

**LOST**

**The opportunity of owning and operating a business, building wealth and opportunity for ourselves and our families is for many of us the motivation for entering into a franchise.**

**But for an ever increasing number of people like us the reality of the franchise relationship is turning the entrepreneurial dream into a nightmare of debt, intimidation, marriage breakdown, bankruptcy and in some cases attempted suicide. This has certainly been the case of a number of current and former franchisees associated with a national pet store franchise.**

**We are a group of 11 current and former franchisees who have banded together to fight a class action against a national pet store franchisor over what we describe as a systemic culture of misleading and unconscionable conduct and a total lack of good faith in relations with franchisees.**

**In each of the cases, we describe a breakdown in the entrepreneurial relationship between the franchisee and the franchisor where we believe the franchisor has little or no regard for the financial health of the franchisees business and where the franchisor is prepared to let the franchisee descend into further debt and hardship.**

**This is some of our stories....**

**LYNDA AND ELSA**

I have always had a love of animals, especially my pet dogs. And like a lot of girls from a young age animals and my dogs have been my passion.

At the age of 30 and armed with a marketing and commerce degree from Bond University and years of experience in various marketing communication roles, I had an idea of opening a pet super store. The store would include the sale of animals, pet food, accessories, a pet bakery, doggie day care and grooming – a one stop shop for all your pet needs.

I also wanted to combine my passion for animals and the desire to be my own boss and to grow my own business.

For months I researched the industry, scouted potential locations. I eventually located a retail space at the [REDACTED] Shopping Centre in Burleigh Heads in Queensland that would be perfect for the store.

Although confident of my marketing background, I had no previous retail experience so sought out a franchise that would provide the processes, training and support needed to make my vision a reality and so I settled on [REDACTED]

In 2005, after opening discussions with the company and reading through their marketing material, I agreed to take on a franchise and paid the \$50,000 franchise fee (plus GST). After paying over the franchise fee, I then signed the lease on a 680 square metre store at Burleigh Heads.

In January 2006 I traveled to Melbourne for training with my mother, Elsa, who, sharing my love of animals, had agreed to help with the store.

It was during this trip that problems with the Franchisor first began. When we arrived in Melbourne we were bombarded with paperwork. On the day before we were due to fly back to Brisbane demands were made on mum that she had to sign the Franchise Agreements there are then. The Franchise Agreement had been signed by me but they had hand written mum's name and were forcing her to sign to be guarantor for the business.

Although we initially resisted the pressure to sign, we were told by the Franchisor that if we didn't sign that I would forfeit the franchise fee and leave myself open to further litigation for breaking the agreement. Mum was not allowed to take the document to read or to get a legal opinion. We were left with no choice because I had already signed the lease with [REDACTED]

Mum and I were also pressured and bullied to sign over the lease for the [REDACTED] shop at Burleigh Heads but we held firm and unlike other franchisees we still hold the lease on the store. However, we were then told we had to sign an Assignment of Lease which would be held in escrow by the Franchisor and if we did not adhere to their rules and regulations they would then take the store from us using the Assignment of Lease to do so - yet another threat.

**And so it begins**

There are always startup costs for any business and the new pet store at Burleigh Heads was no different. In addition to the franchise fee, we spent approximately \$240,000 on the store fit out, including \$25,000 on new flooring and \$200,000 in stock.

We were forced to undertake the fit out through a Brisbane based company that had an exclusive arrangement with [REDACTED] and were prevented from seeking quotes from local suppliers. The fit out took two days and the invoice for materials was only about \$65,000. The stock was bought though the Franchisor under the terms of the franchise agreement

We borrowed the full amount of the costs for both the stock and fit out.

The beginning of the breakdown in the relationship with the Franchisor really started with our increasing frustration at the third line enforcement that the company insisted upon. This is the system whereby all the store's stock must be purchased from the franchisor.

The Franchisor provided stock such as pet food that was either out of date or close to expiry, second hand stock that had been removed from other stores and stock that was supposed to be exclusive to the Franchisor, but freely available at other retailers and often cheaper, damaged stock which they refuse to credit.

We found this particularly frustrating because we were told that as part of our franchise agreement that we would be selling stock that was exclusive and we now find that it is available cheaper at other retailers. Not only are we being

forced to buy the stock at inflated prices, but we are also being forced to sell it at prices sometimes double our competitors.

I eventually put an end to another common practice of forced and unsolicited allocations. This involves the Franchisor sending allocated stock to the shop that is not ordered and then debiting the store for the goods, further increasing the indebtedness of the store to the franchisor.

We once got an allocation for ferret food, but we don't have ferrets in Queensland. We asked to send the allocation back and receive a credit, but the Franchisor refused. This has been the same when we have received out of date stock or sub-standard stock, our requests for credits have simply been ignored.

### **Paying the piper**

In the nearly three years our pet store has been operating, it has yet to turn a profit. Despite some good weeks, each financial year has returned a loss with the breakeven for the store running at about \$21,000 a week, the store averages about \$17,000 a week.

The only way I have managed to survive is through the further injection of owner's equity which has totaled nearly \$260,000, which has largely been used to ensure the lease and outgoings are paid.

I estimate that in that same period we have paid the Franchisor an estimated \$212,000 in royalty payments in addition to the franchise fee, the fit-out and the original outlay for stock.

While the Franchisor does not have access to the stores bank account, I must leave my Franchisor supplied computer on every night so that the head office in Melbourne can download our daily accounts and keep an eye on the business income.

We were forced to use a company called [REDACTED] based in Melbourne for our Point of Sale computers in which the Franchisor has a 50 per cent shareholder at a cost of \$595.00 per month. When the computers broke down we were told to courier it back to Melbourne and manually record our sales. In the last instance it took in excess of seven weeks to repair the computer and on receiving it back it had exactly the same problem as when it was sent. The primary computer also had problems and just stopped working. We have had to go to the expense of putting a new point of sales system into the store an expense we cannot afford and have now received a letter from the Franchisor threatening to take any necessary steps to remove us as is their right if the figures are not produced within seven days.

But in the whole time we have run the store and they have been monitoring our performance no one has ever rung to question what's going on if our figures fall or to offer us any assistance nor offered us any relief in terms of royalty payments.

During a Franchisee meeting with the owner of the Franchise he agreed to meet with us to discuss discounting, pricing strategies and gross margins but despite numerous email requests from us, nothing ever happened, and that was more than two years ago.

Mum and I have now either borrowed or committed funds of an estimated \$700,000 towards a business that doesn't make a profit, a business that is not allowed to source from other suppliers cheaper and often better products thus be able to offer more competitively priced products, and receives no support from the franchisor.

In that time, my wages have been \$40,000 per year and mum, about the same.

Last year we made the decision to stop paying the franchise royalties because we believed that the Franchisor was not acting in good faith and living up to their end of the franchise agreement. We pay ten per cent of our gross sales (which they poll each evening) plus the Franchisor insists that we add a further 10 per cent GST for royalties.. We pay one percent of our gross sales plus again 10 per cent GST for advertising. Frustrated with the lack of proper promotion of the business, despite paying the above levies of the gross turnover on non-existent advertising and promotion, out of date stock food and faulty product, unwanted allocations of stock we decided enough was enough.

Not only are we claiming that they have failed to deliver on everything they promised, (which is their own written word) simply put their franchise module has serious flaws. It is not designed for franchisees to be successful. Furthermore, they are now not only making a claim against us for the royalty and advertising payments, but also interest charges that are calculated at 27 per cent.

### **Things are getting nasty**

This action has promoted the usual angry response from the franchisor and so began the expected round a legal claim and counter claim.

In retaliation to our refusal to continue to pay the royalty payments and the pending legal action, the Franchisor moved on us by taking caveats out on property we owned so as to frustrate our ability to raise money to seek compensation and justice in court.

- Lynda [REDACTED]

---

### **MICHAEL AND FIONA**

Like the [REDACTED], Michael, 29, and his partner Fiona, 41, have a shared passion for animals and a desire to build something for themselves, and the other thing they have in common is the same Franchisor.

In May 2005 Fiona and her brother Jason bought the pet store at Tea Tree in the [REDACTED] in Modbury. They bought the store from the original owners for \$125,000 with an additional \$40,000 in stock.

When Fiona bought the store it wasn't trading that well, but she and I worked hard in the store and we increased the turnover from \$600,000 a year to about \$1 million, but the following year turnover plummeted to below the turnover when we purchased the store.

The store was hit by a bout of Parvo disease which is a serious condition that afflicts dogs, so we had to remove all the dogs from the store which makes up about 45 per cent of our sales.

At the end of 2005, we made the decision to purchase another franchise store, this time at the [REDACTED] [REDACTED] of Marion in Oaklands Park. We borrowed \$240,000 from my mother, Susan, who re-mortgaged her home to provide us the finance we needed. We purchased the store for about \$170,000 and purchased stock from the Franchisor of about \$45,000.

As part of the purchase, my mother agreed to go guarantor over the store.

When we bought the store the rent was quite low, but after a few months the Franchisor, who holds the Head Lease on all our shops, renegotiated the lease with [REDACTED] and our rent increased significantly. We found ourselves at the mercy of the leasing manager who negotiated a rent that is one of the highest per square metre rents in Australia - \$14,800 - \$15,200 per month for a shop that is 78.9 sq metres in size.

At the same time our turnover at both stores kept dropping to below breakeven and we were facing a critical cashflow problem.

Our problems were compounded by the franchise agreement that locked us into global purchasing agreements, whereby the purchase all stock from the franchisor, monthly rental commitments to the shopping centre owners for which we are liable despite not owning the lease and finally monthly royalty payments.

### **The slippery slope**

Under the global buying arrangements we were committed to buy stock from a company which is owned by the Franchisor.

This company basically provided us with stock that was readily available from other suppliers at cheaper prices, but we were being forced to buy stock at anywhere between 10 per cent and 50 per cent more.

When we protested about the excessive cost of the stock and threatened to look at other suppliers we came under heavy pressure and bullying not to use other suppliers.

On top of being pressured to buy stock at inflated prices we were also provided with unsolicited allocations of stock that in many cases was sub-standard, often out of date, out of season, and sometimes do not comply with Australian regulations. Some of these products have also been known to cause cancer and are harmful to animals.

These products come unannounced and unwelcome as they are generally invoiced into the thousands. Fiona has had \$21,000 worth of allocated stock in less than two years.

One of the products we were allocated included an automatic waterer that retailed for \$149.99. The product arrived with a European plug on it and could also be found at Big W at half the cost. Another product we received was recalled after the RSPCA placed pressure on the Franchisor to recall it.

In both cases the Franchisor refused to provide us with credits and claim that we still owe them for the cost of the items.

Basically we were struggling to increase business because we were receiving overpriced and substandard stock that was proving increasingly difficult to sell.

As the performance of the stores worsened, we were still required to pay our monthly rent, which had increased, and our monthly royalty payments of 10 per cent (plus GST) of our gross turnover and a one per (plus GST) of the gross turnover in the advertising levy.

We kept up paying our rent and royalty payments through to early 2007, which we estimate was in excess of \$170,000, but under increasing pressure made the decision to stop after that time.

### **Pleas for help ignored**

Before we made the decision to stop paying the royalties, we asked for help with royalties, rent and buying. But our cries for help fell on deaf ears; constant emails, phone calls, faxes and letters were sent in a plea of hope that the Franchisor would start to adhere to their obligations.

But we had no response to our cries for help until the middle of last year when the National Manager started to put pressure to pay up or else, threatening that we would lose our shop, lose our house and in his words, 'Get F\*\*\*\*D up' if we didn't pay our bills.

We traveled to Melbourne to try to resolve the issues and show that our intentions were genuine, but it failed.

We even asked for correctly appointed mediation but were denied.

### **Walk away**

In addition to our upfront investment, ongoing purchases through the global buying arrangements and to meet their royalty obligations, we sold personal items such as cars, a boat, my horses and both borrowed an additional \$35,000 each from relatives to keep going.

In August this year, however, the pressure was too much and we have walked away from the Marion store with debts of more than \$320,000 including a claim against us from the Franchisor for unpaid royalties that are growing as a result of the 27 per cent interest they are charging.

They have also taken out caveats on our home, including my mother's home, as we fight to get some kind recompense.

The Marion store is soon to reopen in the next few weeks, probably with a new owner or as a company owned store.

Even as recently as the 25<sup>th</sup> of August 2008 our store at Tea Tree Plaza was raided by Security and a representative from the Franchisor. This was instigated by the Franchisor as [REDACTED] had no notice. Without any court orders or official documents they unsuccessfully tried to lock us out of our business.

We are currently in court disputing their claims. Our determination and probably stubbornness for justice we planted ourselves and withstood their barrage, but many have not.

### **Driven to the brink**

The word churning has been thrown through the media over the past 12 months. I have been in an unfortunate position to see this first hand. My brother in law, Jason, 34, was one of the franchisees that did everything by the book.

With little money, Jason was offered the opportunity to open a store in Melbourne which he jumped at and that within weeks he was offered a total of nearly six stores, most of which had little or no chance of success.

The stores that were placed in his charge were those that had already been broke before and in actual fact one of them was previously operated by the national franchise manager. These stores were so run down that not even 12-months of trading went bankrupt for \$1.2 million. Financially he will never be the same but more importantly his mental health has deteriorated to a low where he has tried to take his life on three separate occasions.

### **A Final Footnote**

We are currently in litigation with the Franchisor. This is a monumental task because of the lack of resources that we have available to fight this action, not to mention the caveats that have been taken out on our homes.

Currently there are 11 separate current and ex franchisees involved. This is still becoming a hard task as most of the group have lost everything to the Franchisor and are in financial ruin. But through our collective determination and a Will to survive we will not become another victim of what we believe is this

Franchisor's unconscionable way of operating. I hope our story, and those of others, will result in changes that give franchisees greater power when trying to deal with franchisors. I along with members of the class action, and I'm sure the rest of an ever dying breed of franchisees hope that the Federal Governments will make swift and diligent changes to stop more families of Australia losing everything.

- Michael [REDACTED]

---

### **BRIAN AND SAMANTHA**

We both were raised within families with strong knowledge and interest in animals. My family had a background of breeding birds and Samantha's family in breeding and exhibiting in the show ring with cats and dogs. Together Samantha and I moved into breeding and exhibiting in the Show Ring an exotic breed of dog (Shar Pei's) and a small hobby of cold, tropic and marine aquariums.

Prior to purchasing our first franchise, Samantha had looked at vet nursing given her passion and experience in delivering and caring for cats and dogs. Samantha found her first job with the brother of the Franchisor who had many years of experience and knowledge of the franchise. Working for a leading Franchisee, Samantha became the company's most knowledgeable and strongest sales person holding the highest store sale title for five years plus. She even received a merit award from the Franchisor.

We bought our first franchise store at Seven Hills, in Sydney, in 1998 and in the first year the store recorded the second highest increase sales in Australia. We ran it successfully for three years and sold the store for about \$60,000 in 2001.

I had been best friends with the brother of the owner of the franchise and he had been the best man at my wedding. We decided to sell the shop in 2001 when my wife, Samantha, fell pregnant with the first of our two girls.

A few years later we took a holiday to Queensland and we met up with my friend who was still involved in the franchise business. He told us that the Penrith store in Sydney was on the market and that we should grab it and get back into the pet store business. He said the store had performed really well and that the previous owner had managed to pay off his mortgage in no time at all.

The Penrith store is in the [REDACTED] and we decided to go ahead with the purchase in December 2005, just before Christmas.

We bought the store for \$230,000 plus stock purchased through the Franchisor of about \$100,000, and with other associated costs taking our investment to about \$340,000.

Initially we approached our bank for finance after putting down a holding deposit of \$50,000, but the Franchisor was slow in getting us the accounts leading to our bank declining the loan. After being advised that we would lose our deposit the Franchisor recommended their bank which finally approved

finance after we had actually taken possession. The Franchisor's bank would not lend us the full amount and we were about \$40,000 short. So I took out a personal loan for about \$20,000 and a credit card with a \$10,000 limit. The vendors lent us the \$10,000 balance which we agreed to pay back out of the business at \$500 per week.

The previous owners of the store kept the lease in their name, although we were required to pay the rent.

#### **A quite time after a promising start**

After a good Christmas, trading really took a dive. Our turnover was only between \$13,000 and \$15,000 per week, which was just on or slightly below breakeven and well below the \$20,000 per week we had been told by the Franchisor.

Like others in the group, we had to buy [REDACTED] stock and soon found that we were receiving aged and unsuitable stock and stock that was overpriced. We complained about this and then decided to try and source better and cheaper stock from other suppliers. As soon as the Franchisor found out we were doing this, they became extremely nasty. They constantly threatened to lock us out of our store for not buying [REDACTED] stock and it was suggested that we remove or sell below cost any non-[REDACTED] stock.

After only about three or months of trading we found that we were struggling to pay not only our rent but also our royalty payments and we quickly fell behind. The Franchisor moved us on to a pre-payment plan for stock and started taking \$800 a week from the business to pay back debts with him.



To keep things going, I sold an investment property and used the profits from the sale to keep the business going, particularly our rental obligations. We approached the Franchisor and explained our difficulties and looked for help and support on numerous occasions, but our pleas were ignored. We asked not to receive any unwanted allocations as more often these allocations did not sell and had to be discount below cost to get rid of them.

This resulted in the Franchisor refusing to send stock that was paid for, our bread and butter lines, until the unwanted allocations were paid for in full.

We also begged for help in negotiating a reduction of rent, which was what had been provided with our first franchise in Seven Hills and which is also advertised on their web advertisement for purchasing a franchise only to be told that this is not provided. The franchisor promised to meet with us but this never happened and as a result we felt alone and abandoned and our pleas for help were constantly ignored.

We weren't paying ourselves any wages during this period and working up to seven days a week.

Our debt to the Franchisor continued to grow as the business just failed to turn around. The Franchisor eventually sent someone around to assist, but we later found out that has was a failed franchisee who was now working for the Franchisor who gave little assistance.

### **A heavy toll**

We just kept pushing the business as hard as we could, but by December 2007

we realized that we just couldn't keep things going and on the advice of our lawyer we decided to walk away.

The franchise has taken a huge toll on our financial and mental health. We had always planned for a third child. But we made the hardest decision a parent can ever make by deciding not to go through with a pregnancy because of the financial stress. Having two children with acute learning difficulties we find it difficult to provide the needed requirements to assist there development due to the financial stress the franchise has put us in.

About a month before we walked away, the Franchisor contacted me a said the only way I could keep things going was to sell more assets and put them into the business and that was the only solution to our problems.

After we left the shop in December 2007 it was reopened within the week and the previous owners who manage company stores had taken back the shop. I think that may be this had always been the plan because of the stories I now know from other franchisees.

I think that this whole system is based on making money from people going broke and stripping them of their assets. It seems to me to be a calculated thing because they are very keen to see what kind of assets you have at the start and then the process of swindling money from you begins.

We received a lot of pressure to purchase the Penrith franchise and find it amazing the difference in treatment from the Franchisor from one franchisee to another franchisee including his family

not paying royalties. We went from  
wining and dining with selected  
franchisee's yet when we hit financial  
difficulties we soon found ourselves on  
the outer.

Samantha regrets the 11 years she has  
spent within the franchisee and we  
decided to join the class action because I  
just don't want this destroying anyone  
else and their family.

- Brian Cini

---