

-----Original Message-----

From: John Farrell [<mailto:epic@can.nfib.com.au>]
Sent: Wednesday, 11 July 2007 12:23 PM
To: Hallahan, Peter (SEN)
Cc: Pamela Ayson
Subject: Re: FW: TPA submission

Peter; I sincerely hope that the attached will suffice for a submission.

I will be back in Canberra next Tuesday 17/7 and can elaborate as necessary. The REAL TIME data describes the problem and the deficiencies

in ACCC performance, NOT the Act. The ONLY extension should be the "Harsh and Oppressive"; this will simplify analysis by the currently deficient investigators. The recent exchange between the Small Business Commissioner and myself follows:

Thanks for your response John; obviously we understand that the Commission is an independent Statutory body, hence my comment that the email was sent to you as a matter of business courtesy and forewarning of a potential workload. The fair comments received from small business that the ACCC simply does not know what it is doing have been verified by our personal contact with some of your people - sometimes in your presence - and this problem MUST be fixed. We believe that the TPA is adequate in the "conduct" area but the ACCC enforcement folks are not. In fact, the ones we have met appear to be commercial "children" and this includes some very senior people. In addition, we have the outstanding problem of Graeme Samuel's comments (you say falsely reported - repeatedly and by various people) re (Franchising/Tenancy, etc..) failures being due to Bad Operators, etc..

The NFIB wants to work with the ACCC in resolving problems, not creating

them. WE have the grass roots knowledge of the way Big Business Bastardry works; no IFs, BUTs or MAYBES. Mr Samuel needs to take advice from us and we should meet with him as soon as practicable in order to get the facts across to him.

On the "pollie" matter, the MPs "make the laws" and are also responsible

to their constituents to ensure that the enforcement authorities actually do their job. That is what we are pushing to achieve with their

support; the IMPOSED catastrophic financial and personal disasters that have befallen competent and honest small business families must NOT be allowed to continue. Their assets are being "stolen" and the ACCC appears to be their ONLY access to justice; therefore, I sincerely hope that the investigations that are currently underway produce the right results as the problem is reaching runaway proportions.

We will call you to arrange an appointment.

Regards - John

Martin, John wrote:

> John

> I am aware of the matters but cannot comment on anything we have
under > investigation. While you are fully entitled to brief MPs they
will have > no influence on the Commission which they understand and
respect has to > be totally independent in such matters. > Regards >
> John Martin > > -----Original Message----- > From: John Farrell
[mailto:epic@can.nfib.com.au] > Sent: Friday, 29 June 2007 10:51 AM >
To: Martin, John > Cc: Pamela Ayson; Leanne 2; Sue Brown; BAILEY
Rochelle [PD07574]; Farial > Lalji; Joanne; Karen Moore; Graeme Brown;
Greg Walter; > deanne@phoenix-directions.com; John & Di; k ka; Tammy
Parker; Howard > Kerrsmith; don.randall.MP@aph.gov.au;
joanna.gash.MP@aph.gov.au; > graham.edwards.mp@aph.gov.au; Malcolm
Turnbull > Subject: Lenards Poultry > > Good morning John > Yet
another Franchisee problem has hit us, this time with Lenards, the >
Brisbane-based chicken outlet. As usual, the financial and personal >
disasters are horrific, with CONDUCT the clear cause; the initial group
> is four families in Perth. > As a matter of business courtesy, I am
giving the ACCC some warning > although we hope that we can resolve
the matter by up-front informal > ADR; it may just be possible in this
instance. To this end, I will be > meeting with the Lenards Chairman
and his CEO in Brisbane on July 16; > this will be followed by a
meeting of Lenards and MP Don Randall -plus > constituents - in Perth.
We recently had a meeting with several Federal > MPs at Parliament
House and they are pursuing the matter on behalf of > their respective
constituents; you will have heard from Graham Edwards > and Joanna
Gash recently. You will also know that the other "stronger" > parties
involved in current cases are Bakers Delight, Lend Lease, Kick >
Juice, Gloria Jeans and Michel's Patisserie- no 2; these are still >
awaiting finalisation with ACCC involvement and, I hope, will be >
resolved very soon. Fortunately, Michel's - no 1 and Garlos were >
resolved by the NFIB last year via ADR after common sense on the part
of > the CEOs prevailed. > Regards - John >

Conduct - Harsh and Oppressive

This ground of relief will be focussed on the outcome of the conduct rather than the bargaining process. That is, the focus should be on the effect of the conduct on the party concerned, having regard to the circumstances of the particular case. Conduct will be harsh and oppressive in those circumstances where the effect of the conduct is so unduly severe that it would be unjust to allow the conduct to stand.

The "Robbery" diagram is also attached; this illustrates the modus operandi used by Franchisors to "steal" the assets of small business families.

Sincerely
John Farrell
Federal President
National Federation of Independent Business

Hallahan, Peter (SEN) wrote:

> Dear Mr Farrell

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> A short extension would be possible, but could you please ring to
> discuss, at your convenience. It will be necessary to at least send
> the committee a short statement of concerns that can be fleshed out
> later in the week.

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> Peter Hallahan
> Secretary
> 02 6277 3541
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> -----Original Message-----
> From: John Farrell [<mailto:epic@can.nfib.com.au>]
> Sent: Monday, 9 July 2007 10:11 PM
> To: Economics, Committee (SEN)
> Cc: Pamela Ayson
> Subject: TPA submission
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>
> Attn: Peter Hallahan
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> Owing to serious and urgent problems involving "unconscionable"
> conduct
> cases against some of our members, we are not able to submit as
> previously advised; if an extension can be granted, we will do so.
> Our
> essential issue is that Harsh and Oppressive conduct, requiring a
> simple
> analysis of the "effect of the conduct", rather than the process,
> should
> be the driving force behind legislation; the current situation is
> ridiculous and must be replaced.
> Regards - John Farrell
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