

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the matter of Gary Swernik; Dana Bersch,)
a/k/a Frank Bersch; Boulder, Inc. d/b/a)
Yu-Chu's; Ed Foo Yung's Inc., a/k/a)
Ed Foo Yung's Ltd.; and)
their Officers, Directors,)
Agents, and Employees,)
Respondents.)

**ORDER FOR
HEARING**

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WHEREAS, Lori J. Doerr, a resident of North Dakota, has filed a complaint with the office of the North Dakota Securities Commissioner alleging that the Respondents violated provisions of the North Dakota Franchise Act by engaging in fraudulent practices pursuant to North Dakota Century code § 51-19-11 and **WHEREAS**, Lori J. Doerr has alleged that:

1. In October of 1993 Lori Doerr and her husband Lance Doerr saw an article in a business magazine about Yu-Chu's Chinese fast-food and delivery franchises. They called the number given and requested more information about a Yu-Chu's franchise;
2. in January 1994, Gary Swernik, President of Yu-Chu's sent to Lori and Lance Doerr, in North Dakota, a packet of information about Yu-Chu's franchises, including menus, newspaper articles, a personal financial statement form, and a franchise application for Yu-Chu's;
3. the franchise agreement names the franchisor as Boulder, Inc. dba Yu-Chu's, 9702 Gayton Drive, Suite 140, Richmond, Virginia 23233, telephone (804) 741-9992, fax (804) 740-6532;
4. Lance and Lori Doerr completed the forms and sent them back;
5. Gary Swernik and Dana Bersch made telephone calls to Lance and Lori Doerr in North Dakota regarding Yu-Chu's franchises;
6. on or about February 1994, Lori and Lance Doerr flew to Toronto, Canada to meet with Gary Swernik and Dana Bersch a/k/a Frank Bersch to discuss Yu-Chu's franchises;
7. in February 1994, Lori and Lance Doerr contacted Gary Swernik and told Gary Swernik they would like to invest in a Yu-Chu's franchise;
8. Gary Swernik told Lori and Lance Doerr to send a \$25,000.00 fee for a Yu-Chu's franchise;

9. in March 1994, Lori and Lance Doerr, on behalf of Great Plains Marketing Inc., sent a cashier's check for \$25,000.00 to Boulder Inc., a United States Corporation doing business as Yu-Chu's at 9702 Gayton Road, Suite 1140, Richmond, VA 23233, for a Yu-Chu's franchise in North Dakota;
10. Lori and Lance Doerr are part owners of Great Plains Marketing Inc.;
11. in the spring of 1994, Gary Swernik flew to Bismarck, North Dakota to discuss the Yu-Chu's franchise operation with Lori and Lance Doerr;
12. in the spring and summer of 1994, Lori and Lance Doerr continued developing plans for the Yu-Chu's franchise, but never received the assistance in obtaining financing or information pertaining to the Yu-Chu's franchise, such as operational manual and recipes, promised to them by Gary Swernik;
13. in August 1994, Gary Swernik called Lori and Lance Doerr in North Dakota informing them that Yu-Chu's could not be used in the United States because of a trademark conflict, the name of the franchise was now to be Ed Foo Yung's;
14. in September 1994, Gary Swernik called Lori and Lance Doerr in North Dakota and told them that Dana Bersch had disappeared with the Doerr's \$25,000.00 and that Gary Swernik had reported the matter to the Federal Bureau of Investigation;
15. Gary Swernik told Lori and Lance Doerr that he would give them a Master Franchise Agreement in Ed Foo Yung's;
16. in December 1994, Lori and Lance Doerr flew to Toronto to meet with Gary Swernik to discuss the Master Franchise Agreement in Ed Foo Yung's;
17. on December 7, 1994 Gary Swernik on behalf of Ed Foo Yung's Inc. entered into an unregistered Ed Foo Yung's Master Franchise Agreement with Lori and Lance Doerr on behalf of Great Plains Marketing Inc.;
18. on or about December 15, 1994 Gary Swernik sent a letter to the Doerr's enclosing a copy of the Uniform Franchise Offering Circular for an Ed Foo Yung's franchise and stating that they were finalizing the roll-over from Yu-Chu's, the letter was signed by Gary Swernik, President of Ed Foo Yung's;
19. in February 1995, Gary Swernik flew to Bismarck, North Dakota to encourage the Doerr's to sell Yu-Chu's franchises under their Master Franchise Agreement;
20. on January 17, 1995 the North Dakota Office of the Securities Commissioner received a Franchise Registration Application for Ed Foo Yung's, Inc.; the franchisor's principal business address is listed as 4085 L.B. McLeod Road, Suite H, Orlando, Florida 32811; the name and address of Franchisor's agent in the State of North Dakota authorized to receive process is listed

as: Securities Commissioner, State Capitol, Bismarck, ND 58505; the name, address and telephone number of person to whom communications regarding the application should be directed is listed as: Gary Swernik, President, Ed Foo Yung's Limited, 4085 L.B. McLeod Road, Suite H, Orlando, Florida 32811, telephone 1-800-265-4545;

21. the uniform consent to service of process received with the franchise registration application dated January 6, 1995 was signed by Gary Swernik, President of Ed Foo Yung's and states: "Ed Foo Yung's Inc., (a corporation organized under the laws of the State of Florida), irrevocable appoints the North Dakota Securities Commissioner and the successors in office, its attorney in the State of North Dakota for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of North Dakota, and consents that an action or proceeding against it may be commenced in a court of competent Jurisdiction and proper venue within North Dakota by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of North Dakota and had lawfully been served with process in North Dakota. It is requested that a copy of any notice, process or pleading serviced this consent be mailed to: Ed Foo Yung's Inc., 4085 L.B. McLeod Road, Suite H, Orlando, Florida 32811"
22. on March 31, 1995 Ed Foo Yung's Inc. was registered as a franchise in North Dakota pursuant to Ch. 51-19 N.D.C.C.;
23. in April 1995, Gary Swernik sold Ed Foo Yung's Inc. to Rip Blackwood of Atlanta, Georgia;
24. in June 1995 Great Plains Marketing Inc. purchased an Ed Foo Yung's franchise from Rip Blackwood for \$25,000.00;
25. in June 1995 Great Plains Marketing Inc. purchased an Ed Foo Yung's Master Franchise from Rip Blackwood;
26. in July 1995 Rip Blackwood and his son Greg flew to Bismarck, North Dakota to meet with Lori and Lance Doerr and to discuss franchise operations;
27. Great Plains Marketing Inc., Lori Doerr and Lance Doerr have never received a return of the \$25,000.00 they invested in March 1994 for the purchase of a Yu-Chu's franchise and the terms of the franchise agreement have not been fulfilled;
28. Gary Swernik sold other franchises besides the franchise he sold to Lori and Lance Doerr and the Doerr's relied upon the experience and expertise of Gary Swernik to assist in the establishment of their franchise.

NOW, THEREFORE, IT IS ORDERED that:

1. pursuant to §51-19-13 N.D.C.C. the Securities Commissioner will begin a PUBLIC INVESTIGATIVE HEARING for this matter in the Fort Union Room on the ground floor of the state Capitol in Bismarck, North Dakota at 9:00 a.m., Tuesday, September 3, 1996 and continuing until all interested parties have had an opportunity to present any relevant oral and written evidence under oath for complaints and remedies involving alleged franchise violations and related material issues; and
2. to be received on or before Friday, July 19, 1996, complainant Lori J. Doerr and each of the Respondents shall provide to one another and to the Office of the Securities Commissioner copies of any documents they intend to present at the hearing for this matter with a brief description of the relevance of each of the documents to the alleged violations; and
3. to be received on or before Friday, July 19, 1996, complainant Lori J. Doerr and each of the Respondents shall provide to one another and to the Office of the Securities Commissioner a list of the name, address, telephone number, and brief summary of anticipated testimony for each witness whom they intend to present at the hearing, and the parties shall designate any witnesses who will not voluntarily appear and who should be subpoenaed by the Securities Commissioner; and
4. to be received by complainant Lori J. Doerr and the Respondents on or before August 5, 1996 the Office of the Securities Commissioner shall prepare a list of documents and witnesses for the hearing for the specific allegations of franchise violations, a description of relevant fact issues that appear to be undisputed, and a description of relevant fact issues that appear to be disputed between the parties; and
5. a party who requests that a subpoena be issued for any witness at the hearing shall pay the witness fees and expenses for the witness to attend the hearing.

Dated at Bismarck, North Dakota on May 31, 1996.



Cal Hoovestol
CAL HOOVESTOL
Securities Commissioner
State Capitol, 5th Floor
Bismarck, ND 58505-0510
(701) 328-2910

**STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH**

**BEFORE THE
SECURITIES COMMISSIONER**

In the matter of Gary Swernik; Dana Bersch,)
a/k/a Frank Bersch; Boulder, Inc. d/b/a)
Yu-Chu's; Ed Foo Yung's Inc., a/k/a) **AFFIDAVIT**
Ed Foo Yung's Ltd.; and) **OF**
their Officers, Directors,) **MAILING**
Agents, and Employees,)
)
Respondents.)

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I, Diane Lillis, being first duly sworn, state that I am a citizen of the United States over the age of twenty-one years and not a party to or interested in the above-entitled proceeding.

On, June 7, 1996 I deposited in the Central Mailing Bureau of the United States Post Office Department in the State Capitol in Bismarck, North Dakota, true and correct copies of the following document:

**ORDER FOR HEARING
NOTICE OF HEARING**

A copy of the above document was securely enclosed in an envelope with postage prepaid, sent via certified mail, return receipt requested, and addressed to:

Gary Swernik, President
Boulder, Inc. d/b/a Yu-Chu's
9702 Gayton Rd. Suite 140
Richmond, VA 23233

Gary Swernik, President
Ed Foo Yung's Limited
4085 L.B. McLeod Road, Suite H
Orlando, FL 32811

Dana Bersch
c/o Boulder, Inc. d/b/a Yu-Chu's
9702 Gayton Road, Suite 1140
Richmond, VA 23233


Ed Foo Yung's Inc. a/k/a Ed Foo Yung's Ltd.
4085 L.B. McLeod Road, Suite H
Orlando, FL 32811

Boulder, Inc. d/b/a Yu-Chu's
9702 Gayton Rd. Suite 140
Richmond, VA 23233

Lori J. Doerr
414 E. Brandon Dr.
Bismarck, ND 58501

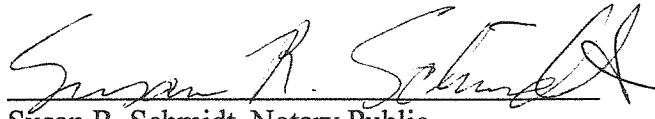
Daniel S. Kuntz, attorney for Gary Swernik
Zuger, Kirmis & Smith
PO Box 1695
Bismarck, ND 58502-1695

To the best of my knowledge, information, and belief, the address given above is the actual post office address of the party intended to be served.



Diane Lillis

Subscribed and sworn to before me on June 7, 1996.



Susan R. Schmidt, Notary Public
Burleigh County, North Dakota
My commission expires 9/25/2001