NATIONAL FRANCHISE MEDIATION PROGRAM

Steering Committee

MONDAY, JUNE 9, 2003
Intercontinental Barclay Hotel
New York, New York


Absent: Ronald K. Gardner, Jr. Donald Hachenberger

Also Attending: F. Peter Phillips, Craig Prusher

INTRODUCTION AND WELCOME

Mr. Aronson convened the meeting at 10:05 a.m. and asked the attendees to introduce themselves and share their backgrounds. Mr. Aronson announced his retirement from InterContinental Hotels Group and his affiliation with the firm of Kilpatrick Stockton LLP. He expressed the goal that next year the Program would be co-Chaired by a franchisor and a franchisee. Mr. Aronson introduced Steve Smith and Mr. Dixon introduced John Kujawa as their successors in representing their companies on the Committee.

APPROVAL OF MINUTES

The Minutes of October 24, 2002 were approved as submitted.

RECENT EVENTS AND REPORTS OF EXPERIENCES

Mr. Aronson reported on a presentation on mediation at the Annual Convention of AAHOA. Mr. M. Patel reported that the event was well received by those attending, and supplied a good education about mediation.

Mr. Dady shared his opinion that mediation was becoming more active, particularly in certain areas such as Texas where mediation is mandated. He emphasized the importance of having a good mediator, having the decision maker present at the mediation, and the parties’ predisposition to resolve the issues. In his experience, when one of those elements fails, the mediation will fail. Mr. Shah urged that franchisors include mediation in their franchise agreements. Mr. Rosen noted the utility of the mediator, as a neutral, to supply a “reality check”
from someone other than the adversary.

A discussion of the advisability of mediation clauses in contracts ensued. Mr. Aronson expressed the view that the voluntary nature of mediation may be one of its strengths. Mr. Rosen believed that a mediation clause was a positive thing. Mr. Prusher noted that mediation is required in the Burger King agreement, but only for encroachment disputes. He also noted that, despite bad results in some arbitrations, he believed the mediation/arbitration program was still preferable to litigation, which would have been more expensive with (roughly) the same uneven results. Mr. Hazlett noted the reluctance of franchisors to mediate “system issues.” Mr. Purvin reported on an instance where Subway’s agreement required mediation, but neither its managers nor its franchisees knew about it, an example of a situation where “the contract was right but the culture was wrong.” Mr. M. Patel urged that the Program educate the constituencies in the franchising communities. Mr. Smith noted that some mandatory mediation provisions are disregarded or treated as perfunctory hurdles prior to litigation, and that a willingness and supportive attitude by the parties is essential.

REPORT ON PROGRAM USAGE

Mr. Phillips reported on low usage of the Program. See attached report. At the same time, he suggested that many companies and franchisees at the table had engaged in mediation, either as parties or as neutrals, during that period, but that activity was not captured by the Program. He suggested that it may be a better contribution to the franchise community to survey mediation usage as a whole, rather than to measure usage only through the Program. Mr. Purvin agreed that many mediations have occurred because of the Program, but did not go through the Program and therefore are not reflected in the statistical report.

REPORTS OF ORGANIZATIONS

AAFD reported that it had made an award to the Program at its recent Annual Meeting. The AAFD Fall Meetings in October will be in New York, and franchisee organization leadership will be present; this prompted Mr. Purvin to suggest that the Program be represented in some way.

Mr. Shay shared his view that the IFA looks to the Program to change the culture of the community with respect to relationship-building, and to advocate an environment of self-regulation, not merely to administer individual mediations. He noted that AAHOA’s commitment of a spot at its Convention to mediation was a very powerful indication of an openness to cultural change. Mr. Aronson reported on a presentation at the IFA Legal Symposium. Mr. Simon reported that the work of the National Franchise Council is now folded into the IFA, where it is growing with substantial support from the IFA.

Mr. Hall reported on a presentation at the ABA Dispute Resolution Section in San Antonio in March.
Mr. Phillips briefly reported on recent products and initiatives of CPR Institute, including books on best practices in employment dispute management and contract drafting, as well as an international initiative and a new videotape on mediation made in cooperation with the International Trademark Association.

Mr. M. Patel suggested that AAHOA urge the creation of industry-specific subcommittees within the Program. He also solicited articles for the AAHOA magazine.

**REPORT OF FRANCHISEE AND REVENUE SUBCOMMITTEES**

Mr. Phillips reported on the background of the Revenue and Franchisee subcommittees and the current notional budget and assets of the Program.

Mr. Hall then presented some thoughts on taking the Program to a different level in doing its work of encouraging mediation. Stakeholders include trade associations, neutrals who earn revenues, franchisors and franchisees. None of these groups is ready to fund the Program the way it is now operating. At present the Program is trying to make sales to generate revenues to cover costs – “NFMP, Inc.” The Committee, however, is trying to promote mediation to benefit the franchising community. The alternative is a nonprofit Program that encourages mediation – “NFMP, Non-Profit.” We can’t market the Program until we make a decision about what we are in business to do. If we adopt the non-profit mission, then compensation for the administrator should not come from Program usage, but from the sources benefited by its advocacy. Franchisees in particular need information and education, which the Program is best postured to provide. Funding to promote mediation is more likely to be had if the Program were an advocacy organization, not a provider of neutral services. Money should be spent, not on getting more mediations, but advocating mediation itself.

Mr. Aronson wondered if too much emphasis was being placed on money, particularly in light of the contributions of time that the leadership already extends. Mr. Kujawa doubted that corporations would contribute to the Program simply because it is virtuous to do so – some value proposition needed to be set forth that the prospective funders would recognize. Mr. Shah thought that those who save money through actual mediations may be inclined to support the program. Mr. Zuckerman said it was the promise of future benefits, not the value of past ones, that motivate those who support the Program. Mr. Aronson indicated in response to a question from M. Patel that it was his intent to set up industry-specific subcommittees of the NFMP, namely in hotels and fast food.

Mr. Phillips set forth the activities of the Program administrator, showing that the only revenue activities are administration of individual disputes. Since inception, neither CPR’s program maintenance nor its promotion/advocacy activities have been recompensed. Mr. Purvin suggested that neutrals who get work through the Program can be a source of revenue, or perhaps dues from participating organizations. Mr. Dixon said it was clear that the Program cannot support itself through cases and must have contributions. Generating cases is irrelevant to the real mission of the Program, which is to teach the business benefits of mediation.
Mr. Hall said that the effort is not to raise money, but to sharpen the activities of the Program to support itself – to change the approach of the organization and re-state the mission to the promotion of mediation, rather than maximizing case streams. Mr. Shay said the IFA could underwrite costs of meetings, designing promotional materials, and provide other in-kind services that might reduce the need for hard dollars. Mr. Aronson indicated that his firm might assume the costs of a future meeting.

**PAYMENT TO CPR**

In partial payment of services received, the amount of $6000 was approved to CPR Institute as Program administrator.

The meeting adjourned at 1:00 p.m.

Respectfully Submitted,

F. Peter Phillips