

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 25, 2019

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2019-00017

BIERY, LLC  
d/b/a MADSEN DONUTS  
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Biery, LLC d/b/a Madsen Donuts ("Biery" or the "Defendant") pursuant to § 13.1-567 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code").

Biery is an Ohio limited liability company. Biery conducts business under the name Madsen Donuts. Biery offers and sells franchises that provide doughnuts, coffee, and similar items to the public. Biery has never been registered with the Division to sell or offer to sell a franchise in the Commonwealth of Virginia ("Virginia").

Based on its investigation, the Division alleges that in 2018 Biery violated § 13.1-560 of the Act by selling one franchise to be opened and operated in Virginia to a Virginia resident ("Virginia Franchisee") during a time when Biery was not registered with the Division, as required.

Further, the Division alleges that Biery also violated § 13.1-563 (4) (ii) of the Act by failing to provide the Virginia Franchisee a Franchise Disclosure Document reviewed and cleared for use by the Division in connection with the unregistered sale.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-562 of the Act to revoke a defendant's registration, by § 13.1-568 of the Act to issue temporary or permanent injunctions, by § 13.1-570 of the Act to impose certain monetary penalties and to request a defendant make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendant neither admits nor denies the allegations herein but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

Prior to the entry of this Order, Biery made an offer of rescission ("Offer") to the Virginia Franchisee. The Virginia Franchisee accepted the Offer, and Biery agreed to pay the rescission amount of Twenty-five Thousand Dollars (\$25,000) pursuant to the schedule identified below.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will pay a total amount of Twenty-five Thousand Dollars (\$25,000) in rescission to the Virginia Franchisee ("Rescission Amount");
- (2) As of the entry of this Order, the Defendant has paid Three Thousand Dollars (\$3,000) of the Rescission Amount to the Virginia Franchisee;
- (3) The remaining Twenty-two Thousand Dollars (\$22,000) of the Rescission Amount will be paid to the Virginia Franchisee within fourteen (14) days after the entry of this Order;
- (4) The Defendant will pay to the Treasurer of Virginia the amount of Twenty-five Thousand Dollars (\$25,000) in monetary penalties on or before August 15, 2019. However, the penalty amount will be waived if the Defendant pays the remaining Twenty-two Thousand Dollars (\$22,000) of the Rescission Amount to the Virginia Franchisee within the time specified in paragraph (3) above;

(5) The Defendant will pay to the Treasurer of Virginia, contemporaneously with the entry of this Order, the amount of Two Thousand Dollars (\$2,000) to defray the costs of investigation in this matter;

(6) The Defendant will provide a copy of this Order to the Virginia Franchisee; and

(7) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding or taking such other action it deems appropriate on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Keith A. Biery, 5128 Shadowbrook Drive, Geneva, Ohio 44041-9782; and a copy shall be delivered to the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.

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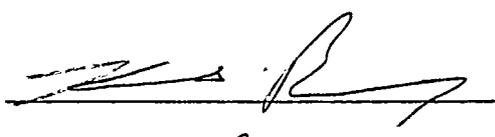
ADMISSION AND CONSENT

Biery, LLC d/b/a Madsen Donuts (collectively, the "Defendant") admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof, and neither admits nor denies the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Biery, LLC

Date: 6/10/19

By: 

Its: General Partner