

Disasters yet another one"

My story of the way [redacted] Holdings has conducted them selves with me I hope will save some people of heartache and sorrow.

My wife and I became [redacted] franchisees in 2006 leasing [redacted] Hawthorn for 18 months for a lease fee of \$10,000 p/m, (nothing to sneeze at hey) but made ends meet and turned a poor run store into a success once again.

After this time [redacted] met with us with an opportunity to purchase our own store starting with leasing first and option to buy, the place was Goulburn NSW, we accepted the challenge and moved to Goulburn in November 1997.

After four and a half years of hard work and commitment to the franchise system and more on our behalf with community involvement and marketing we had a successful store and were the apples in [redacted] eyes with a NSW Prime Ministers award for small business community partnership and several records in MAT% increase on the business in Australia.

In early 2000 we decided to sell Goulburn and get out of the franchise and start something else.

In November 2000 we still had not sold the Goulburn store and were in Melbourne for the [redacted] Xmas Ball when [redacted] asked for us to meet with him (boy do we regret going) [redacted] somehow built our ego to move to south Australia to purchase 2 stores from the [redacted] group mind you according to [redacted] and his merry men the potential of these stores was always there for the takings.

[redacted] was prepared to move mountains to get us to purchase these 2 stores Gawler and Munno Para to the point where [redacted] had set up for 2 new franchisees to lease the bakery off us till the purchaser was ready to take over after finishing his training, (Yes [redacted] wasted no time in finding a purchaser for Goulburn yet no one was sent our way beforehand) [redacted] can move mountains when it suits his back pocket.

January 2001 we came to SA for a holiday and to see what stores were available in SA, well we met with [redacted] and [redacted] whom showed us 2 stores in which [redacted] had up for sale, one store we were not even allowed to go inside of because [redacted] did not want leasing Franchisees to know Munno Para was about to be sold there were issues with them we were told, spent all of 1 hr at shopping centre then moved on to Gawler.

When we looked at Gawler the shopping centre had full tenancy and we were told by [redacted] and [redacted] that tenancy was sound and strong and that after [redacted] and [redacted] would hand the store over to [redacted] it would be looked after by [redacted] himself until we came across to take over Gawler we were there for about an hour during this time we had a short conversation with [redacted] (care taking Franchisee) before being driven to Barossa Valley and stopping for lunch at Heidelberg Café Tunanda where we continued negotiations on the 2 stores.

At that meeting we were promised that upon purchase of the 2 stores the leases would be both brought up to a 5+5 yrs lease terms and would have the support of [redacted] in growing the store portfolio to possibly 5 stores in the northern region as [redacted] Called it the strip (Main North Road).

First 12 months here in SA we poured many thousands of Dollars into the businesses and achieved great growth in both stores [redacted] even awarded us an award for the highest MAT % increase in Australasia we were placed high on a Pedder stool for all Franchisees to follow our example.

After 12 months We have raised many concerns and issues with [redacted] and Landlords of Gawler on issues in which have and would affect our trading and profits in future only to be told by [redacted] ([redacted] property manager) to pull My head in and

mind my own business, well the performance, condition and tenancy is my business because it all affects our bottom line, during this conversation I told [REDACTED] that if he was in front of me I would knock his head off I guess since then [REDACTED] has not gone out of his way to help us in any way nor has the Landlord.

We were sold 2 stores under false information Sucked in by a better term We did not get legal advice because we needed to save money as we were short on funds to purchase the store and have always been told by [REDACTED] property department that don't bother to try to change anything on the contracts as they are non negotiable.

[REDACTED] were very keen to see us here that they even loaned our company \$50,000 just to make sure that we would take the 2 stores off their hands on the proviso the loan was paid back within 6 months I suppose that once we were in there (2 stores) they were no longer their problem ([REDACTED]).

At the end of 12 months of being in SA we placed our stores on the market because our confidence in [REDACTED] management had expired all the promises of support and expansion had not transpired.

In December 02 I was diagnosed with Major depression it was kept quiet for a while until Mel spoke to [REDACTED] business consultant #3 in 18 months about the problems we were having and reiterate the point that we needed to get out of this industry.

The SA management did not do enough to help us get out of the system to avoid any further losses both financially and physically.

November 2002 [REDACTED] (4th largest [REDACTED] stakeholder at the time) stood in front of all SA Franchisees at the SA conference in the Barossa and said quote " **If anyone wanted to get off the bus [REDACTED] will help us implement an exit strategy just ring the bell and we will stop the bus**" [REDACTED].

We are still waiting for this bus to stop and let us off, in mid 2003 Melissa contacted potential purchasers whom were earlier interested in buying one of our stores but could not get finance and let them know that Munno Para was on the market, the purchasers initiated proceedings and negotiation with us and [REDACTED] to purchase Munno Para store this all happened because of Melissa not [REDACTED] not nobody yet [REDACTED] still takes the credit for making the sale happen at Munno Para Claiming that [REDACTED] loaned the Purchasers money to buy store which to our knowledge is untrue.

[REDACTED] staff in SA advised the purchasers on several occasions on matters that as a result cost us in excess of \$25,000 in loss of sale price and wages for making staff redundant upon sale.

On the 9th June 04 I served [REDACTED] with a notice of dispute on several issues (please read attached notice) in which has cost our company many thousands of dollars, since then we have not been able to get a straight answer from any [REDACTED] staff or management or the landlord at Gawler, our livelihood was hanging in the balance because of the incompetency of the SA management and [REDACTED] property department I have been labelled as a troublemaker by the Landlord according to [REDACTED] and this is the reason that why the landlord has not executed the extension of lease so that we are able to refinance with the bank.

[REDACTED] has known of our financial position with [REDACTED] since march 04 when we first requested an extension of lease and was granted one but has not been executed yet by landlord because they will only execute for new franchisee not the Ferraro's, we had a lease until 31st December 06 as it stands [REDACTED] only gave us a 4 yr lease from time of purchase but did not notify us of this until January 7th 2004.

All [REDACTED] and Landlord are doing is screwing us to the wall with our cash flow due to \$7000 per month repayments to [REDACTED] the reason that both [REDACTED] and Landlords are did so to make sure that we had no money left to fight them in court which they know that if a judge has to decide it will not go in their favour the easiest way is to ruin peoples lives and take all we had in time bit by bit.

Well it is now September 2008 and [REDACTED] achieved their goal my marriage has ended and we had to sell absolutely everything including our home to pay our business debts after being blackmailed by [REDACTED] into selling our Gawler store back to them for half the price we paid for it during so called mediation not to mention solicitors bills for the amount of \$30,000 and mounting debts with accountant and living off credit cards, the conflicts of interest and unfair trading by [REDACTED] and their staff were of the highest levels ever encountered but as I said to Mr Gillespie and his merry men and woman "WHAT GOES ROUND COMES ROUND AND THEIR DAY WILL COME" [REDACTED] Business and its Greedy people whom have lined their pockets at the expense of innocent people like us will one day be exposed, all up our losses for the 5 yrs in South Australia were in excess of \$1,300,000 thank you [REDACTED] for ruining our lives.

A dishonourable mention must go to the ACCC for the poor effort of investigating the complaints lodged with them by former franchisees on the unconscionable conduct, misrepresentation, blackmail, fraud, conflict of interest, unfair trading just to mention a few misdemeanours on [REDACTED] behalf, my 3 hour interview with the ACCC was and absolute waste of time with one member of the ACCC almost falling asleep whilst I was telling my story and because of confidentiality laws due to the mediation I was not allowed to discuss mediation matters and conversations which occurred the ACCC has a lot to answer for many people whom have lost their livelihoods, Family's and Millions of dollars shame on all of them .

[REDACTED]

21 June, 2004

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Australia

Dear [REDACTED]

I refer to your letter dated 17 June 2004.

In your letter you seem to think that this is a personal vendetta against Mr [REDACTED], Cat & Dog as you called it over our phone conversation.

The allegations I have made against Mr [REDACTED] conduct as a Regional Manager and a representative of [REDACTED] will be substantiated once investigations by my solicitor and Myself are complete there are many people that will be interviewed and much more paperwork to be obtained.

I will in turn respond to each Item in turn.

- 1) External or Independent inquiry into the Business sale process in the last 3 yrs in SA by RM [REDACTED].

[REDACTED] Could You please explain as to why as a Franchisee I have no right to request this after all aren't we all stakeholders as we have been told for the last 9 + years.

I Have been personally told by other Franchisees that when they made enquiries regarding purchasing a store they were always steered towards the [REDACTED] Stores by Mr [REDACTED] or were flown into SA specifically to see [REDACTED] [REDACTED] for sale this is unfair trading by any standards.

Items 2-3-4

██████ You have stated that the Deed of Surrender and Release we signed releases ██████ from any such Claims on items 2-4, even though the document had been signed and received by ██████ settlement had not gone through yet so after the ██████ advised us of their plans with staff I rang ██████ and asked for clause 5) to be removed or a new document to be drawn up I was then advised that ██████ would speak to ██████ ██████ regarding this matter of clause 5).

██████ rang me back advising me that clause 5) would not be taken out and if I asked for document to be sent back we could not sell the business to the ██████ (Check phone records) this is outright BLACKMAIL considering that ██████ knew of the issues that had arisen no help or assistance was given to us at all. This is a great way to treat a member of the ██████ ██████ Family" after 9+ yrs in the company.

- 5) The ██████ were advised by someone at SA Regional office not to employ any full time staff and stay with casuals, the ██████ did not specify whom this person was.

On the 10th February a meeting was held at Starplex Gawler to notify staff of changeover all staff went home under the understanding that they still had their jobs full time and casual.

On the 19th February ██████ rang Melissa to tell her that they ██████ had changed their mind about hiring ██████ and ██████ as full time but wanted to give them casual positions only after having received further advice from SA Regional office, this is when I asked the question of clause 5) to be removed or for the SA Regional Office and a lengthy conversation with ██████ (Check Phone records) to help sort this mess out because it was going to cost us more money than it needed to ██████ or the SA Regional office did nothing to help us in this matter but BLACKMAIL us into signing the Deed of Surrender and Release.

As per the contract yes all staff were going to be paid out for their entitlements as per our obligations but it

ended up costing us more than it should have because of advice given to [REDACTED] by [REDACTED] SA.

- 6) Termination of [REDACTED] I can live with your decision I will not have to do business with [REDACTED] ever again.

Action required to settle dispute.

- 1) We are happy for [REDACTED] to be our point of contact.
- 2) Once again the Deed of Surrender and Release comes into the equation I do not agree with this with reasons stated in previous items. Once again the [REDACTED] were told by [REDACTED] Staff that the Ferraro's were keen to get out and could possibly receive a \$20 K to \$30 K reduction in the price I was even told to expect this by [REDACTED] at the meeting in Melbourne in October in which you were present and Your words were "even at \$390 K it would still be a cheap Buy.
- 3) By [REDACTED] flooding the market with [REDACTED] stores we as franchisees would have been able to get higher returns on our investments not having to compete with the company owned stores or new sites whom were being sold by the Regional Manager and isn't it strange how all the [REDACTED] have sold and we are still having to battle to sell our business. New Franchisees being placed in bakeries without leases or Franchise Deeds seems that it is one rule for [REDACTED] and other rules for Franchisees EG: Happy Valley and just recently Arndale just ask them.
Yet my deeds would not be released without clause 5) one rule for [REDACTED] one Rule for US.
- 4) Assignment fee, to this day no one has ever been able to explain the meaning of this but I guess the hard work and money that the franchisee invests into his business in building it and then selling it is all because of [REDACTED].

Further to the amounts that are owed by us according to you as per our contractual obligations:

Assignment fee- Munno Para \$16,280 if we had the money we would pay it as per contractual agreement [REDACTED] Has known of our financial position for 18 months this is why 18 months ago we asked for the bus to stop before our finances were diminished to nothing, help in this department has been a slow process due to [REDACTED] stores being sold first we have suffered very substantial trading losses in the past 12 to 18 months due to various reasons as soon as we have the money we will gladly pay it.

Royalties and Advertising Levies for week ending 3rd March 2004 totalling \$361.29 this is [REDACTED] liability as they took over on the Monday 1st March 2004 this is not our liability.

Fee payable for Hire purchase payout \$1,049.47 this was paid out on the 23rd April 2004 of the amount of \$491.17 as monthly payments had already come out of account on direct debit prior (see attached payment summary).

Sum Payable as per debtors list for Gawler \$1662(which includes the administration fee for Deed of Surrender and Release for Munno Para) I know Melissa has been trying to pay these amounts a bit at a time I reiterate of our financial position and cash flow we are doing the best that we can but without the extension of lease from the Landlords for Gawler we are not able to go further with the bank on restructuring our loan therefore paying \$7000 + per month in loan repayments will take its toll on cash flow could you also please provide a break down of the \$1662.

We are now waiting on [REDACTED] to have documents for extension of lease drawn up to present to bank prior to eventual sale of Gawler, as per emails sent yesterday and today to all parties concerned.

If [REDACTED] would like to buy the Gawler store back for a price of \$450,000 I will be able to pay all moneys owed to you by us as soon as settlement goes through or [REDACTED] will just have to do what is best for all at this stage.

Dear [REDACTED] as I said in our previous conversation this has not been an attack on [REDACTED] but the way business has been conducted with us by [REDACTED] staff it is the last resort to recoup 3 yrs

of being screwed by some of [REDACTED] departments, in 9 yrs of being with this company we have always conducted ourselves to the best of our ability to be the best Franchisees we could be and promoted this company and trained many people to become part of this [REDACTED] Family what we are asking for is no where near the amount of money in which [REDACTED] has cost this company in sales of businesses (\$200 k in just one bakery) yet still hold his position as RM and possibly more if this matter continues to go to the courts.

As you stated in your letter dated 17th June 2004

"You are willing to participate in mediation in accordance to your contractual obligations, but do not assume that you will be more conciliatory at mediation".

We would like you to reconsider your decisions on our response to avoid any unnecessary court proceedings in the near future.

Yours Sincerely,

Robert & Melissa Ferraro



Australian
Competition &
Consumer
Commission

5 October 2007

Mr Robert Ferraro

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Dear Mr Ferraro,

I am writing to you in regards to the complaint you made to the office of Ms Joanna Gash MP which was received by the Australian Competition and Consumer Commission (ACCC) on 13 April 2007. In your complaint you allege that [REDACTED] Pty Ltd ([REDACTED]) has engaged in conduct that is in breach of the *Trade Practices Act 1974* (the Act). This office has considered the material that you have provided to date and is now in a position to correspond on the allegations raised.

The role of the ACCC is to ensure compliance with the Act. The Act prohibits a range of anti-competitive conduct and provides for the protection of consumers, small businesses and franchisees through the prohibition of misleading, deceptive and otherwise false and unconscionable trading practices. The Act includes the Franchising Code of Conduct (the Code) which is a mandatory code and as such has the force of the law.

The conduct you allege that [REDACTED] have engaged in is most appropriately considered in light of sections 51AC and 52 of the Act. I will deal separately with each of these allegations below.

Unconscionable Conduct

You allege that [REDACTED] acted unconscionably in its dealings with you in the negotiation and performance of your franchise agreement. In support of this allegation you provided information relating to the following relevant conduct:

- [REDACTED] did not provide sufficient support to you during the course of the franchise agreement;
- [REDACTED] did not negotiate a lease extension for the Gawler bakery, despite representing that they would do so when you entered the franchise agreement;
- [REDACTED] did not take sufficient steps to assist you in selling your bakeries once you had decided to exit the system.

Section 51AC of the Act prohibits unconscionable conduct in business transactions. Generally, unconscionable conduct is harsh and oppressive conduct that is so unreasonable that it goes against good conscience. Unconscionable conduct is not a static concept, nor is the conduct defined in the Act. Despite this, there are a number of factors that the court will consider when deciding if the conduct in question is unconscionable. These factors include:

- The relative strengths of the bargaining positions of the parties involved;
- Whether the small business was able to understand any documentation being used;
- Whether the stronger party used undue influence or pressure or unfair tactics;
- The extent to which the stronger party's conduct towards the small business was consistent with transactions of a similar nature;
- The requirements of any industry code, including the Code; and
- The extent to which the stronger party was willing to negotiate the terms of the contract with the small business.

These factors are not exhaustive and in determining whether an unconscionable act has occurred the court will consider the conduct as a whole, including other factors that have not been listed above.

On the information you have provided to the ACCC it does not appear that a claim for unconscionable conduct can be substantiated. The conduct you described as amounting to unconscionable conduct appears to relate to matters which are contemplated under the terms and conditions of your contract with [REDACTED] and are most appropriately dealt with under these terms and conditions. For example, the contract sets out what is to be done in circumstances where a franchisee is suffering from a diagnosed medical condition and the process that is to be taken when a franchisee wants to sell their business. Given this, it is unlikely the conduct alleged would be regarded as unconscionable conduct.

While I appreciate that your dealings with [REDACTED] have been difficult, based on the analysis of the material provided to date and in the absence of further evidence demonstrating a contravention, the ACCC will not be pursuing the allegations that [REDACTED] has breached the unconscionable conduct provisions of the Act in your circumstances.

Misleading and deceptive conduct

You allege that [REDACTED] have engaged in misleading and deceptive conduct during the pre-contractual negotiations of your franchise agreement and in the performance of that agreement. In particular, you allege, among other things, that [REDACTED] misled you in relation to:

- The support that you would receive from [REDACTED] in the running of the franchise, particularly support that was to be offered after you were unable to operate your franchise due to a medical condition; and
- Representations made to you when entering the Gawler bakery about the term of the lease agreement.

This conduct is most appropriately considered under the section 52 of the Act. Section 52 prohibits conduct by a business that is misleading or deceptive, or is likely to mislead or deceive. Determining whether or not conduct is held to be misleading or deceptive will depend on the particular circumstances of each case.

The allegations you have made that [REDACTED] are, in my view, unlikely to be misleading within the meaning of the Act. For example, it is my view that the representations that the lease agreement was to be extended at the Gawler bakery are unlikely to be misleading. On the information you provided, it appears [REDACTED] took some steps to negotiate an extension to the lease and that the failure to negotiate an additional lease term was, at least in part, contributed by a breakdown in your relationship with the lessor.

On this basis the ACCC will not be pursuing the allegations you have made that [REDACTED] engaged in misleading and deceptive conduct in your dealings with them.

The ACCC's role in the [REDACTED] franchising disputes

As you are aware, the ACCC is currently investigating numerous complaints made by franchisees against [REDACTED]. After reviewing all of these complaints, the ACCC has identified some similarities in the allegations made by the complainants. Broadly speaking, these allegations relate to allegations of unconscionable conduct and contraventions of the Code. As a result of these enquiries, the ACCC has decided only to pursue allegations at this stage that are well supported.

On this basis the ACCC's investigation into allegations of contraventions of the Act are ongoing. However, as stated above, on the material provided by you to date it appears unlikely that it could be proven that [REDACTED] engaged in conduct that is unconscionable or misleading or deceptive in your circumstances.

Notwithstanding the ACCC's decision not to further investigate your complaint, I note that it is ultimately a matter for a court to determine whether or not a

contravention of the Act has occurred. Further, the Act confers a right of private action on parties that believe they have suffered loss or damage as a result of conduct offending the provisions of the Act. If you are considering taking private proceedings I would advise you that it would be prudent to seek independent advice.

If you would like to discuss the matter further, please contact Ms [REDACTED] of this office on telephone [REDACTED]

Yours sincerely

[REDACTED]

Director
Enforcement and Coordination Branch

cc: Ms Melissa Ferraro