

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

IN THE MATTER OF DETERMINING ) Order No.: S-17-2159-17-FO02  
Whether there has been a violation of the )  
Franchise Investment Protection Act of )  
Washington by: ) ENTRY OF FINDINGS OF FACT AND CONCLUSIONS  
 ) OF LAW AND FINAL ORDER TO CEASE AND DESIST  
New York Bagel Enterprises, Inc.; Joseph V. ) AS TO DENNIS K. MASON  
Smith; and Dennis K. Mason, )  
 )

Respondents.

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

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 served on Dennis K. Mason on September 14, 2017.

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

Dennis K. Mason, however, failed to request an administrative hearing, either on the Application for Hearing or otherwise, within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing.

The Securities Administrator, therefore, will adopt as final the following Findings of Fact and Conclusions of Law as written in the Statement of Charges:

**FINDINGS OF FACT**

Respondents

1. New York Bagel Enterprises, Inc. is a New Jersey corporation formed in 2008 for the purpose of operating a 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. Bagel Enterprises, Inc., N.Y. Bagel Café & Deli, and NY Bagel Café & Deli. The company is located in Rutherford, New Jersey.
2. Joseph V. Smith is a resident of New York and acts as the principal of New York Bagel Enterprises.
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

1 Franchises Unlimited, Inc., a New Jersey corporation. Dennis K. Mason uses aliases, including Keith Samuels and  
2 Brian Schofield, in his solicitation of New York Bagel Enterprises franchises.

3 Offer of Franchises in Washington

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

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

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

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

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

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

21 Respondents' Legal and Financial History

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

- 24 a. From 1987 to 2009, Dennis K. Mason filed for bankruptcy twice. He was also named as a defendant in  
25 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.
- 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.

- 1 d. In 2011, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in  
2 connection with his purchase of a New York Bagel Enterprises franchise. In 2013, a court ruled that  
3 New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated the New Jersey  
4 Franchise Practices Act and the New Jersey Consumer Fraud Act and entered a judgment against the  
5 defendants.
- 6 e. In 2011, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for  
7 fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the  
8 Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of contract in  
9 connection with the sale of a New York Bagel Enterprises franchise in Pennsylvania. In 2012, the  
10 parties settled the lawsuit.
- 11 f. In 2012, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for  
12 violations of the North Carolina Deceptive Trade Practices Act in connection with the defendant's sale  
13 of a New York Bagel Enterprises franchise. In 2013, a court entered default judgment of \$839,976.96  
14 against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason, finding that the  
15 defendants willfully violated the North Carolina Deceptive Trade Practices Act.
- 16 g. In 2012, franchises sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for  
17 violations of New York State General Business Law in connection with the sale of a New York Bagel  
18 Enterprises franchise in New York. In 2014, a judge ruled that New York Bagel Enterprises, Joseph V.  
19 Smith, and Dennis K. Mason violated New York State General Business Law.
- 20 h. In 2013, an arbitrator issued a franchisee an award against New York Bagel Enterprises, Joseph V.  
21 Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises  
22 franchise.
- 23 i. In 2013, franchisees sued New York Bagel Enterprises and Joseph V. Smith for violations of the New  
24 Jersey Franchise Practices Act, fraud, unjust enrichment, and breach of contract in connection with the  
25 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  
of a New York Bagel Enterprises franchise. In 2016, a default judgment was entered against New  
York Bagel Enterprises.
- k. In 2015, the Securities Division of the Office of the Attorney General of Maryland issued an Order to  
Show Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason alleging

1 fraud in connection with the sale of a New York Bagel Enterprises franchise in Maryland. In 2015, the  
2 Maryland Securities Commissioner issued a Final Order against New York Bagel Enterprises, Joseph  
3 V. Smith, and Dennis K. Mason after they failed to respond to the Order to Show Cause. The Final  
4 Order ordered that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason permanently  
5 cease and desist from violations of the Maryland Franchise Law.

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

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

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

#### Registration Status

13. New York Bagel Enterprises and Joseph V. Smith are not currently registered to offer or sell franchises in the 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. Dennis K. Mason'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. Dennis K. Mason violated RCW 19.100.140 by offering franchises for sale in Washington without registering with the state to do so.

3. In violation of RCW 19.100.170(2), Dennis K. Mason's representations in his 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:

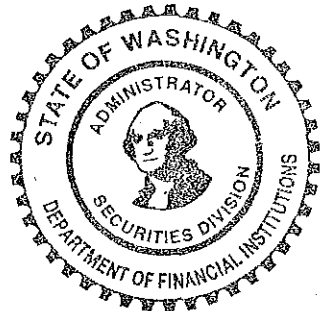
IT IS HEREBY ORDERED that Respondent Dennis K. Mason shall cease and desist from offering or selling franchises in violation of RCW 19.100.140, the franchise broker registration section of the Franchise Investment Protection Act.

IT IS HEREBY ORDERED that Respondent Dennis K. Mason 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 17th day of November 2017.



William M. Beatty  
Securities Administrator

Approved by:

Suzanne Sarason  
Chief of Enforcement

Presented by:

Eric Palosaari  
Financial Legal Examiner

Reviewed by:

Jack McClellan  
Financial Legal Examiner Supervisor

