

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

2 IN THE MATTER OF DETERMINING ) Order No.: S-17-2159-17-FO01  
3 Whether there has been a violation of the )  
4 Franchise Investment Protection Act of )  
Washington by: ) ENTRY OF FINDINGS OF FACT AND CONCLUSIONS  
5 New York Bagel Enterprises, Inc.; Joseph V. ) OF LAW AND FINAL ORDER TO CEASE AND DESIST  
Smith; and Dennis K. Mason, ) AS TO NEW YORK BAGEL ENTERPRISES, INC. AND  
6 ) JOSEPH V. SMITH

Respondents.

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8 On July 28, 2017, the Securities Administrator of the state of Washington issued order number S-17-2159-17-  
9 SC01, a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist (Statement of Charges) against  
10 New York Bagel Enterprises, Inc., Joseph V. Smith, and Dennis K. Mason.

11 The Statement of Charges, together with the Notice of Opportunity to Defend and Opportunity for Hearing  
(Notice of Opportunity for Hearing) and an Application for Adjudicative Hearing (Application for Hearing), was  
12 served on New York Bagel Enterprises and Joseph V. Smith on August 14, 2017.

13 The Notice of Opportunity for Hearing advised New York Bagel Enterprises and Joseph V. Smith that a written  
14 application for an administrative hearing on the Statement of Charges must be received within twenty days from the  
date of receipt of the notice.

15 New York Bagel Enterprises and Joseph V. Smith, however, failed to request an administrative hearing, either  
16 on the Application for Hearing or otherwise, within twenty days of receipt of the Statement of Charges and Notice of  
Opportunity for Hearing.

17 The Securities Administrator, therefore, will adopt as final, the following Findings of Fact and Conclusions of  
18 Law as written in the Statement of Charges and enter a final order against New York Bagel Enterprises and Joseph V.  
Smith to cease and desist from violations of the Franchise Act.

**FINDINGS OF FACT**

Respondents

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21 1. New York Bagel Enterprises, Inc. is a New Jersey corporation formed in 2008 for the purpose of operating a  
22 bagel and deli franchise. New York Bagel Enterprises, Inc. does business under the trademark New York Bagel Café  
& Deli, a trademark that the company does not own. New York Bagel Enterprises alternatively uses the names N.Y.  
23 Bagel Enterprises, Inc., N.Y. Bagel Café & Deli, and NY Bagel Café & Deli. The company is located in Rutherford,  
New Jersey.

24 2. Joseph V. Smith is a resident of New York and acts as the principal of New York Bagel Enterprises.

ENTRY OF FINDINGS OF FACT AND  
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3. Dennis K. Mason is a resident of New Jersey and arranges for the offer and sale of New York Bagel Enterprises. Dennis K. Mason has offered and sold franchises for other companies in the past, through his company Franchises Unlimited, Inc., a New Jersey corporation. Dennis K. Mason uses aliases, including Keith Samuels and Brian Schofield, in his solicitation of New York Bagel Enterprises franchises.

Offer of Franchises in Washington

4. From approximately January 2017 through March 2017, New York Bagel Enterprises advertised through Craigslist the sale of New York Bagel Café & Deli licenses in King, Kitsap, and Snohomish counties.

5. Dennis K. Mason paid for the posting of these Craigslist advertisements, which he ran every few weeks.

6. For an initial fee of \$27,500, New York Bagel Enterprises offered prospective licensees the right to own and operate New York Bagel Café & Deli stores in Washington under the New York Bagel Café & Deli trademark. Dennis K. Mason represented that prospective licensees could operate these New York Bagel Café & Deli stores within protected territories.

7. As part of the fee, New York Bagel Enterprises also offered prospective licensees assistance in opening new stores and performing financial analyses. Additionally, New York Bagel Enterprises claimed that it would provide prospective licensees with training on the operation and management of the licensee's new store.

8. These Craigslist advertisements directed prospective licensees to call New York Bagel Enterprises listed telephone number or to visit the company's website, where the company continues to generally offer the sale of New York Bagel Café & Deli franchises.

9. In their online advertisements, New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason represented that New York Bagel Enterprises had a history of successful operations, however, New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason failed to disclose their lengthy legal and financial history described below.

Respondents' Legal and Financial History

10. New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason have at least the following legal and financial history:

- a. From 1987 to 2009, Dennis K. Mason filed for bankruptcy twice. He was also named as a defendant in at least ten commercial lawsuits, nearly all alleging fraud in connection with the offer and sale of franchises. The Superior Court of New Jersey destroyed the records for three of these cases, but the defendants were found liable or settled the claims in the other seven lawsuits.
- b. In 2011, an arbitrator ruled against New York Bagel Enterprises, ordering the company to fully refund the franchisee's \$29,500 franchise fee.

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- c. In 2011, an arbitrator awarded a franchisee a \$22,000 judgment against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises franchise.
  - d. In 2011, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in connection with his purchase of a New York Bagel Enterprises franchise. In 2013, a court ruled that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated the New Jersey Franchise Practices Act and the New Jersey Consumer Fraud Act and entered a judgment against the defendants.
  - e. In 2011, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of contract in connection with the sale of a New York Bagel Enterprises franchise in Pennsylvania. In 2012, the parties settled the lawsuit.
  - f. In 2012, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for violations of the North Carolina Deceptive Trade Practices Act in connection with the defendant's sale of a New York Bagel Enterprises franchise. In 2013, a court entered default judgment of \$839,976.96 against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason, finding that the defendants willfully violated the North Carolina Deceptive Trade Practices Act.
  - g. In 2012, franchises sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for violations of New York State General Business Law in connection with the sale of a New York Bagel Enterprises franchise in New York. In 2014, a judge ruled that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated New York State General Business Law.
  - h. In 2013, an arbitrator issued a franchisee an award against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises franchise.
  - i. In 2013, franchisees sued New York Bagel Enterprises and Joseph V. Smith for violations of the New Jersey Franchise Practices Act, fraud, unjust enrichment, and breach of contract in connection with the sale of a New York Bagel Enterprises franchise in New Jersey. A default judgment was entered against New York Bagel Enterprises and Joseph V. Smith that same year.
  - j. In 2015, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the New Jersey Franchise Practices Act, breach of contract, and unjust enrichment in connection with the sale

1 of a New York Bagel Enterprises franchise. In 2016, a default judgment was entered against New  
2 York Bagel Enterprises.

3 k. In 2015, the Securities Division of the Office of the Attorney General of Maryland issued an Order to  
4 Show Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason alleging  
5 fraud in connection with the sale of a New York Bagel Enterprises franchise in Maryland. In 2015, the  
6 Maryland Securities Commissioner issued a Final Order against New York Bagel Enterprises, Joseph  
7 V. Smith, and Dennis K. Mason after they failed to respond to the Order to Show Cause. The Final  
8 Order ordered that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason permanently  
9 cease and desist from violations of the Maryland Franchise Law.

10 l. In 2016, the State Corporation Commission of the Commonwealth of Virginia issued a Rule to Show  
11 Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis Mason alleging fraud in  
12 connection with the sale of New York Bagel Enterprises franchises in Virginia. In 2017, the State  
13 Corporation Commission issued a Judgment Order against New York Bagel Enterprises, Joseph V.  
14 Smith, and Dennis K. Mason after they failed to appear at a hearing on the Rule to Show Cause. The  
15 Judgment Order assessed a total of \$675,000 in fines and \$20,899.33 in costs against New York Bagel  
16 Enterprises, Joseph V. Smith, and Dennis K. Mason, ordered restitution for New York Bagel  
17 Enterprises franchises in Virginia, and permanently enjoined New York Bagel Enterprises from  
18 operating any franchises in Virginia.

19 11. Many of the franchisees involved in the lawsuits described above first learned about the opportunity to  
20 purchase a franchise through online advertisements.

21 12. In the lawsuits described above, in many instances, the plaintiffs have been unable to collect on their  
22 judgments, and the defendants are not current in many of their settlement payments.

#### 23 Registration Status

24 13. New York Bagel Enterprises and Joseph V. Smith are not currently registered to offer or sell franchises in the  
25 state of Washington and have not been previously registered to do so.

14. Dennis K. Mason is not currently registered as a franchise broker with the state of Washington and has not  
been previously registered to do so.

Based upon the above findings of fact, the following conclusions of law are made:

#### **CONCLUSIONS OF LAW**

1. New York Bagel Enterprises' and Joseph V. Smith's offer of New York Bagel Café & Deli licenses in  
Washington constitutes the offer of a franchise as defined in RCW 19.100.010(6) and RCW 19.100.010(12).

2. New York Bagel Enterprises' and Joseph V. Smith's offer of franchises violated RCW 19.100.020 because New York Bagel Enterprises and Joseph V. Smith were not registered to offer or sell franchises at the time of their online advertisements described above.

3. New York Bagel Enterprises and Joseph V. Smith violated RCW 19.100.140 by employing an unregistered franchise broker to offer the sale of franchises in Washington.

4. In violation of RCW 19.100.170(2), New York Bagel Enterprises' and Joseph V. Smith's representations in their online advertisements of a history of successful New York Bagel Enterprises operations constitute untrue statements of a material fact or omissions of a material fact necessary in order to make the statements made in light of the circumstance under which they were made not misleading.

**FINAL ORDER**

Based upon the foregoing and finding it in the public interest:

IT IS HEREBY ORDERED that Respondents New York Bagel Enterprises and Joseph V. Smith, as well as their agents and employees, each shall cease and desist from offering or selling franchises in violation of RCW 19.100.020, the registration section of the Franchise Investment Protection Act.

IT IS HEREBY ORDERED that Respondents New York Bagel Enterprises and Joseph V. Smith, as well as their agents and employees, each shall cease and desist from violating RCW 19.100.140, the section of the Franchise Investment Protection Act prohibiting the employment of an unregistered franchise broker.

IT IS HEREBY ORDERED that Respondents New York Bagel Enterprises and Joseph V. Smith, as well as their agents and employees, each shall cease and desist from violating RCW 19.100.170, the anti-fraud section of the Franchise Investment Protection Act.

This ORDER is entered pursuant to RCW 19.100.248 and is subject to the provisions of Chapter 34.05 RCW.

**WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

SIGNED and ENTERED this 15th day of September 2017.



William M. Beatty  
Securities Administrator

Approved by:

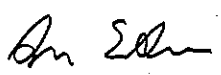
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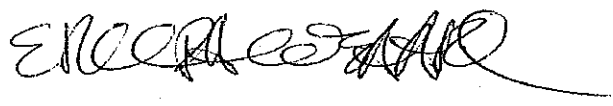
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