Cassidy, Laureen (SEN)

From:

David Wilkinson

Sent:

Monday, 1 September 2008 4:31 PM

To:

Committee, Corporations (SEN)

Subject: Enquiry into Franchising

G'day,

Before I met and the and the II was happily married, financially secure and life and the future was pretty rosy.

I now find myself divorced, on the verge of financial ruin and facing a legal system that seems intent on providing the 'morally bankrupt' with the greatest amount of protection.

In short, these people lied to me to get me to invest in their franchise system, treated me appallingly during the time of my franchise agreement, took customers and money from me for their own benefit and then cancelled my licence when I protested.

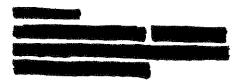
endorsed them under their 'Preferred Franchise' lending scheme.

I have attached some documents which go into a bit of detail but I would like to request that I be allowed to give my evidence to the enquiry in person.

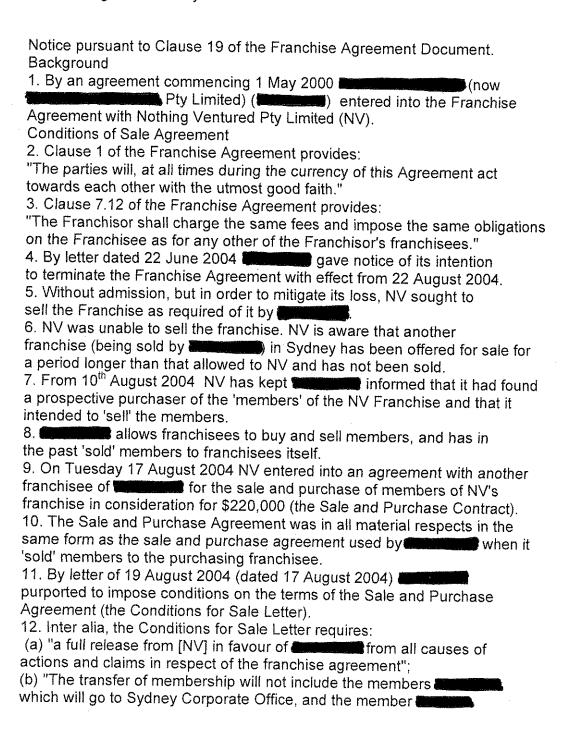
Kindly confirm receipt of my email and details of when verbal evidence will be taken.

Yours sincerely

in your area now! View photos of singles

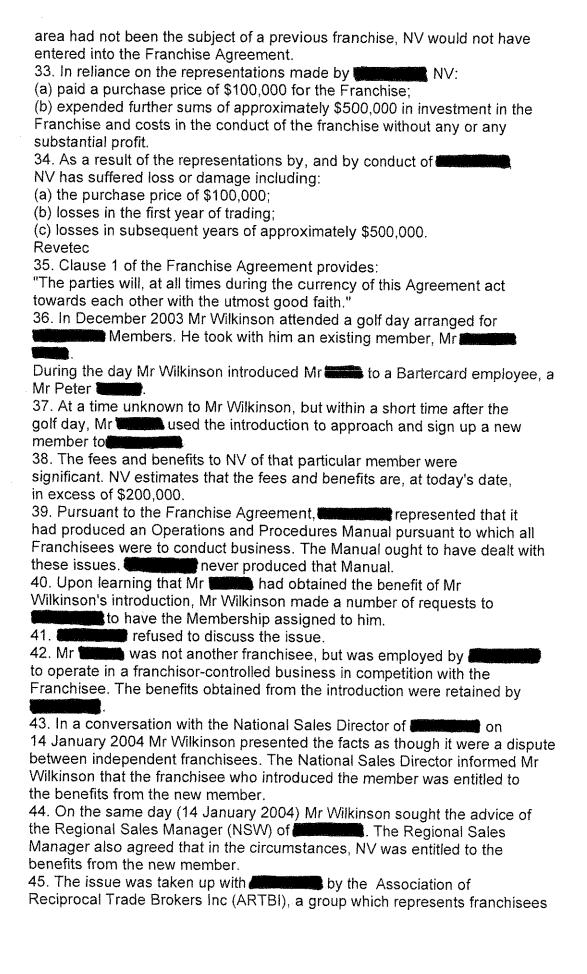


Re: Nothing Ventured Pty Limited



1	which will be transferred to the Sydney
	CBD Brokerage";
(c) "NV will also provide an amount totalling 10% of the sale price to
#	as consideration of the sale, as provided for in the franchise
a	greement, this being \$22,000 + GST.";
	d) "and reserves the right to impose additional matters".
ì	3. Inter alia the purported conditions are unfair and unconscionable,
	and not made in good faith because:
	a) the requirement that NV release the second of the requirement that NV release from all claims is not
	easonably connected to the Sale and Purchase Agreement;
(b) the exclusion of certain members from the Purchase and Sale
F	agreement has, or has the prospects of, reducing the value of the
C	onsideration paid pursuant to the Purchase and Sale Agreement without
	ompensating NV;
f	urther to (b), the second of the exclusion has provided no explanation for the exclusion of
t	nese members from the Purchase and Sale Agreement;
f	urther to (b), the value of the members from the Purchase and Sale
F	agreement has been transferred to without compensation for NV;
6	c) clause 15.1(j) of the Franchise Agreement (being the clause under
V	which presumably is seeking 10% of the transaction) is expressed
ŧ,	o include a sum for the costs to seeking 10 % of training future franchisees,
i	o include a sum for the costs to the purchase and Sala Arms and it is to be a sum of the costs to the purchase and Sala Arms and it is to be a sum of the costs to the costs t
11	n circumstances where the Purchase and Sale Agreement is being made to
6	n existing franchisee of the who does not require that expense;
(d) sent the Condition of Sale Letter on 19 August 2004 being
t	wo days after the date of the letter and in circumstances where
	as not made itself available to discuss the said Conditions.
1	4. Further or alternatively, the Conditions of Sale is in breach of the
O	bligation of the treat all franchisees equally in circumstances
M	here is imposing conditions which are not imposed on other sale
а	nd purchase agreements for members, including the agreements used by
	itself.
	5. By reason of the matters set out above, if fails to
C.	onsent to the Sale and Purchase Agreement, NV will have suffered loss or
٦	amage including but not limited to the consideration of the Sale and
	furchase Agreement of \$220,000.
	Representations made by
7	6. Before entering into the Agreement, provided to NV
(1	hrough its directors) certain information relating to the prospective
fr	anchise. That information was contained in part in the "Disclosure
	ocument for Prospective Franchise" dated 1 February 2000 (the Disclosure
	ocument).
	7. As a Franchisee of Extraction , NV earned income from introducing and
re	etaining members who utilised a system operated by
6	xchange of goods and services pursuant to the Trading Program.
1	8. The Franchises was greated a Franchise every province. The
	8. The Franchisee was granted a Franchise over a particular area. The
	ranchise Agreement provided that:
Ţ,	3.1 The Franchisor grants to the Franchisee the non-exclusive right and
Н	cence to conduct the Franchise within the boundaries of the area
d	elineated . The Franchisee agrees to conduct the Franchise from premises
S	elected and approved by Franchisee"

- 14.1 The Franchisor shall not, subject to clause 3.1, grant to any other franchises, or any Franchisor-controlled business that is in competition with the Franchise, a franchise within the boundaries of the Licensed Area.."
- 19. The Franchisee was also required to "meet the minimum first half year period and thereafter quarterly new Member enrolment levels as specified in the Schedule C.."
- 20. Self-evidently, a Franchise granted over an area that had been the subject of another, prior, grant of franchise rights would be less capable of generating new members. This is because potential members from the area may have already joined and subsequently left the having been 'prospected' by another franchisee.
- 21. Amongst other information contained in the Disclosure Document was a disclosure made in relation to the site or territory the subject of the proposed agreement. Question 11.2 of the Disclosure Document set out the following:
- "11.2 Has the territory or site to be franchised been subject to a previous franchise granted by the Franchisor?
 No."
- 22. Amongst other things, the Franchise Code of Conduct required that, if the territory or site had been the subject of a previous franchise, the franchisor was to provide "details of the franchised business, including the circumstances in which the previous franchisee ceased to operate."
- 23. NV now believes that in fact, the territory or site, or a substantial part of the territory or site, was the subject of a previous franchise. The area covered by the purportedly "new" franchise was previously part of the "Parramatta franchise" then known as the "Sydney Central Franchise".
- 24. Further or alternatively, the Disclosure Document provided to NV prior to entering into the Franchise also contained an Annexure "B" which contained what was described, without qualification, as "Earning Information".
- 25. The Franchise Code of Conduct set out certain requirements of the franchisor if Earning information was to be provided.
- 26. Annexure B of the Franchise Agreement consisted of three tables headed "Broker Profit & Loss / Cashflow" for respectively, "Years 1 to 3".
- 27. The Earning Information table was a representation as to a future matter within the meaning of section 51A of the Trade Practices Act 1974
- 28. The Earning Information table represented that a franchisee would earn a profit in its first year, a figure increasing substantially in each subsequent year.
- 29. In fact in its first year NV made a loss.
- 30. Contrary to the requirements of the Franchise Code of Conduct the facts and assumptions upon which the Earnings Information were based were not explained to NV or its agents.
- 31. At no time did reveal to NV or its agents that:
- (a) the Earning Information was not a true or reliable indicator of performance of franchises in its first three years;
- (b) that the area granted under the Franchise Agreement has previously been exploited by the control or its franchisees.
- 32. But for the Earnings Information and the representation that the



of the same of the
refused to discuss to the complaints.
47. has never sought to explain why it allowed its employee
to retain for itself the benefits of the Revetec transactions.
48. Inter alia, failed to act in good faith in relation to
the transactions by allowing a franchisor-controlled business to
obtain the benefits of the transactions.
49. But for appropriation of the transactions, NV
would have earned:
(a) \$200,000 or more in fees from the said memberships and transactions;
(b) future income from continued membership with
50. By breach of the terms of the Franchise Agreement and
by conduct of the terms of the Tranchise Agreement and by conduct of the terms of the Tranchise Agreement and
Failure to act in good faith, unequal treatment
51. Clause 1 of the Franchise Agreement provides:
"The parties will, at all times during the currency of this Agreement act
towards each other with the utmost good faith."
52. Clause 7.12 of the Franchise Agreement provides:
"The Franchisor shall charge the same fees and impose the same obligations
on the Franchisee as for any other of the Franchisor's franchisees."
53 The Franchisee as for any other or the Franchisor's franchisees.
has purported to terminate the Franchise Agreement with
NV for breach of clause 8.17 of the Agreement. Clause 8.17 requires a
franchisee to meet minimum performance standards set out in Schedule C to
the Franchise Agreement, as modified by a Deed of Amendment dated 14
February 2003.
54. In the four years in which NV operated under the Franchise Agreement
it received 17 sales or trading awards. On three occasions in 2003 NV was
awarded "top trading brokerage" for Sydney In December 2002 All Live
awarded "top trading brokerage" for Sydney. In December 2003 NV was
placed 13 out of approximately 50 brokerages across Australia.
55. In a detailed email of 12 January 2004 Mr Wilkinson responded to
December 'warning letter' in detail. Mr Wilkinson explained
various difficulties experienced by NV, in particular related to the
retention of sales staff.
56. Mr Wilkinson is aware that during the material times there were a
number of other franchises who were performing in a manner equal to or less
than that of NV.
57. By letter dated 7 January 2004 represented that:
"We are happy to see an upward trend in your sales level towards your
minimum requirements and are willing to assist you in any way necessary to
improve your position."
58. On at least 8 occasions since January 2004 Mr Wilkinson sought
assistance from including for sales support and other assistance.
59. The Franchise Agreement further provides:
"7.1 The Franchisor shall use its best endeavours to provide the services
to the Franchisee set out in Schedule F.
Schedule F
"Item 5 To Provide on-site assistance for the Franchisee as requested by
the Franchisee subject to the availability of the Franchisor's staff."
60. Without explanation, has refused to assist.
61. Further, the performance of the Franchise was severely affected by
, and the second

the refusal of the franchise with the new Members and
benefits from the transactions. 62. If NV is in breach of the Agreement (which is not admitted) NV
contends that was the cause of that breach. In particular, if the members and transactions had been credited to NV (as they shou have been) NV would have been in a substantially better position to comply with the performance requirements the subject of the termination notice. 63. In breach of the Franchise Agreement has treated NV unequally and has failed to act in good faith, and by conduct of NV has suffered loss or damage. Issues in dispute
64. The issues in this Clause 19 notice may be summarised as:
(a) the imposition of unfair and unconscionable restrictions on the Sale and Purchase Agreement which have prevented, or may prevent, NV from obtaining the benefit of that Agreement;
(b) representations made by about the territory and including the Earning Information which were not true and correct;
(c) the failure of the state of the assign the new members and benefits from the transactions to NV;
(d) the failure of to act in good faith and to treat members equally as required by the Franchise Agreement.
Desired outcome 65. NV seeks:
(a) approval of the sale of members pursuant to the Purchase and Sale Agreement as it has been or substantially as it has been agreed; (b) compensation for the conduct of which has mislead NV as to the prospects of the franchise;
(c) compensation for the failure of the failure of the credit NV with
benefits properly owing to it from the transactions;
(d) compensation for the failure of to act in good faith and equally in the matters relied upon by as the basis for the termination.
Action required to settle the dispute
66. NV is willing to agree to a mediation of the issues in dispute.

David Wilkinson Director Nothing Ventured Pty Limited

cc. David Johnstone