

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Franchise Investment Protection Act of the
State of Washington by:

Grout Doctor Franchising Co. of America, Inc.,
Barry F. Baruh, their employees and agents,

Respondents.

SDO - 104 - 02

CONSENT ORDER

Case No.02-05-159/ACO No. 11025

THE STATE OF WASHINGTON TO:

Grout Doctor Franchising Co. of America, Inc.
Barry F. Baruh
1056 El Capitan Drive
Danville, CA 94526

INTRODUCTION

The Securities Division, Department of Financial Institutions, State of Washington, and Respondents Grout Doctor Franchising Co. of America, Inc. and Barry F. Baruh do hereby agree to this Consent Order in settlement of the matters alleged herein. Respondents neither admit nor deny the Tentative Findings of Fact and Conclusions of Law as set forth below and as set forth in SDO-070-02 Summary Order to Cease and Desist entered August 7, 2002, except as to the jurisdiction of the Securities Division to enter this Consent Order.

TENTATIVE FINDINGS OF FACT

I.

Grout Doctor Franchising Company of America, Inc. ("Grout Doctor Franchising") is a California corporation with a primary business address of 1056 El Capitan Drive, Danville, California. Grout Doctor Franchising grants franchises for the performance of grout cleaning and restoration services. Barry F. Baruh ("Baruh") is the President and Chief Executive Officer of Grout Doctor Franchising.

1 II.

2 A Washington resident, while in California performing other work on a recently deceased
3 relative's house in that state in September of 2001, contacted Barry F. Baruh of Grout Doctor Franchising
4 about having grout restoration work done on the residence. Baruh came to the house and provided an
5 estimate for doing the work, and because the Washington resident expressed interest in the process
6 performed Baruh explained about the company and informed the Washington resident that he too could
7 become a "Grout Doctor" performing grout restoration and cleaning services. After the Washington
8 resident returned to Washington he contacted Baruh by telephone and arranged a meeting in California to
9 further discuss a franchise arrangement. At the subsequent meeting in October of 2001 the Washington
10 resident discussed with Baruh the possibility of buying a franchise to be located in the state of Washington
11 as well as obtaining the right to sell other franchises throughout the state.

12 In December of 2001, the Washington resident again returned to California and executed two agreements
13 with Grout Doctor Franchising and its President and Chief Executive Officer Baruh. The first, entitled
14 simply "Agreement" and dated December 12, 2001, granted the Washington resident as "licensee" (in
15 part) the right and license to use the trade name and service mark "The Grout Doctor," to operate the
16 business under such name within the State of Washington, to use the name in connection with all approved
17 products, services, and approved sales promotion programs, and to use an operations manual containing
18 specifications and instructions for the proper cleaning and restoration of grouting. The "Agreement"
19 further provided that the Washington resident pay license fees for "each location established by or
20 through" the licensee, pay monthly non-refundable royalty fees based on the greater of a minimum dollar
21 amount or a percentage of gross monthly sales. Finally, the "Agreement" provided for the payment of an
22 "enrollment fee" of \$25,000, \$5,000 of which was due and payable upon execution of the agreement with
23 the balance due one hundred and eighty days following "written approval" of the Agreement or upon the
24 close of escrow for the sale of the home the Washington resident had been working on in California.

1 The second associated agreement also executed by the Washington resident with Grout Doctor
2 Franchising and Baruh on December 12, 2001, was entitled “The Grout Doctor Franchise Agreement”
3 (“Franchise Agreement”). This document also granted the Washington resident the right and license to use
4 the trade name and service mark “The Grout Doctor” as well as the right to operate the business under that
5 name within a designated territory within the State of Washington and to use approved products, services
6 and sales promotion programs. The Franchise Agreement further provided for the payment of an initial
7 non-refundable franchise fee of \$12,500, the payment service fees based on the greater of a minimum
8 dollar amount or a percentage of gross sales, entitled the franchisee to training in grout cleaning and
9 restoration techniques, and granted the Washington resident the use of an operating manual which
10 consisted of operational techniques, financial and accounting information, marketing plans, advertising
11 techniques and other services and procedures relevant to the operation of the business.

12 The Washington resident paid Baruh \$4,500 in furtherance of the agreements. The Washington
13 resident was not provided with a Uniform Franchise Offering Circular (“UFOC”) containing complete
14 material information about the grout cleaning and restoration opportunity including, but not limited to, a
15 financial statement for the seller.

16 III.

17 The Respondent Grout Doctor Franchising Company of America, Inc. is not currently
18 registered to offer and/or sell franchises in the state of Washington and has not previously been so
19 registered.

20 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

21 22 23 24 CONCLUSIONS OF LAW

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I.

The offer and/or sale of the Grout Doctor Franchising grout cleaning and restoration opportunity as described above constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(16) and RCW 19.100.010(4).

II.

The offer and/or sale of said franchise as described above was made in violation of RCW 19.100.020 because no registration or notification of claim of exemption for such offer and/or sale is on file with the Administrator of Securities and it appears that the Respondents do not otherwise qualify for an exemption from registration.

III.

The offer and/or sale of said franchise as described above was made in violation of RCW 19.100.170 because Respondents failed to provide the Washington resident with a UFOC containing complete material information about the grout cleaning and restoration opportunity including, but not limited to, a financial statement for the seller.

ORDER AND CONSENT

Based upon the premises of the foregoing:

IT IS THEREFORE AGREED AND ORDERED That Respondents Grout Doctor Franchising Company of America, Inc., Barry F. Baruh, and their agents and employees each shall refrain from offering and/or selling franchises in any manner in violation of RCW 19.100.020, the registration requirement provision of the Franchise Investment Protection Act.

IT IS FURTHER AGREED AND ORDERED That Respondents Grout Doctor Franchising Company of America, Inc., Barry F. Baruh, and their agents and employees each shall refrain from offering and/or selling franchises in any manner in violation of RCW 19.100.170, the disclosure document requirement provision of the Franchise Investment Protection Act.

1 IT IS FURTHER AGREED AND ORDERED That Respondents Grout Doctor Franchising
2 Company of America, Inc. and Barry F. Baruh shall disclose the existence and contents of this Order in
3 any franchise registration disclosure document approved for use in the state of Washington after
4 registration has been effected, such requirement commencing from the date of entry of this Order.

5 IT IS FURTHER AGREED AND ORDERED That Respondents Grout Doctor Franchising
6 Company of America, Inc. and Barry F. Baruh shall inform all employees and agents who offer franchises
7 in the state of Washington of the existence and contents of this order for a period of three years from the
8 date of entry of this Order.

9 IT IS FURTHER AGREED AND ORDERED That this Order shall remain in force and effect for
10 a period of three years from the date of entry of this Order.

11 IT IS FURTHER AGREED That Respondent Grout Doctor Franchising Company of America,
12 Inc. shall refund the amount of \$2,500 to the Washington resident who paid Grout Doctor Franchising
13 Company of America, Inc. and Barry F. Baruh in furtherance of the agreements referenced above, such
14 reimbursement to be made within sixty (60) days of the entry of this Order. Respondent Grout Doctor
15 Franchising Company of America, Inc. shall file or cause to be filed proof satisfactory to the Securities
16 Division of such reimbursement within seventy (70) days of the entry of this Order. Failure to provide
17 such satisfactory proof of reimbursement shall be grounds to revoke this Order.

18 IT IS FURTHER AGREED That Respondent Grout Doctor Franchising Company of America,
19 Inc. shall reimburse the Securities Division \$500 for its costs of the investigation of this matter prior to the
20 Division's entry of this Order.

21 IT IS FURTHER AGREED That Respondents Grout Doctor Franchising Company of America,
22 Inc. and Barry F. Baruh each waives their rights to a hearing in this matter.

23 IT IS THEREFORE ORDERED That SDO-070-02, Summary Order to Cease and Desist, is
24 hereby vacated.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

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Barry F. Baruh, as President and Chief Executive Officer of Grout Doctor Franchising Company, Inc., and individually:

(Signature)

Signed this ____ day of _____, 2002.

This Order entered by the Securities Division this 16th day of December, 2002.



Deborah R. Bortner
Securities Administrator

Presented by: _____
Brad Ferber
Financial Legal Examiner

Michael E. Stevenson
Chief of Compliance

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