

8th April 2018

Mr & Mrs Kelly

To the Committee of the Parliamentary Enquiry into the **operation and effectiveness of the Franchising Code of Conduct.**

Myself Bryan Kelly and my wife Amanda Kelly held a lease agreement with Brumby's store in Maroochydore Qld from 1/8/2009 until 30/06/2013 when we had to cease trading and walked out of the store.

We wish to make a submission to the enquiry for the following **Terms of Reference.**

The following matters were referred to the Parliamentary Joint Committee on Corporations and Financial Services for inquiry and report by 30 September 2018:

- (a) the operation and effectiveness of the Franchising Code of Conduct, including the disclosure document and information statement, and the Oil Code of Conduct, in ensuring full disclosure to potential franchisees of all information necessary to make a fully-informed decision when assessing whether to enter a franchise agreement, including information on:

During the time of our investigation and due diligence, we met with RFG representative on the sale of the Maroochydore store on several occasions.

We were sold on the purchase of the store after the Area Business Manager convinced us that the Maroochydore store had the potential to make larger profits than the Brisbane City Brumby's store. We were shown a profit and loss of the store and the figures looked encouraging.* We were advised that we were sitting on a gold mine and that we would smash it and be able to pay for the required store renovations within the first 3 months of trading. They also advised us that with Bryans Level of Experience and Qualifications as a Qualified Pastry Chef and 15 years of training apprentices in the Baking Industry, would set us up to do very well. At this time we were excited at the prospect of turning a rundown store into a profitable business for our retirement.

After paying the initial deposit, we received documents including Brumby's operation manual, Brumby's contract agreement and training requirements and Franchising Code of Conduct. I do not recall sighting the Oil Code of Conduct. I do not believe that we received full disclosure of all information necessary to make a fully-informed decision on entering the franchise agreement.

RECOMMENDATION

RFG should not glorify the store potential.

RFG should be more realistic for new business owners on possible losses at early stages until they establish themselves as being proficient business owners.

RFG should allow more time and less pressure on making this financial decision.

RFG should present history of the franchise and successful stores and unsuccessful stores.

(i) likely financial performance of a franchise and worse-case scenarios,

Proper disclosure at the time we signed the contract was not provided. We were led to believe the financial performance of the Maroochydore store was better than other trading stores as shown to us on a spreadsheet of store sales performances.

I refer to point (2) we were shown a profit and loss of the store and the figures looked encouraging.*

Upon commencement of trading in the Maroochydore store we quickly realised within the first 2 weeks that the sales figures were considerably lower than what was presented in the Profit & Loss of previous owners.

We immediately contacted the Area Business Manager and advised her of the shortfall of income as to what was presented to us. We were advised that it was just an initial slump with the changeover of owners and that it would improve and that a strong marketing campaign was about to be implemented.

We continued to improve our operations and customer service and quality product control but over the coming months, years we noticed that sales were consistently lower than the presented Profit & Loss.

We initiated contact with fellow stores to gauge their performances and spoke with an owner of another store on the Sunshine Coast. He advised us that he had looked at the operations of the Maroochydore store when it was for sale and advised us that the Profit & Loss figures were fabricated and left the store alone.

At no point were the realistic views of the worse-case scenarios ever discussed with us. We were told it was positive GOLD mine all the way.

RECOMMENDATION

We would have made a better informed decision if we were shown

high low periods of trading/trends of sales

Correct and true financials from the RFG sales reporting program instead of the store owners independent profit and loss (which can be fabricated)

(iii) the leasing arrangements and any limitations of the franchisee's ability to enforce tenants' rights, and

Leasing arrangements are currently fair. RFG have the legal ability to arrange leasing on behalf of the franchisee. It is fair that the Franchisor has control over the lease.

It is also fair that RFG should act on behalf of the Franchisee to negotiate rental charges and increases.

In our case, this did not occur. RFG did not provide assistance with negotiations on Rent Increases/Waivers. We as the franchisee were left to negotiate for 3 years. When we requested that RFG act on our behalf, the Area Manager advised that we should continue the negotiations as the Lessee would be more inclined to approve Rent Reductions with us directly, rather than with RFG.

When we advised the CEO of RFG at the time of our walking out of the store, the CEO turned to the Area Manager (who were both present) with utter disbelief and said that should never have happened and was angry with the Area Manager. Hence, several people lost their jobs shortly after this.

This was the first time we had ever seen the CEO on who met with us when we advised of us closing the store. The CEO realised when it was finally brought to his attention that we were negotiating the rent for 3 years and he wanted to help us continue to trade. We advised him that we had been requesting this support for over 12 months while we were in survival mode but nobody came to help us even after many, many requests.

We advised the CEO that his desire to help us was all too little too late.

RECOMMENDATION

RFG should provide a better support system for franchisees. Including advice and support on operational costs, wages cost and Lease support.

(iv) the expected running costs, including cost of goods required to be purchased through prescribed suppliers;

The operating costs were different to what we expected to when we first signed on. Operating costs of supplies were considerably higher from the companies we were forced to buy from than that of competing suppliers. We on several occasions purchased products from local suppliers that saved us a lot in purchase costs. We were reported from the mandatory RFG supplier and RFG issued us with a breach of contract warning if we were to continue to purchase outside of their companies. We complied with this requirement of our lease agreement, thinking that RFG must have the numbers right, so if we comply our business will survive under their guidance. This did not turn out to be correct. We blindly followed the RFG business rules in good faith and have now lost everything.

There is no scope for bargaining power with suppliers. RFG receive kickbacks from their suppliers. Franchisees have no leeway to source cheaper competitors. Reducing the supply cost for our store would have been instrumental to allowing us to stay in business. We had no scope to run the operational side of the business as any business owner would to ensure reduced operational costs to allow higher profits of the business.

An example of the supplier control put in place by RFG:

I have been informed from a previous representative of Kerry Pinnacle's, that KP was instructed to increase the % wholesale margin from 5% to 12.5%. The representative of KP objected and said the Franchisees could not sustain this increase. RFG replied, don't you worry about that, increase the margin; I will take care of the Franchisees.

Another store owner in our local area, who is of legal background, challenged RFG on this point when his store was failing. This store owner walked quietly away and hasn't been heard from since. There was a possible under the carpet arrangement at this store.

RECOMMENDATION

- Allow for local area stores to source products on a competitive playing field.
- Remove kickbacks for contracted suppliers to RFG. It is not in the best interest of the Franchisee for RFG to receive bonuses off the back of small operational stores that are breaking the stores.

(h) any related matter.

Sale of Stores

We decided to sell our Franchise Store in Maroochydore. The failure to sell our store for years was due to the following. The Local Real Estate Agent acted on our sale. He was proactive in attaining a prospective buyer. After meeting with prospective buyer who was keen to move quickly, we advised we will set up a meeting with them and RFG who have to approve the buyer and sale.

We requested a meeting from RFG with the buyer. We were met with long waits with responses such as that person is on leave and will have to wait for their return. We held the buyer off and set up meeting when this person returned from leave. At the arranged meeting RFG advised the buyer of the refurbishment costs of the store and other mitigating factors and the time involved. The prospective buyers interest in the store had declined significantly after this meeting and they walked away. We had lost a sale due to the deliberate actions of RFG to prevent the sale.

We believe it was the intention for RFG to take over the store upon our walking away, and for them to onsell quickly to another buyer at a higher price.

Our sale was hi-jacked and demolished by RFG.

Expensive refurb/exit fees expected when leaving/selling –

Refurbishment fees are exorbitant and unnecessary. Our store was not run down in regard to tiling and store fittings. However, when the brand changes a small detail on their colour range, all stores need to be retiled and new fittings at the Franchisees expense. This is unsustainable for a small profit business.

Exit fees are extremely high and I have no understanding of the need for this fee considering all other entry and training fees that have to be paid upon purchase.

Working long hours for small profit or loss –

To stay afloat with a small profit, I (Bryan Kelly) was required to work 3 nights a week on my own for the production of the whole bakery products. I worked these nights for free. We were unable to draw a wage so I worked for non-payment of wages. We could not afford the wages of another baker to assist and I ran myself to the ground in working these long nights alone. As a result; these conditions triggered a D4 gene from the stress of this soul destroying work. I now have been diagnosed with Rheumatoid Arthritis and Fibromyalgia. I am barely able to get out of bed in the mornings and can no longer work to support my family.