

**Contact Details:**

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Attached: Submission and Our Story

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**RE: Submission George and Ruth Nimbalker**

I would like to take this opportunity to thank the committee in conducting this inquiry. The franchisee families of this great nation of ours have been subjected to a crime that has been well orchestrated by the franchising systems and their powerful financiers, the bankers of Australia. It has been heartbreaking to see what these criminals have been able to get away with in this country that is build on a fair go for all. We plead with the government of this nation who have sworn to protect us to do so against these corporate criminals. These crimes has sent many families to the wall with them losing everything and some have paid the ultimate price their lives as man and women of this well planned industry continue to prosper on the blood of franchisee families.

My franchisor and my bank [REDACTED] have a lot to answer for what they have put my family through and how they have destroyed our financial and emotional stability. I write to your inquiry with hope that this devastation will stop as there are many families currently undergoing this destruction. I pray that laws and powerful bodies will come into play to stop the franchisors, bankers and retail landlords who participate in this systematic destruction of franchisee families.

1 The nature of the franchising industry, including the rights of both franchisors and franchisees;

The franchising contract currently gives all the rights to the franchisors and none to the franchisee, the balance of power in these contracts needs to be questioned. The franchisor has the financial power to enforce these unfair and unjust contracts and with their in-house lawyers they threaten and bully the ordinary franchisee families who are unable to engage legal assistance. The contract is written to protect franchisors at all times and gives them powers one would never see in any ordinary contract. I note my franchisor use these contracts to illegal terminate my business by creating a false breach and then refusing to mediate with me. They then send me to Hugh debts with the assistance of my bankers. The contract gives the franchisor the power to take on your business any pay you next to nothing for your business, in my case I paid 250K for my business and in three years the bank and my franchisor were negotiating a settlement fee of 17K, and the franchisor was reselling it for \$270 k .

1. whether an obligation for franchisors, franchisees and prospective franchisees to act in good faith should be explicitly incorporated into the Code (having regard to its presence as an element in paragraph 51AC(4)(k) of the *Trade Practices Act 1974*);

I believe that this should be the case as my franchisor threatens, bullied and harassed my family during this period. This was done from day 1 of entering the business. They worked closely with the landlord to undertake this intimidation and humiliation of my family. After pleading with them on numerous occasions to act reasonably before and after termination they refuse stating that they had no obligation to act in good faith to resolve my matter. I note that we were sold a system that was never going to succeed as the equipment that was sold to us was old and damaged and was not fit for trading. This caused hardship and huge losses to the business, which then was used by my franchisor to try and churn us. So our legal system needs to clearly define the steps that the franchisor has to undertake before selling a franchise. They are not allowed to use their mighty force to churn franchisee families and that they work closely with their franchisee's to overcome issues. They should act in good faith to their franchisee by ensuring that they sell them equipment that is fit for trading, they have undertaken business feasibility studies before opening shops, they have negotiated good and sustainable rents with the landlord, they pass on the savings from product bulk buying to the franchisee, undertake appropriate local marketing strategies. They provide good financial training to their franchisee and support franchisees. They do not open another franchisor store in close proximity to the other store. The financial institutions that bank roll these corporate crime needs to be held accountable, My banker was introduced to me by the franchise system who loaned me my \$300k for the business but was willing to sell the business to the franchisor for \$17k three years later and also was willing to loan again to another family to purchase the business for \$250k, with the awareness of how they destroyed mine. Good faith needs to be spelled out to the franchisor and their partners in these criminal acts against franchisee families.

2. interaction between the Code and Part IVA and Part V Division 1 of the *Trade Practices Act 1974*, particularly with regard to the obligations in section 51AC of the Act;

I believe that my franchisor now taken over by [REDACTED] Australia has behaved unconscionably under s51AC of breach of the Trade Practice Act

**They refused to go to mediation with me after I requested them to do so in writing on the 26<sup>th</sup> September 2005. They responded by terminating my franchise on the 5<sup>th</sup> October 2005. I once again requested that they go into mediation on 6<sup>th</sup> October 2005 to resolve these issues with them totally refusing to do so. The Operations Manager indicated to me that they are not obliged to do so, since they have terminated the contract as of 5<sup>th</sup> October 2005.**

I am concerned that they are available to act in such a manner, that we have no protection whatsoever under the Act. I feel that before a franchisor can terminate an agreement they should be required to come in front of a mediator to try and resolve these issues. They should not be allowed to do this with just

correspondence or notices. It should be unlawful for them to terminate a franchise agreement due to breaches without some form of mediation as seen in the “ **Residential Tenancy Act**”.

I believe that they were in breach of the contract as they did not sell us equipment fit for trading even though we were promised and paid premium amount for this equipment and the bank loaned us \$300k for it. The banker did not undertake the due diligence on this loan as they were in a special relationship with the franchisor. The bad blood was created from the day we entered it with them as they did not undertake the appropriate shop fittings that was fit for trading as required by legislation. This has been our fight with the franchisor from day one. They have acted unconscionable to us from day one in order to see us fail so that they and the banker could steal our assets.

### **Continued harassment and bullying techniques undertaken by The franchisor.**

This discussions created bad relationship with them and we have been subjected to continued harassment and bullying by them by their continued false allegations.. They could not prove these on numerous occasions after they were required to do so. They continue this bullying techniques until I wrote to them on 20<sup>th</sup> August 2005 requesting that they respect our agreement at mediation on 13<sup>th</sup> October 2004 to act in a professional manner. Their continued harassment was to demoralize us and create an environment of continued stress during this business relationship.

I believe it was a technique used to distract us from running of our business. Their regional manager had even indicated to the centre manager “that the company was going to take over the shop in March 2005” and put new managers in and fix all the shop fitting. This was when we started to get into a cash flow crisis due to the downturn of the business. I believe it was here onwards that “up” their harassment and bullying of us resulting in the termination of the business in October 2005. So I believe they planned to do this after we went to mediation in October 2004 in which they had agreed to undertake the appropriate shofitting requirements and also to address any major shop fitting issues if any authority required them to do so.

I note that they did not undertake the major issues in the shop fitting, we were put on notice by council that one of the major issues had to be addressed by 20 June 2007. ( So I believe because we had an agreement from mediation of 13<sup>th</sup> October 2004, they would be required to undertake this work, this would mean that they had to redo the shop which would have been substantial if we were still franchisee at that time.

So when the opportunity arose when we had a financial crisis, they use this to get rid of us, their other method to bully us out by their false allegations of selling products of shelf life did not come into fusion. This is clearly demonstrated in their reply to MP Sharon Grierson who wrote to them on our behalf Note that they indicated that they tried mediation with us prior to termination(not at all) also note that they indicate further risk and damage. I am not sure how owing them money would cause us to harm the brand name and system. We were even awarded from Hunter Business nominating us as a finalist in their September 2005 awards after we were nominated

by the public for the quality service provided in to the local area. If anything we were promoting the brand name.

So it goes to prove that they wanted to terminate our franchise with their false allegations but could not do so as they did not have any proof of this, but when we got into financial crisis it gave them the perfect opportunity.

They have used their market power, their unfair contracts, bullying and unfair behaviour to make themselves a nice neat profit and by doing so will result in us losing our home to the bank.. A well planned crime by the franchisor and the bankers

## **After illegally enforcing their unfair contract and stealing our business**

1 The franchisor traded in the shop.

2 They refused to have any meaningful dialogue with our bankers and lawyers to resolve the situation for 13 months until the media and minister got involved.. The bankers continued to charge us interest on the loans that we had no means to service.

3 They refused to service the bank loan after numerous attempts by the bank for them to do so. The bankers made an attempt, but they did not enforce it directly as they knew they could come after our home.

3. the operation of the dispute resolution provisions under Part 4 of the Code;  
and

The dispute resolution process as it stands now does not work; the office of the OMA is not effective and has no powers to stop the franchisors with the big pockets and sleek lawyers. The franchisor will come for meditation because they have to but usually will walk out not wanting to settle because they are aware that it is just a matter of time where they can use their mighty force and their unlawful contract on the franchisee to destroy them. So until such time we the franchisee have a powerful government body protecting us the franchisor with the bankers will continue to unleash this destruction on franchise families. The ACCC till date have been totally ineffective to protect the franchisees of this nation. We need an office with good financial backing and well qualified resources to take on the franchisor, the financial institution, retail landlords who engaged in this corporate and horrendous crime against mum and dad franchisee of this great nation.

4. any other related matters

The bankers who finance the franchising systems have to be stopped, They have a social and moral responsibility to us franchisee's to protect our interest as we are their customers. They need to act in good faith to resolve financial hardship that they have cause because of their lack of due diligence to us as customers in approving the loans to purchase this horrendous systems. The inquiry should look at the lending practices of the bankers and strong legislation has to be put into place to this reckless and

morally and legally wrong ending practices. Bankers do not have to make money on the blood and sweat of franchisee's families by partnering with the franchise world.

Further recommendations

**Disclosure documents need to provide current and prospective franchisees:**

**Names and contact numbers of franchisees who have been terminated, not renewed their franchise agreement in the last 5 years, this will give a better picture on how viable, honest the franchisor is.** It is not good to only have the name of the existing franchisee as the franchisee are constantly reminded of their investment and not to "bad mouth" or "talk down" the franchisor or the business as it will impact on their investment and those who are honest with potential franchisee will be targeted by the franchisor.

If there is a deed of release signed between the two parties, the ex franchisee should be able to give their side of the story without any prosecution from the franchisor after the potential and current franchisee signed a confidentiality statement that the information will be used to assess the business they are buying or used to go into negotiations with the current franchisor.

**The amount of money that is owed to the franchisor by the franchisee's in their business at the end of the financial year, this could include marketing, stock and loyalty.** This will enable potential franchisee to ask the question on why these debts are there. It might indicate to the potential franchisee that all franchisee are not doing as well as claimed by the franchisor. It might highlight to the current franchisee there is a systemic problem in the system.

**A log of complaints received by franchisor from their franchisee in the last 3years and actions undertaken by the franchisor to address the complaints. The actions should be signed off by the franchisee and franchisor to state it has been rectified.**

The ACCC report card, on the number of complaints they receive about a franchisor and actions they have undertaken against the franchisor and the link is provided in the disclosure document. .

### **Business Operating**

The audited figures of a franchise business for three years if the business is to be sold.

Issues faced by the business from the landlord, other retailers and council or any other authority.

Business relationship with the franchisor ie: if money is owed to the franchisor, correspondence between both parties.

**Existing business and new business.**

**The potential of any competitive business that might impact on their sales.**

**The turnover figures of what the other retailers of similar nature are doing in the shopping centre.** The shopping centre collects this information monthly. If a business of a similar nature was operating on the site, the turnover of that business, if the franchisor is taking over the site.

**The certified value of the equipment** and if it is written in the contract that if there are breaches (this breaches could be created by the franchisor if the relationship with the franchisor has broken down due to bad blood between the parties).

### **Termination of Franchise**

The Franchisor can terminate the franchise agreement, and pay the franchisee the value of the equipment if there is a breach.. This should not be allowed. The franchisee should be compensated fairly ie at least the price they paid for the business as they believed that the franchisor had a sound and workable business.

Eg: If they paid \$300k for the business and if they are in breach, eg they owe the franchisor \$50K, they can take the business after warning them three times to remedy this, they can come in overnight take the business over, and pay for the value of the equipment which might only value for\$17k.

They do not need to go into mediation with you, once they terminate the franchise agreement. So they have all the power after termination. This should neve be allowed, if there was a strong body like an ombudsman that they will not be allowed to do this.

If they borrowed money from the bank, they are left with the loans and the franchisor can sue you for the difference between 50K (amount you owe them) and 17 K ( amount of equipment). The bankers need to act responsible in situation such as this and take some of the losers to as they have been the root cause of nightmare.

They then can off sell the business for whatever they want and not give the franchisee anything.

### **Breaches**

Eg; Breaches could be issued for marketing and loyalty funds. Breaches could be issued for other matters, such as customer service or complaints, selling of products out of shelf life and staff employed by the company issues these breaches. These breaches can be used to take the business away for the value of the equipment. This should be stopped.

George and Ruth Nimbalker

## **Our Story in Short into one of Australia's biggest corporate crime – Franchising.**

1. My husband and I bought a franchise in 2002, we were sold a franchise with equipment that was not fit for trading, the bank loan us 100% on this, the bank did not value the equipment, I did not have equity in my home to cover the 100% of the loan, we were refuse by [REDACTED] who we our bankers, our franchsior recommended [REDACTED] as they have a special relationship with [REDACTED]. This relationship needs to be examined and the bankers should be charged for falsely approving loans that are not viable and will cause destruction to their clients. They are the root cause in all this, the franchisor and the banks I have no doubt worked this scheme up knowing that there is ill informed franchisee market out there who are cashed up due to years of accumulating their wealth through honest decent work .

2. 3 years into the business and after a lot of bad blood due to equipment failure and all our buffers running out, we started owing them money, but not what they claim, they terminated us brutally one night. I believe this debt was created so they could terminate us and the franchisor get my business and the bank get my home....(nice little scam worked out by Corporate Australia)

3 Offered us 17K for a business for a business we build up in 3 years and paid \$240K. After termination the franchsior ran the business for 13 months with the bank captilising on my situation. The bank was going to accept this offer, I refuse and took my matter to the ACCC, media and the minister. The franchisor refuse to mediate with me to resolve the issue before and after termination, they only did this after the media and the minister got involved. During my years as a franchisee we were bullied, harassed, threatened by the franchisor

4 After the intervention, the franchsior offered me a settlement and gag me, I accepted because I was desperate to save my home and thought the bank would do the decent thing, not , they decided that they were going to recover from me even though the loan was paid out for \$220K. They decided to charge me penalty interest, fees so to increase the debt.

5 [REDACTED] bank sank so low as to breach my confidentiality agreement with the franchisor in the hope that this will cause me more hardship. The breach by the bank officer occurred when another franchisee, who suffered a similar tragedy as us was told by the officer that we were paid more than her, she was annoyed and inform my franchisor of these and also me, see attached e-mail that I send to [REDACTED] and my franchisor of the breach.



6 I was annoyed, and shocked that I receive that letter from my franchisor and because of the torment we suffered under them I have no doubt they will use anything to get the money back, I want [REDACTED] to be accountable for this and compensate me, how dare they disclose such information. I have never dealt with that officer. I suspected the bank disclose a lot of my personal information to my franchisor during our dispute and it seems this is the practice that is common between the franchisor and the bankers.

7 [REDACTED] and my franchisor have worked very hard to destroy my families financial and emotional stability and they continue to work in partnership to carry on this act of inhumanity against ordinary Australian families who enter franchising systems because we believe it is a safe way to get into business as we do not have business experience, but this is not the case this is a well planned and well orchestrated by franchisors and bankers to ensure that they commercially rape franchisee families from the wealth they have accumulated over many years to hard decent work.

8 I have never been able to afford legal assistance and that is why I believe they think they can get away with it. My franchisor used their legal eagles to ensure my family did not have a legal voice; they financially stripped us of this. We were told it will cost us at least 250K in legal fees if we were to mount a challenge against them. There is no assistance out there for franchisees. we are at the mercy of the franchisors bankers and landlords.

My dilemma continues as my bankers continue to ensure my debt is accumulating as they refuse to accept any proposal of a decent and humane settlement after all they got most of their money back but because of their greed to get more out of my family.

Please stop them by giving us an affordable voice to defend what is morally and legally our right. We franchisee's are decent people who just wanted to enter the business world so that we can make a better life for our families and be responsible citizens. We need an ombudsman with appropriate jurisdiction to ensure such acts of inhumanity by franchisors, bankers and landlords cannot and should not prevail in this nation.