

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING)
Whether there has been a violation of the)
Franchise Investment Protection Act of) Order No. S-16-1853-16-FO01
Washington by:)
Dine In 2Nite North America, LLC and Leo Kats,) ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF
a.k.a. Leo Katz, also doing business as Dine In) LAW AND FINAL ORDER TO CEASE AND DESIST AS
2Nite North America, Inc.) TO DINE IN 2NITE NORTH AMERICA, LLC AND LEO
Respondents.) KATS, A.K.A. LEO KATZ, ALSO DOING BUSINESS AS
DINE IN 2NITE NORTH AMERICA, INC.

THE STATE OF WASHINGTON TO: Dine In 2Nite North America, Inc. and Leo Kats

On March 29, 2016, the Securities Administrator for the state of Washington issued Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, S-16-1853-16-SC01, against Respondents, Dine In 2Nite North America, LLC and Leo Kats, also known as Leo Katz and also doing business as Dine In 2Nite North America, Inc. (“the Respondents”).

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (“Notice of Opportunity for Hearing”) and an Application for Adjudicative Hearing (“Hearing Application”), was served on the Respondents on approximately April 4, 2016.

The Notice of Opportunity for Hearing advised Respondents that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice.

Based on the fact that the Respondents failed to file a request for a hearing with the Director or Securities Administrator within twenty days from the date of receipt of the notice, the Securities Administrator will therefore adopt as final the findings of fact and conclusions of law as set forth in the Statement of Charges. The Securities Administrator finds as follows:

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FINDINGS OF FACT

I.

Parties

1. Dine In 2Nite North America, LLC (“Dine In 2Nite”) is a California limited liability company with its principal place of business in San Diego, California. Dine In 2Nite describes its business as “the first subscription based catering franchise, delivering freshly prepared gourmet meals for \$10 per day.”

2. Leo Kats, a California resident, is the CEO and President of Dine In 2Nite.

II.

Nature of the Offering

3. In early 2013, Dine In 2Nite, Leo Kats and their agents (“Respondents”) caused to be published various advertisements for the sale of franchises on Internet websites such as www.dinein2nitefranchise.com, www.dinein2nite.com, and other sites. On www.dinein2nitefranchise.com, Respondents offered prospective franchisees the opportunity to “Own your own business and offer a unique and rewarding service to your local community. Dine In 2Nite has created a system for your clients to subscribe to ongoing meal delivery service, receiving hot gourmet dinners delivered to their home 3 or 5 times per week” and Respondents represented that “You can own a Dine In 2Nite franchise, complete with a fully equipped kitchen facility for as little as \$49,000.”

4. Respondents’ advertising offered a system to prospective franchisees that included the following:

- a. a complete software and operating system to allow clients to place orders, generate food ordering reports, assist with order preparation and processing and provide “smart delivery routing,”
- b. Dine In 2Nite’s proprietary food cooking process and recipes,
- c. Dine In 2Nite’s franchisee Intranet portal, that provided access to training materials, network supplier information, news and updates in the catering and restaurant industry, apparel and marketing materials, and so much more.
- d. a comprehensive one week training program,

- 1 e. detailed, confidential system manuals that included job descriptions, health regulations,
2 production procedures, marketing ideas, training programs, appropriate forms, etc. and
3 f. consultation and advice on daily operations, general management, food ordering and costs, local
4 marketing plans, labor costs, and troubleshooting.

5 5. Other online advertising published by Respondents or their agents stated that Dine In 2Nite was
6 “Seeking franchisees in Portland, Beaverton, Hillsboro, Lake Oswego, West Linn, Tigard, Milwaukie, Happy Valley,
7 Vancouver, Camas, and beyond.”

8 6. In or about January or February, 2013, Respondents were contacted by a Washington resident
9 (“Resident”) regarding the purchase of a Dine In 2Nite franchise. Leo Kats emailed the Resident the Dine In 2Nite
10 franchise disclosure document (“FDD”) and a copy of the Dine In 2Nite franchise agreement. On March 7, 2013, the
11 Resident and Leo Kats signed the franchise agreement. The Resident paid Respondents half of the initial \$34,000
12 franchise fee upon signing the franchise agreement.

13 7. Respondents provided the Resident a one week training session at its San Diego offices. Respondents
14 granted the Resident a license to use its trade name and marks in the Resident’s business which was located in
15 southwest Washington. Respondents provided the Resident online access to its operations’ manual. Respondents
16 provided the Resident with marketing materials and advice. Respondents managed all customer orders on behalf of
17 the Resident through the Dine In 2Nite call center. Respondents collected all revenue from customers on behalf of the
18 Resident and would remit funds to the Resident after they had taken out a 6% royalty fee and other fees.

19 **III.**

20 RCW 19.100.170 Violations

21 8. An online advertisement published by Respondents or their agents stated they offered “..Quick Break-
22 Even Accessible Six-Figure Net Potential [sic],” but failed to disclose material facts regarding the claim such as the
23 basis and assumptions underlying and supporting the claim. Respondents published another online advertisement that
24 stated that their “subscription based model offers our franchise partners a one-of-a-kind business with tremendous
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1 income and growth potential along with maximum return on both investment and asset value,” but failed to disclose
2 material facts regarding the claim such as the basis and assumptions underlying and supporting the claim.

3 **IV.**

4 Registration Status

5 9. Respondent Dine In 2Nite North America, LLC is not currently registered to sell franchises in the state
6 of Washington and has not previously been so registered.

7 **V.**

8 California Regulatory Action

9 10. On June 27, 2015, the State of California’s Department of Business Oversight issued a Desist and
10 Refrain Order against Dine In 2Nite North America, Inc. and Leo Kats for failing to comply with the California
11 franchise offer and sale requirements and ordered the Respondents “to desist and refrain from the further offer or sale
12 of franchise investments unless and until the offers have been duly registered under the Franchise Investment Law, or
13 are exempt.”

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

15 **CONCLUSIONS OF LAW**

16 **I.**

17 The offer or sale of the Dine In 2Nite franchise agreement described above constitute the offer and/or sale of a
18 franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

19 **II.**

20 Respondents offered and sold said franchise in violation of RCW 19.100.020 because no registration for such
21 offer and sale by Dine In 2Nite was on file with the Securities Administrator for certain time periods when offers or
22 sales occurred.

23 **III.**

24 Respondents violated RCW 19.100.170, the “Violations” section of the Franchise Investment Protection Act,
25 because they failed to provide prospective purchasers material information about the potential financial performance

1 of the business, including, but not necessarily limited to, the basis and material assumptions underlying the claims
2 made about potential performance.

3 **FINAL ORDER**

4 Based on the foregoing and finding it in the public interest:

5 IT IS HEREBY ORDERED that the Respondents Dine In 2Nite North America, LLC and Leo Kats, their
6 agents and employees each shall cease and desist from violations of RCW 19.100.020 and RCW 19.100.170 the
7 registration and violations sections of the Franchise Act of Washington.

8 **AUTHORITY AND PROCEDURE**

9 This Order is entered pursuant to the provisions of Chapter 19.100 RCW and is subject to the provisions of
10 RCW 19.100.260 and RCW 34.05. The Respondents may petition the superior court for judicial review of this agency
11 action under the provisions of RCW 34.05. For the requirements for filing a Petition for Judicial Review, see RCW
12 34.05.510 and sections following.

13 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

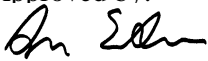
14 Signed and Entered this 9th day of May, 2016.

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16 William M. Beatty
17 Securities Administrator

18 Presented by:

19 Approved by:

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21 Suzanne Sarason
22 Chief of Enforcement

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24 Martin Cordell
25 Financial Legal Examiner

Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor

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**ENTRY OF FINDINGS OF FACT
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