RE: Termination Of A Franchise

RCW 19.100.180(2) (j)
RCW 19.100.180(1)
RCW 19.100.180(2) (c)

Questions Presented:

May a franchisor terminate a franchise upon the death of the franchisee?

Statutes

RCW 19.100.180(1) provides that the parties to a franchise agreement shall deal with each other in good faith.

RCW 19.100.180(2) (c) makes it an unfair act or practice or unfair method of competition for a franchisor to discriminate between franchisees in business dealings unless proven to be reasonable, justified and not arbitrary.

RCW 19.100.180(2) (j) renders it an unfair act or practice or unfair method of competition for a franchisor to terminate a franchise prior to the expiration of its terms except for good cause.

Discussion

Pursuant to RCW 19.100.180(1), the parties to a franchise agreement must deal with each other in good faith. Where the franchise is not one that relies upon the unique talents of the franchisee, and particularly where the franchise agreement does not require that the franchisee personally participate in the operation of the business, a provision that allows the franchisor to terminate the franchise upon the death of the franchisee would not be in good faith and would violate the requirements of RCW 19.100.180(1).

RCW 19.100.180(2) (c) prohibits discrimination between franchisees unless the franchisor can prove that the discrimination is reasonable. A provision allowing the franchisor to terminate a franchise upon the death of the franchisee would discriminate against individual franchisees, who have a limited life, in contrast with corporate franchisees, who have a perpetual life. The corporation’s franchise could continue, even though the ownership of the corporation could change completely during the term of the franchise. Provisions which allow the franchisor to terminate the franchise upon the death of the franchisee are also discriminatory where the franchise agreement allows inter vivos transfers of the franchise. The franchisor must prove that the distinction between the two kinds of transfers of the franchisee’s interest is reasonable.

To terminate the franchise prior to expiration of its term, the franchisor must have good cause. Good cause is expressly defined in RCW 19.100.180(2) (j) as the failure of the franchisee to comply with lawful material provisions of the franchise agreement. Death of the franchisee is not an express ground for good cause.

Conclusion

A franchisor may not terminate a franchise upon the death of the franchisee unless the franchisor can show that the termination is for good cause under RCW 19.100.180(2) (j) and it does not violate RCW 19.100.180(1) and (2) (c). In the registration of a franchise, the Securities Administrator finds
that a provision allowing the franchisor to terminate the franchise upon the death of the franchisee should be allowed only in unusual circumstances.

Adopted: January 1, 1991
Replaces Statement of Policy 83-30
Jack J. Beyers, Securities Administrator
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