

The Operation and Effectiveness of the Franchising Code of Conduct

Submission

2018

Short introduction

I first inquired about a Jim's Group franchise in May of 2015. My wife was diagnosed with Multiple Sclerosis so we were looking for a business that would help sustain us financially into the future, and to employ someone as needed on a weekly basis.

We met with a regional franchisor of a Jim's Group division on a number of occasions and told him of our intentions and the requirements we were looking for in a business. We were told on these occasions that we could earn between \$7,000 and \$10,000 per week and that he made \$43,000 in January of 2015. He also told us that the initial start-up running costs required was \$10,000. Based on these figures a financial advisor was used to secure a loan. A company and trust was also set up as advised by our accountant.

We signed a franchise agreement in August 2015 and paid \$25,000 to operate as a Jim's Group franchisee. We also paid a further \$190K plus for equipment.

Due to the business ethics of both franchisors we surrendered the franchise back to the regional franchisor in March 2016 to avoid insolvency.

I believe we were unable to make a proper informed decision about the purchase of the franchise due to the misleading and deceptive conduct of both franchisors.

We also believe that because of their unconscionable behaviour with their business practices, we fell victim to churning.

My wife and I didn't expect that going with the largest franchise chain in Australia would cripple us both on a financial and health level that it did.

What we experienced in numbered points

1. The business did nowhere near the \$7000-\$10,000 per week. All the information supplied to us was misleading and deceptive.
2. We were told that we would be purchasing a new territory. This wasn't the case as it had already been sold to a previous franchisee.
3. After repeated attempts we were not provided proper disclosure documents or signed financials.
4. That a registered director of the regional franchisor was used as a figure head to cover up the fact that the regional franchisor was a declared bankrupt not a manager as stated in the regional disclosure documents. We also believe the regional franchisor signed the franchise documents (forged the signature of this registered director).
5. The Jim's Group knew the regional franchisor was a declared bankrupt and continued to allow him to trade as a franchisor and not disclose this information to new franchisees.
6. That the regional franchisor advertised (not under the Jims Group name) for himself in areas that other franchisees had purchased.
7. Both franchisors allowed franchisees to knowingly trade in other franchisee territories by using a second business (whether that business was a registered business or not).
8. The Jim's Group Pty Ltd allowed the resale of areas that they are reasonably aware will be unsuccessful.
9. Both the Jim's Group Pty Ltd and regional franchisor instructed us to register and advertise a second business for tax and advertising purposes, putting us in direct breach of our franchise agreement.
10. Both franchisors knew the business was not viable on its own.
11. Both franchisors were committed to churning us.
12. The Jim's Group used their Franchise Management System (FMS) to their advantage. They allocated leads around as they saw fit. Effectively having the power to starve you of work.
13. Both parties resold our territory after we surrendered our franchise back to them.

Failed to maintain and include information in a disclosure document

14. That the regional franchisor was a director of his company and failed to disclose this and the fact that he was (within the last ten years) a declared bankrupt. He was not a manager as stated in his disclosure document.
15. That a Jim's Group franchisee didn't surrender his franchise as stated in the disclosure document, but rather the territory was brought back off him by the franchisors after he threatened them with legal action.
16. No mention of other franchisees that have ceased or surrendered their franchises.
17. I believe that the regional franchisors statement of financial viability was signed again by the regional franchisor forging the director's signature.
18. The regional franchisors statement was not signed (regional disclosure document).
19. The regional franchisors financial report was not signed nor was it signed by the accountant doing the report.
20. The Jim's Group didn't pursue the regional franchisor to supply the proper signed documents.
21. The Jim's Group knew the regional franchisor was supplying misleading information in his disclosure documents but chose to ignore this for their financial gain in securing a new franchisee.

Instigating a franchisee to breach their agreement

22. Both franchisors insisted that we start a second business and advertise that business. This would have put us in direct breach of our franchise contract. We would therefore be running a business which was substantially the same as the business we purchased off them and advertising in areas that other franchisee's had purchased.
23. The Jim's Group condones franchisees running a second business for their benefit.
 - Subsequently they don't have to advertise for you
 - The franchisee has breached their agreement with both franchisors
 - Both franchisors can then begin their process of churning you.

Failure to advertise

24. Apart from a Facebook page (which no one could find) there was no advertising done for us at all.

Causing a franchisee to surrender a franchise before insolvency

25. Intimidation to accept low offers for the sale of our business and equipment.
26. Threats that if we find a buyer for our business they would have to approve of them anyway. Simply put, they were not going to approve any buyer for our business when they could resell a territory and pocket the money themselves.
27. Rather than helping us they put on more franchisees (who serviced the same area) knowing that the work was not there and that we were becoming insolvent.
28. Removing me from areas I previously serviced.

Recommendations and ideas for addressing the issues we experienced

A/ I believe addressing concerns and taking accountability is not a culture that is promoted at the Jim's Group. Rather what we experienced was a culture of intimidation and contempt for governing laws and the Franchise Code of Conduct. The systemic behaviour we experienced can only be curbed through close supervision and constant heavy penalties. Sadly anything else I believe would be licence to continue business as usual.

B/ The only government body that handles these types of complaints are the ACCC. I believe they need to be properly staffed and funded to meet and curb the flagrant culture we experienced. Given their lack of resource's they can only investigate so many matters. As most franchisee's walk away with debt or no money to fight legally to bring accountability, systemic practices will continue to go unchecked.

C/ All franchisors contribute to a litigation fund that franchisees can access on merit through an external governing body. This would highlight what particular franchisees are trying to access the fund, thereby shining a light on systemic behaviour within a particular franchise system. This and penalties such as franchisors contributing extra monies to the fund would make all franchisors proactive in dealing with matters in-house, while saving them from any external attention such as the media.

D/ All franchisors should disclose yearly franchisee figures. The amount of franchisee's they sign on and the amount of franchisee's that have surrendered their businesses back to the franchisor. This information should be collated and made public by an external governing body such as the ACCC. This type of information would aid potential franchisees greatly, while making franchisors more accountable and willing to work at keeping their franchisees and addressing to some degree, their ability to churn.

E/ Realising the gravity of our situation, efforts were made to sell our equipment and franchise territory. Through discussions with both franchisors it was quite obvious that they wanted us to walk away with nothing. We had highlighted many concerns with the Jim's Group but quickly realised that regional franchisors only act in accordance with their directives. Sadly, given our experience I believe that while improving the Franchise Code of Conduct is a step in the right direction, it will not help franchisees unless they have access to funds to litigate and bring accountability. Likewise any kind of dispute resolution would require committed parties to attend; otherwise it only serves to waste everyone's time.

End of Submission

Mediation or Dispute Resolution

Due to the culture and intimidation we encountered, I believed that no mediation would have resulted in an agreeable outcome. With this said we did apply to the Queensland Civil and Administrative Tribunal (QCAT) where mediation was offered. However one franchisor didn't attend and the second franchisor simply seemed detached and dis-interested with the whole process. The mediation session was cancelled due to the absence of the franchisor. Prior to a rescheduling QCAT asked for submissions as to why they should hear the matter. The Jim's Group and the regional franchisor submitted that they in-fact were not traders within the meaning of the QCAT Act and so the matter was transferred to the Brisbane Magistrates Court for a directions hearing. The order of the court is that the proceeding continues as if started by claim. We were to file and serve a statement of claim however we asked that the matter be adjourned to the registrar until we could obtain financial means to continue. It is unlikely that we will pursue this matter further due to the financial costs involved.

I understand that the dispute has been considered by the ACCC. We have sent our concerns and relevant information to them however they do not provide comment or feedback on whether they investigate matters or not.