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*Representing the interests
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American Franchisee Association
53 W Jackson Blvd, Suite 205
Chicago, Illinois 60604
www.franchisee.org

AFA PREPARES TO CELEBRATE 10-YEAR ANNIVERSARY

Can you believe its been ten years? The American Franchisee Association (AFA) will be celebrating its 10th anniversary next year in Washington, DC. Tentative plans call for a Franchisee Leadership Summit held back-to-back with a Legislative Action Day (LAD). Details will be announced in the next issue of the AFA Blast Fax.

AFA ARCHIVES

To commemorate the ten-year anniversary of the AFA, each upcoming issue of the AFA Blast Fax will feature a vignette from the AFA's early history. Each vignette will provide a glimpse into the AFA's past and a sense of the climate under which the organization was founded. This installment of the AFA Archives focuses on the pre-formation days of the AFA ten years ago.



In the early 1990's Congressman John J. LaFalce (D-NY), then Chairman of the U.S. House of Representatives Committee on Small Business, began holding hearings on franchising. Most of the testimony was provided by franchisor trade association representatives. From time-to-time a few brave franchisees testified telling the Committee about problems with encroachment, purchasing of supplies, being terminated without cause and other bad faith actions by certain franchisors. However, franchisee input was limited because of "gag orders" and fear of retribution by their franchisor. Franchisors were represented at these hearings, as always, by their 30+year old trade association. They emphatically asserted that any franchisee that complained was only a failed business person looking to escape his /her financial responsibilities.

There was little support in Congress at the time for significant changes to the Federal Trade Commission's (FTC) Franchise Rule. There was even less support for what some perceived as the "contract" issues between two parties of equal bargaining power--the franchisor and franchisee. To try and gain support for his efforts Congressman LaFalce decided to invite franchisee association leaders to Washington, DC for a Franchisee "Listen-In."

At the time the Congressman's staff could find relatively few franchisee association leaders—only 30 or so—to invite to the "Listen In." Many of them were not independent of control from their franchisors, either. Representatives from 18 of those associations came to Washington, DC to express their viewpoints to the Congressman and to hear what he and others like themselves had to say about the current state of affairs in franchising.

What they heard was remarkably similar. One franchisee leader after another told of problems with their chain that sounded as if they all were part of the same franchise system. Yet these were 18 franchisee leaders from a wide variety of franchise systems and totally different industries.



Susan P. Kezios,
President of AFA,
meets with Senators
Dick Durbin (D-IL) and
Patty Murray (D-WA).

Susan P. Kezios had also been informed about the Franchisee "Listen In." Susan was a former franchisee, a former franchisor marketing executive and as President of her own business, had worked on one of the franchisor trade association's volunteer committees for the preceding couple of years. In addition, in 1991, she had testified in two hearings before Mr. LaFalce's Committee. Susan's testimony on both occasions acknowledged that there were in fact, serious problems in the franchisor-franchisee relationship. She had also stated that these issues were not being addressed by either the Federal Trade Commission or franchisors and their trade association.

As a result of the hearings Susan was aware that Congressman La Falce had introduced franchise relationship legislation to level the playing field somewhat between franchisors and franchisees. When Susan heard about plans for the Franchisee "Listen In" she offered to provide lunch for the franchisee leaders. Arrangements were made for the franchisees to meet with Susan in an anteroom off of the hearing room where the "Listen In" was to be held. Franchisors, the press and attorneys were kept out of the room while Susan introduced herself and the idea that perhaps it was time to form an umbrella organization of franchisee associations. There was a split second of silence in the room after she finished speaking. Almost instantaneously, one franchisee leader after another said, "yes!"

The decision was made by the group that day that they would not announce the formation of the new association until 5,000 franchised outlets had been signed up as members. The AFA didn't even have a name yet! From October through December of 1992 Susan flew from one franchisee association board meeting to another recruiting initial association memberships.



First organizational meeting
of the AFA in 1993.

In February of 1993 the American Franchisee Association (AFA) held its first organizational meeting in San Francisco, California. The meeting was purposely held just a couple of blocks away from the franchisor trade association's annual convention. That way, reporters who arrived to cover the franchisors' convention could just walk down the street and also write about the formation of the AFA—which they did! And what they reported on was the apparent need of franchisees from across brand lines to join forces under the umbrella of an organization like the AFA. That fact was underscored by the fact that instead of an initial membership of 5,000, the AFA had already signed up over 10,000 franchised outlets. The AFA's time had truly come!

TWO AFA AFFILIATES NAMED SUPER LAWYERS

Congratulations are in order to J. Michael Dady and Jeffery S. Haff, partners at the Minneapolis law firm of Dady & Garner, PA. Michael and Jeffery were recently named Super Lawyers by *Minnesota Law & Politics*. Additionally, Michael Dady was also named one of Minnesota's Top 100 Super Lawyers. Both Michael and Jeff appeared in the August Super Lawyer edition of the publication.

We're proud to have Michael and Jeffery as Affiliate Members of the AFA. We're even prouder that they've been recognized by their peers for their outstanding work as lawyers. You can contact Michael Dady at 612-359-9000 or jmdady@dadygarner.com. Contact Jeffery Haff at 612-359-3505 or jshaff@dadygarner.com.

AFA ACKNOWLEDGES OUR SUPPORTERS

The AFA would like to thank the individuals listed below who've made personal financial contributions above and beyond their regular dues payments to support the work of the AFA. If you are in the position to make an additional contribution of your own, please call the AFA office (312-431-0545). Thank you again to all of AFA's generous members!

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WELCOME NEW AFFILIATE MEMBER - M. BLEN GEE, JR.



The AFA welcomes its newest Affiliate Member, Blen Gee (pronounced as in “gee whiz”), partner in the Raleigh, North Carolina law firm of Johnson, Hearn, Vinegar & Gee, PLLC. Blen practices in the area of business and corporate law. He is a litigator with extensive experience in arbitration, mediation (he is a certified mediator), trials and appellate law, automobile dealer issues and franchise law.

Blen regularly represents franchisees and prospective franchisees in business matters, including business litigation and sales of businesses. He has represented the North Carolina Automobile Association since 1978. In recent years he has been especially active in litigation on behalf of Hardee’s franchisees.

Blen represented the franchisees in *Craig F. Goess, et al. v. David J. Rogers*, American Arbitration Association, Case No. 31 199 00158 95 resulting in an award of \$1,298,000.00 involving the aborted sale of an automobile dealership in 1996. Blen is a 1981 graduate of the University of North Carolina School of Law, J.D. with Honors. You can contact Blen at 919-743-2200 or bgee@jhvglaw.com.

CHOOSING A CONTRACTOR

By John Lawyer, Franzen Contracting

You have your lease; you have your franchise agreement. You’re ready to get to work opening up your new location. Only one thing remains: the build-out.

There are quite a few things to consider when choosing a general contractor. Price is the biggest and most obvious, but not always the most cut and dried. Other considerations include the schedule, the payment terms, and the relationship you expect to have with the contractor.

Price is always the first thing you will consider. Most experts will tell you to get several bids, this is wise advice. If you have done this in the past, you will know that bid prices can vary substantially from contractor to contractor. The first question you must ask is “are the bids all covering the same items?”

How do you compare to make sure everyone is bidding apples to apples? First, insist that your bidders all break out their bids to show the different price for each trade. Beware of the “lump sum” bid that only gives a total amount for your build-out without a supporting price break down. A bid should have a line item for each trade showing how much you are paying for each trade; concrete, carpentry, painting, plumbing, HVAC, electric, etc., as well as a line showing how much of the bid is the contractor’s overhead and profit.

You also want to make sure that everyone is bidding the same scope of work and specifications. Are the bidders working off of a set of plans drawn up by an architect, or are the bids based on your verbal instructions? If everyone is working off a full set of architectural plans, chances are the bids will be a lot closer in scope than if the contractors were each left to their own interpretation of what you need.

Also make sure everyone is bidding the same materials, fixtures, and furnishings, and the same quantities of each. Is the contractor offering you industrial quality plastic laminate cabinets? Or is he just going to install whatever the local building supply store has on sale that week? Are they all bidding the same type of carpet, of floor tile? What about lighting? Does everyone have the same lighting plan in mind?

The point is that it is important to qualify each bid. Talk to your bidders, find out what they are including or excluding. Don’t just write off a contractor because their price is too high or too low. Find out what the differences are. Once you find out where they are different, don’t be afraid to ask them to re-bid with more similar scope.

In an upcoming issue of the *AFA Blast Fax* we’ll investigate other factors beyond price to consider when comparing contractors. Visit <http://www.franzencontracting.com> or call 651-631-0466 for details.

The AFA Remembers It's Friends

Robert Schiesel

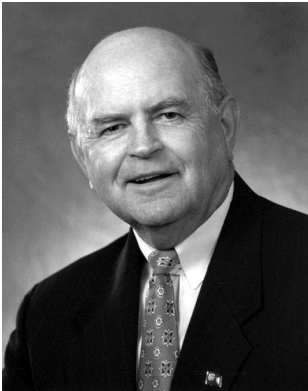
Robert Schiesel, Past President of the Independent Association of Jackson-Hewitt Franchisees (IAJHF), died unexpectedly last July while on vacation. Bob was a great friend and supporter of the AFA.

You may remember Bob from one of the AFA's Annual Franchisee Legal Symposiums. He was always concerned with improving the value of the Jackson-Hewitt brand in the marketplace. He thought that was good business for both the franchisee and the franchisor. The AFA is going to miss his input, his business savvy and his presence for some time to come.

In lieu of flowers, memorial donations may be made to the Association of Retarded Citizens of Washington County, 810 Florida Ave., Hagerstown, MD, 21740.



Jim Johnson



The AFA lost a dedicated small business advocate with the passing of Jim Johnson. Jim had been the U.S. Small Business Administration's (SBA) advocate for Region 6 since 1994. AFA delegates to the 1995 White House Conference on Small Business (WHCSB) will remember him best as the tall Texan who loved fighting for a good small business issue. Jim was a former boxer, so "putting on the gloves," was second nature for him. He was always fighting for the rights of small business owners — literally until the day he died. He had a conference call scheduled that morning with the SBA's Office of Advocacy Chief Counsel, Tom Sullivan. Jim called his good friend Till Phillips, National Rural Advocate for Advocacy, that morning and said, "cover for me." Jim checked himself into a hospital shortly thereafter and died later that day. Jim is survived by his father, age 95, his wife and two adult sons.



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