

27<sup>th</sup> March 2018  
Graham Evans

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Secretary,

### **Submission to The Operation and Effectiveness of the Franchising Code of Conduct Inquiry**

I wish to submit my experience in purchasing a franchise through Yarra Valley Farms Pty Ltd based in Yarraville, Victoria and to make a recommendation regarding franchising for your consideration.

In early 2016 I was working as a Bank Manager for the Bendigo Bank and as I had been in the financial services industry for all my working life I decided I needed a change and looked to bring my skills and experiences I had learned in banking to a new industry.

I looked at a number of franchise opportunities and decided upon purchasing a franchise from the Yarra Valley Farms Pty Ltd to deliver fruit and vegetables to retail operations into the Brunswick / Coburg territory which was ideal as I lived in the area.

I conducted due diligence and spent a number of days on the Port Melbourne "run" to get a feel for the work and time involved.

In June 2016 I paid the franchise fee of \$75,000 plus GST, documentation fee of \$3,000 plus GST and purchased a refrigerated truck for \$77,000 plus GST. There were other smaller set up costs such as a new printer, work clothes, stationery and new mobile phone and number.

### **The Recruitment Process**

The Franchise Recruitment Manager (later sacked by the company) basically produced lie after lie as he said what ever he thought would get me to sign the contract. I understand he earned a large part of the franchise fee and as a result he was under pressure to bring on new franchise owners.

The generous offer of putting me on a "run" prior to signing was a well run snare. The company would put a potential franchisee on a run with 2 different current franchisees who would then get favourable treatment by the franchisor for talking up the company. Both these runs were compact, profitable with compliant customers and said to represent a typical franchise. This was far from the truth. It was (and probably still is) a master class in misrepresentation.

## **Cooling Off Period**

There was a 2 week cooling off period which conveniently did not actually cover any time working on my new delivery area. The first week was set aside for a training course which could have been covered in 1.5 days but dragged out over the first week. The second week we were put to work with the 2 franchisees noted above giving them free labour for a week and we did not learn anything about our new delivery area.

Therefore my cooling off period was over before I had even set foot in my new territory.

I was promised to work with the current company employee that was delivering into the Coburg / Brunswick for the whole of the third week but come Monday morning he was no where to be seen and I was heckled into making the delivery run on my own. This meant finding the correct route, finding the correct parking spots, introducing my self to the owners, finding out security codes by calling owners very early in the morning and generally just fumbling my way through the day. That night I asked for the assistance I was promised and again I was compared to a "little baby and you're a bigger enough boy to battle through". In short I was not given the assistance promised.

## **My Experience as a Yarrav Valley Farms Franchise Owner**

As part of the reason for buying a Yarra Valley Farms franchise was that the company employed 2 sales staff dedicated to bringing on retail clients for the franchisees. Within 2 weeks of my starting these 2 staff members were sacked and not replaced.

The company then increased prices dramatically thus making my delivery service uncompetitive against other similar services and buying direct from the supermarkets or local markets. I then learned that corporate clients (nursing homes, large hotel chains, large franchise restaurants) were being given large discounts at head office to bring the costs to those clients to a reasonable level.

The effect of that was that I lost retail clients (ie small restaurants and cafes) but gained more corporate clients. I was being paid a delivery fee only for corporate clients and as such my truck was being filled with a less profitable mix of clients for myself but a more profitable mix of clients for the franchisor.

At this point I asked the owner, [REDACTED], to catch up over a coffee. I suggested a café in nearby Spotswood with a view to keep the conversation light and let him know what was happening at the "front end". He responded with a demand for me to meet him in his office with his solicitor and National Franchise Manager. I tried to convey that I was avoiding a formal situation but he ignored me and insisted I attend the formal meeting. I did not attend and was later asked by the Solicitor why I did not attend I stated I was concerned that it was 3 on 1 and that the conversation was probably going to be recorded. He just said "fair enough" and left it there.

I was to learn that this was a standard response by [REDACTED] to any franchisee enquiry. It was pure intimidation.

After 3 months I worked out that I was working 6 days a week for a return of \$22,000 profit for the year. This was clearly unsustainable and the response from the company was that I should increase margins on items being sold to the retail clients. That is I should make an over priced item even more

over priced and hope that the client didn't notice. I was given instructions on how best to price gouge those clients that didn't closely manage their accounts.

I decided that this business was not for me and gave notice to leave. The company responded by threatening to invoke clauses in the franchise agreement that could be interpreted in a number of ways. Their interpretation meant that I could be up for costs of well over \$100,000 per annum while they took over the delivery round. I challenged their costings but they said "we will see you in court and expect a caveat on your house in the meantime".

Over the next 3 months I negotiated a release from the franchise with no recovery of the franchise fee paid. Quite frankly I was just glad to leave. At the last moment they tied in the sale of my truck at a discount to market value to the release agreement. I negotiated the best outcome I could and signed the agreement, finished my last delivery in January 2017 and handed over the truck. It was agreed that the \$57,500 for the purchase of the truck would be paid in full within 2 weeks from that day.

Yarra Valley Farms then refused to pay me the \$57,500 and I had to engage a solicitor to take them to court to recover my money. The company dragged it out to the last moment and then lied to the court to gain an extra month to prepare for negotiations. I indicated that I would not be negotiating and again at the last moment they paid me all but \$3,000. In discussions with my solicitor he said I would easily win an order for the remaining \$3,000 but it would cost approximately \$1,500 in costs let alone the time and stress involved. At that point I walked away from a terrible experience.

### **Summary**

Yarra Valley Farms lied to me and misled me in the due diligence process. Once I had paid the franchise fee and completed the cooling off period the company showed its true colours by removing support and actively sabotaging my business to their gain.

Any comments, suggestions or complaints were met by threats of legal action. I was by no means a one off situation with the company in conflict with a number of franchisees. I understand that franchisees in Brisbane and the Gold Coast were treated extremely badly and instigated joint legal actions against the company for misrepresenting the franchise.

### **Recommendation**

I recommend that franchisors have to give a 6 month cooling off period. If the franchisee does not wish to continue for any reason then the franchisor has to return the franchise fee, return all establishment costs and purchase any capital equipment at the accounting written down figure at the time that the franchisee confirms in writing that they wish to leave.

A 6 month cooling off period will mean that franchisors will have to show proper support and demonstrate that the system involved is robust and viable. Only franchisors that are 100% confident in what they offering and the ability of the incoming franchisee will continue franchising under such a system. The current 2 week cooling off period is too short and is subject to manipulation by the franchisor.