

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-07-469-08-CO01
Whether there has been a violation of the)
Franchise Investment Protection Act of) CONSENT ORDER
Washington by:)
)
)
Day-By-Day Gourmet, LLC,)
)
Respondent)

INTRODUCTION

On December 31, 2007, the Securities Division of the Department of Financial Institutions (Securities Division) entered a Statement of Charges and Notice of Intent to Enter Stop Order Revoking Registration S-07-469-07-SO01 (Statement of Charges) against Respondent Day-By-Day Gourmet, LLC. Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and the Respondent do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law as set forth in the Statement of Charges and stated below.

FINDINGS OF FACT

RESPONDENT

1. Day-By-Day Gourmet, LLC is a Washington limited liability company with a principal business address of 16108 Ash Way, #114, Edmonds, Washington 98087. Day-By-

1 Day Gourmet, LLC is the seller of franchises that entail the retail sale of delicatessen items as
2 well as pre-assembled meals and other items for customers to take home to finish preparing.

3 Bradford Vorhees is the company's Managing Member and CEO (Chief Executive Officer).

4
5 **FRANCHISE REGISTRATION BY THE RESPONDENT**

6 2. On December 19, 2006, Day-By-Day Gourmet, LLC filed or caused to be filed an
7 application for franchise registration (Securities Division File # 70013655). An offering
8 document (otherwise known as a Uniform Franchise Offering Circular or UFOC) accompanied
9 the application and was proposed for use in the offer and sale of franchises in the state of
10 Washington. The UFOC contained the following disclosure (in Item 2) concerning the business
11 experience of Bradford Vorhees:

12 Mr. Vorhees is Our founder, Managing Member and CEO, a position he has held
13 since January 26, 2006. Previously, Mr. Vorhees was a founder of Dinners
14 Ready, Inc., of Mukilteo, Washington and was its CEO from January 1, 2004
15 through January 25, 2006. From May 1, 2000 through December 31, 2004, he
16 was the Managing Member of Alternative Capital, LLC in Mukilteo, Washington,
17 where he managed a private investment fund.

18 3. The following disclosure concerning litigation (in Item 3) was included in the
19 UFOC:

20 No litigation is required to be disclosed in this offering circular.

21 4. On January 2, 2007, the Securities Division issued a registration permit to Day-
22 By-Day Gourmet, LLC which granted the authority to the company to offer and sell franchises in
23 the state of Washington.

24 5. The UFOC disclosure for Day-By-Day Gourmet, LLC on file with the Securities
25 Division regarding Bradford Vorhees was unchanged in a subsequent registration amendment

1 filing made on April 13, 2007, but, in an amendment filed on October 26, 2007, the language in
2 Item 2 regarding his business experience was altered:

3 Mr. Vorhees is Our founder, Managing Member and CEO, a position he has held
4 since *March 15, 2006*. *From January 26, 2005 until March 15, 2006, he was*
5 *involved in developing Our concept and organizing Us...* (emphasis added).

6 6. Although changes were made in the text relating to the business experience of
7 Bradford Vorhees, he has always been identified as a “founder, managing member and CEO” of
8 Day-By-Day Gourmet, LLC in documents on file with the Securities Division. The language
9 regarding litigation contained in Item 3 of Day-By-Day Gourmet, LLC’s UFOC on file with the
10 Securities Division has also remained unchanged, stating that “No litigation is required to be
11 disclosed in this offering circular.”

12 ALTERNATIVE CAPITAL, LLC AND BRADFORD VORHEES STATE ACTION

13
14 7. On November 13, 2006, the Securities Division entered into a Consent Order with
15 Alternative Capital, LLC and Bradford Vorhees as Managing Member and individually (herein
16 identified collectively as the Alternative Capital Respondents) in Securities Division Case
17 Number S-05-236. That Consent Order (referred to herein as the Alternative Capital Consent
18 Order) was in settlement of a Statement of Charges and Notice of Intent to Enter an Order to
19 Cease and Desist, Impose Fines and Costs, and to Deny Registration against the Alternative
20 Capital Respondents that was entered on June 19, 2006 (the Alternative Capital Statement of
21 Charges). In the Alternative Capital Consent Order, the Respondents and the Securities Division
22 agreed that the Alternative Capital Respondents would, among other things, cease and desist
23 from violations of RCW 21.20.040 and RCW 21.20.110, the investment adviser and investment
24 adviser representative registration requirement provisions. The Alternative Capital Respondents
25

1 agreed to pay a fine of \$1,000 and costs, fees, and other expenses of \$500. The Alternative
2 Capital Respondents waived their right to a hearing and judicial review of the matter.
3

4 OMISSION OF UFOC DISCLOSURE BY RESPONDENT

5 8. WAC 460-80-315 provides that in order to implement the disclosure requirements
6 of RCW 19.100.040 for franchise registrations, the Securities Division has adopted the UFOC
7 promulgated by the North American Securities Administrators Association (NASAA). The
8 UFOC mandates certain disclosures for principal officers and other executives of a franchisor
9 who will have management responsibility relating to the franchises offered. The term “principal
10 officer” includes a CEO. Disclosure is required if a principal officer is subject to a currently
11 effective state order or decree brought under, among other things, state securities law resulting
12 from a concluded or pending action or proceeding brought by a public agency.
13

14 9. The versions of the UFOC disclosure documents filed or caused to be filed by
15 Day-By-Day Gourmet, LLC with the Securities Division failed to disclose the Alternative
16 Capital Consent Order that was entered in settlement of the Alternative Capital Statement of
17 Charges in Case Number S-05-236. The versions of the UFOC that were filed were materially
18 deficient in failing to disclose the Alternative Capital Consent Order that was entered in
19 settlement of the Alternative Capital Statement of Charges.
20

21 Based upon the above Findings of Fact, the following Conclusions of Law are made:

22 CONCLUSIONS OF LAW

23 1. Day-By-Day Gourmet, LLC has violated RCW 19.100.170(1), which provides (in
24 relevant part) that “it is unlawful to omit to state in any application, notice or report, any
25 material fact which is required to be stated therein ...”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

right to a hearing or judicial review of this matter pursuant to Chapter 34.05 RCW.

Day-By-Day Gourmet, LLC by:

/s/

(Signature)

/s/ Brad Vorhees, CEO

(Print Name and Title)


Signed this 15th day of April, 2008.

Signed and Entered this 22nd day of April, 2008



Michael E. Stevenson
Securities Administrator

Approved by:


Martin Cordell
Chief of Enforcement

Presented by:


Brad Ferber
Financial Legal Examiner