

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 4, 2008

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COMMONWEALTH OF VIRGINIA, ex. rel.

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2008-00028

BEYOND JUICE, INC.,
Defendant

FINAL ORDER

On May 21, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Beyond Juice, Inc. ("Defendant"), and Morrie Friedman. The Rule alleged that the Defendant violated certain provisions of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for July 22, 2008. Additionally, the Rule ordered the Defendant to file a responsive pleading on or before June 16, 2008, in which the Defendant was required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that it intended to assert. The Defendant was advised that it may be found in default if it failed to either timely file a responsive pleading or other appropriate pleading or if it filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendant was advised that it would be deemed to have waived all objections to the admissibility of evidence and may have entered against it a judgment by default imposing some or all of the sanctions permitted by law.

On July 22, 2008, the Commission entered an Amended Rule to Show Cause ("Amended Rule"). The Amended Rule, among other things, provided the Division of Securities and Retail Franchising ("Division") the opportunity to properly serve and perfect service on the Defendant

through the Secretary of the Commonwealth, rescheduled the hearing for September 23, 2008, and directed the Defendant to file a responsive pleading on or before August 15, 2008.

On September 3, 2008, the Division filed a Motion for Default Judgment. In support, the Division stated that the Defendant had not filed an answer or other responsive pleading. The Division provided legal authority for the Commission to enter a default judgment and provided a sworn affidavit from Marc Bantel, Senior Investigator with the Division, along with accompanying documentary proof to provide the facts necessary to prove the allegations set forth in the Amended Rule.

A hearing on the Amended Rule was convened on September 23, 2008. The Division was represented by its counsel, Mary Beth Williams, who offered into the record the affidavit of Marc Bantel and other attachments relating to proving proper service of the Amended Rule. The Defendant, who was served via the Secretary of the Commonwealth pursuant to § 8.01-329 of the Code of Virginia, failed to appear at the hearing. Additionally, the Division requested that the Commission enter a default judgment against the Defendant on the counts alleged in the Amended Rule and impose the maximum penalty allowed under the Act for each violation.

On October 3, 2008, the Hearing Examiner issued his Report. In his Report, he found that based upon the evidence presented: (1) the Defendant was in violation of the Act as alleged in the Amended Rule; (2) the Motion for Default Judgment should be granted; (3) the imposition of the maximum penalties as recommended by the Division is warranted; and (4) the Defendant should be permanently enjoined from any act which constitutes a violation of the Act. Additionally, the Report allowed for the parties to file comments within twenty-one (21) days of the entry of the Report. As of this date, the Defendant has not filed comments.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that: (1) the Division established by clear and convincing evidence that the Defendant violated the statutes as set forth in the Amended Rule; and (2) the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the October 3, 2008 Hearing Examiner's Report are hereby adopted;

(2) In accordance with the Commission's regulatory duties and powers and pursuant to § 13.1-570 of the Act, judgment is entered for the Commonwealth against the Defendant in the amount of \$25,000 for each statutory violation, for a total penalty of One Hundred and Fifty Thousand Dollars (\$150,000); and

(3) Pursuant to § 13.1-568 of the Act, the Defendant is hereby enjoined from any further violation of the Act.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: Beyond Juice, Inc., c/o its Registered Agent, Sally Kline, 10170 Splendor Ridge Avenue, Las Vegas, Nevada 89135; and the Commission's Office of General Counsel and Division of Securities and Retail Franchising.