

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, JULY 12, 2023

2023-07-12 08:15
DOCUMENTAL CONTROL CENTER

2023 JUL 12 A 8:15

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2022-00034

FATBURGER NORTH AMERICA, INC.,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Fatburger North America, Inc. ("Fatburger" or "Defendant") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

Fatburger is a Delaware corporation with a principal office location of 9720 Wilshire Boulevard, Suite 500, Beverly Hills, California 90212. Fatburger offers and sells franchises that provide primarily hamburgers to the public in a fast casual restaurant system. Fatburger was registered with the Division in 1993 and again in 2018. Fatburger's registration expired on December 7, 2019.

Based on its investigation, the Division alleges that, from December 2020 through August 2021, Fatburger offered and sold two unregistered franchises to one individual to be operated in Virginia and a third unregistered franchise to a business entity to be operated in Virginia (collectively, "Virginia Franchises") in violation of § 13.1-560 of the Act. The Division further alleges that the Defendant violated § 13.1-563 (4) (ii) of the Act by failing to provide the purchasers of the Virginia Franchises (collectively, "Virginia Franchisees") with the

230730080

Commission's required disclosure document in connection with the offer and sale of the Virginia Franchises.

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 civil penalties and to request that 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 Division wherein the Defendant will abide by and comply with the following terms:

1. The Defendant will make an offer of rescission ("Rescission Offer") within thirty (30) days of the entry of this Order to the Virginia Franchisees as follows:
 - a. The Defendant will send the Rescission Offer, by certified mail, to each of the Virginia Franchisees. The Rescission Offer will include an offer to return the initial franchise fee, as defined by § 13.1-559 of the Act, paid by each of the Virginia Franchisees. The Rescission Offer must contain a provision that allows each of the Virginia Franchisees thirty (30) days from the date of receipt to provide the Defendant with written notification of each Virginia Franchisee's decision to accept or reject the Rescission Offer.
 - b. The Defendant will provide the Division with a copy of the Rescission Offer, for review and comment, at least twenty (20) days prior to sending it to the Virginia Franchisees.
 - c. The Defendant will include a copy of this Order with the Rescission Offer sent to each of the Virginia Franchisees.

- d. If either of the Virginia Franchisees accepts the Rescission Offer, the Defendant will make payment of the initial franchise fee to the Virginia Franchisee(s) within fifteen (15) days of receipt of the written acceptance.
- e. Within ninety (90) days from the date of entry of this Order, the Defendant will submit to the Division an affidavit, executed by an authorized representative of the Defendant, containing the date that each Virginia Franchisee received the Rescission Offer, each of the Virginia Franchisees' responses, and, if applicable, the initial franchise fee amount paid and the date that payment was sent to each of the Virginia Franchisees.

2. The Defendant will pay to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Twenty-Four Thousand Dollars (\$24,000) in monetary penalty.

3. The Defendant will pay to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Three Thousand Dollars (\$3,000) to defray the costs of investigation.

4. The Defendant will not violate the Act in the future.

The Division supports the Defendant's settlement offer and recommends that the Commission accept the settlement.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the settlement should be, and is hereby, accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The settlement is accepted.
- (2) The Defendant shall fully comply with the terms of the 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 of the settlement.

Commissioner Patricia L. West participated in this matter.

A COPY shall be sent by the Clerk of the Commission by electronic mail to:

Kenneth R. Costello, Esquire, at kenneth.costello@bclplaw.com, Bryan Cave Leighton Paisner LLP, 120 Broadway, Suite 300, Santa Monica, California 90401; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2022-00034

FATBURGER NORTH AMERICA, INC.,
Defendant

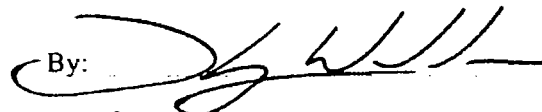
ADMISSION AND CONSENT

Fatburger North America, Inc. ("Defendant") admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof. The Defendant, while 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.

FATBURGER NORTH AMERICA, INC.

Date: 5-12-2023

By: 

Its: CHIEF OPERATING OFFICER

Seen by:



Kenneth R. Costello, Esquire