

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

IN THE MATTER OF DETERMINING)
Whether there has been a violation of the)
Franchise Investment Protection Act of) Order No. S-16-1853-16-FO02
Washington by:)
David Baer,) ENTRY OF FINDINGS OF FACT AND
) CONCLUSIONS OF LAW AND FINAL ORDER
Respondent.) TO CEASE AND DESIST AS TO DAVID BAER
)
)

THE STATE OF WASHINGTON TO: David Baer

On May 12, 2016, the Securities Administrator for the state of Washington issued Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, S-16-1853-16-SC02, against Respondent David Baer (“the Respondent”).

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (“Notice of Opportunity for Hearing”) and an Application for Adjudicative Hearing (“Hearing Application”), was served on the Respondent on approximately May 20, 2016.

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

Based on the fact that the Respondent failed to file a request for a hearing with the Director or Securities Administrator within twenty days from the date of receipt of the notice, the Securities Administrator will therefore adopt as final the findings of fact and conclusions of law as set forth in the Statement of Charges. The Securities Administrator finds as follows:

FINDINGS OF FACT

I.

1. Dine In 2Nite North America, Inc. (“Dine In 2Nite”), a related party, is a California corporation with its principal place of business in San Diego, California. Dine In 2Nite describes its business as “the first subscription

1 based catering franchise, delivering freshly prepared gourmet meals for \$10 per day.” On May 9, 2016, Dine In 2Nite
2 was issued a Final Order to Cease and Desist from violations of the registration and violations sections of the
3 Franchise Act of Washington by the Securities Administrator after a Statement of Charges and Notice of Intent to Issue
4 an Order to Cease and Desist was issued to the company by the Administrator on March 29, 2016. On June 27, 2015,
5 the State of California’s Department of Business Oversight issued a Desist and Refrain Order against Dine In 2Nite
6 North America, Inc. and Leo Kats for failing to comply with the California franchise offer and sale requirements and
7 ordered the Respondents “to desist and refrain from the further offer or sale of franchise investments unless and until
8 the offers have been duly registered under the Franchise Investment Law, or are exempt.”

9 2. From 2012 to 2013, Respondent David Baer was a master franchisee and franchisee of Dine In 2Nite.
10 Baer’s primary place of business was in Portland, Oregon.

11 II.

12 3. In 2012, David Baer entered into an agreement with Dine In 2Nite to act as its master franchisee in
13 Oregon and southwest Washington. As the Dine In 2Nite master franchisee, David Baer marketed Dine In 2Nite
14 franchises for sale and received a commission on the sale of a franchise. David Baer also provided ongoing assistance
15 to Dine In 2Nite franchisees. In early 2013, David Baer caused to be published various advertisements for the sale of
16 Dine In 2Nite franchises on Internet websites such as Craigslist, www.franchiseinoregon.com, and other sites. On
17 www.franchiseinoregon.com, David Baer offered prospective franchisees the opportunity to purchase a Dine In 2Nite
18 franchise in southwest Washington. David Baer published an advertisement stating that Dine In 2Nite was seeking
19 franchisees in “...Vancouver, Camas and beyond.”

20 4. In or about January or February, 2013 and, in response to Baer’s Craigslist advertisement, a
21 Washington resident (“Resident”) contacted Baer about the purchase of a Dine In 2Nite franchise. Shortly thereafter,
22 Dine In 2Nite emailed the Resident the Dine In 2Nite franchise disclosure document (“FDD”) and franchise
23 agreement. In exchange for an initial franchise fee and other fees, Dine In 2Nite offered the Resident the use of its
24 names and marks, training, an operations manual and other marketing assistance. David Baer communicated with the
25 Resident later to discuss the information in the FDD. On March 7, 2013, the Resident and Dine In 2Nite signed the

1 franchise agreement. The Resident purchased a Dine In 2Nite franchise for an initial \$34,000 franchise fee. Dine In
2 2Nite subsequently paid David Baer a commission for the Resident's purchase of the franchise.

3 **III.**

4 5. An online advertisement published by David Baer stated that Dine In 2Nite promised franchises a
5 high return on investment, high income potential, and a predictable revenue model, but the advertisement failed to
6 disclose material facts regarding the claim such as the basis and assumptions underlying and supporting the claim.

7 **IV.**

8 6. Respondent David Baer is not currently registered as a franchise broker to offer or sell franchises in the
9 state of Washington and has not previously been so registered.

10 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

11 **CONCLUSIONS OF LAW**

12 **I.**

13 The offer or sale of the Dine In 2Nite franchise described above constitute the offer and/or sale of a franchise
14 as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

15 **II.**

16 Respondent David Baer offered and sold said franchise in violation of RCW 19.100.140 because he was not
17 registered as a franchise broker with the state of Washington at the time of the offer and/or sale of Dine In 2Nite
18 franchises to Washington residents.

19 **III.**

20 Respondent David Baer violated RCW 19.100.170, the "Violations" section of the Franchise Investment
21 Protection Act, because he failed to provide prospective purchasers material information about the potential financial
22 performance of the business, including, but not necessarily limited to, the basis and material assumptions underlying
23 the claims made about potential performance.
24
25

1 **FINAL ORDER**

2 Based on the foregoing and finding it in the public interest:

3 IT IS HEREBY ORDERED that the Respondent David Baer, his agents and employees each shall cease and
4 desist from violations of RCW 19.100.140 and RCW 19.100.170 the franchise broker registration and violations
5 sections of the Franchise Act of Washington.

6 **AUTHORITY AND PROCEDURE**

7 This Order is entered pursuant to the provisions of Chapter 19.100 RCW and is subject to the provisions of
8 RCW 19.100.260 and RCW 34.05. The Respondent may petition the superior court for judicial review of this agency
9 action under the provisions of RCW 34.05. For the requirements for filing a Petition for Judicial Review, see RCW
10 34.05.510 and sections following.

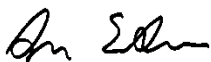
11 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

12 Signed and Entered this 15th day of June, 2016.

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14 William M. Beatty
15 Securities Administrator

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17 Approved by:

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19 Suzanne Sarason
20 Chief of Enforcement

Presented by:

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22 Martin Cordell
23 Financial Legal Examiner

24 Reviewed by:

25 

Jack McClellan
Financial Legal Examiner Supervisor

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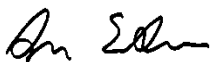
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Financial Legal Examiner Supervisor

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