer within the thirty (30) days, it will operate as a rejection of the Rescission Offer;
- (e) If the Rescission Offer is accepted, F.C. Franchising, within fifteen (15) days of receipt of the acceptance, will pay, in the form of certified funds, the initial franchise fee, to the Virginia Franchisee;
- (f) Within ninety (90) days from the date of entry of this Order, F.C. Franchising will provide the Division with an affidavit, executed by an authorized officer F.C. Franchising, that contains the date the Virginia Franchisee received the Rescission Offer, the Virginia Franchisee's response, and, if applicable, the payment amount and date the payment was sent to the Virginia Franchisee;

(2) The Defendant will pay restitution and refund initial franchise fees to three (3) former Virginia Franchisees. Restitution will be made as follows:

- (a) Within thirty (30) days from the date of the entry of this Order, F.C. Franchising will draft a Restitution Offer and provide the Division with a copy of the Restitution Offer for review and approval at least ten (10) days prior to sending it to the Virginia Franchisees;

- (b) F.C. Franchising will include a copy of this Order with the Restitution Offer;
- (c) If any of the Virginia Franchisees accepts the Restitution Offer, F.C. Franchising, within fifteen (15) days of receipt of the acceptance, will pay the Virginia Franchisee, in the form of certified funds, the franchisee's initial franchise fee;
- (d) Within ninety (90) days from the date of entry of this Order, F.C. Franchising will provide the Division with an affidavit, executed by an authorized officer of F.C. Franchising, that contains the date each Virginia Franchisee received the Restitution Offer, the response of each Virginia Franchisee, and, if applicable, the payment amount and date the payment was sent to each Virginia Franchisee;

(3) The Defendant will pay to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Six Thousand Dollars (\$6,000) in monetary penalties;

(4) The Defendant will pay to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Two Thousand Dollars (\$2,000) to defray the costs of investigation in this matter; and

(5) 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.

A COPY hereof shall be sent by the Clerk of the Commission by electronic mail to: Jeffrey D. Siehl, Esquire, at jsiehl@franchisesupport.net; and a copy shall be delivered to the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.

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STATE CORPORATION COMMISSION

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Defendant

ADMISSION AND CONSENT

F.C. Franchising Systems, Inc. d/b/a Fresh Coat (the "Defendant") admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof, and neither admits nor denies 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.


F.C. FRANCHISING SYSTEMS, INC.
d/b/a FRESH COAT

Date: Feb 10, 2021

By:  Tara Riley (Feb 10, 2021 10:55 EST)

Its: President

Seen and approved by:


Jeff Siehl (Feb 10, 2021 10:56 EST)
Jeffrey D. Siehl, Esquire