Text by Chuck Green with Ben Brody Illustration by Robert Pizzo

THE PROMISES AND PITFALLS OF FRANCHISING

While opening your own branch of an established company may sound like a sure thing, it's actually anything but.

At a major meeting with his franchisor in 2010, franchise owner Tom Fox says he "was experiencing a very emotional time." His Mamaroneck-based sales-management-training franchise, Sandler Training, was nearly $25,000 in debt because his large corporate clients hadn't paid for all of the training kits he was required to sell them. To make matters worse, the deficits were putting him behind on his royalty payments to headquarters. Coincidentally or not, the pain of three stressed vertebrae in his back was nearly incapacitating him.

The pressure, the unreasonable goals—he hadn't expected franchising would be like that. In fact, when Fox purchased his Sandler franchise in 2009, he'd been a successful corporate executive who owned his own training business, but was attracted to franchising, as so many are, because it seemed to offer an opportunity to be at the top of a business with an already-established strong track record.

He was, instead, surprised to discover that his location put him in direct competition with other Sandler franchises, and that the marketing tools he'd been told were successful—like seeking out golfers who tend to be upwardly mobile and business-oriented—turned out to be duds. Sure, there were supposed to be the training courses and the "coaches" at headquarters who spent up to an hour a week on the phone with him, but he felt as if he'd been sucked into more than he could handle by promises of success and representatives who glossed over important details as part of a sales pitch. "They make it clear that successful franchisees make a lot of money and play on your ego that you can do what others do," Fox says.

As mom-and-pop shops close and franchises become increasingly popular—an economic forecast for 2013 prepared by research firm IHS Global Insight projects about a 1.5-percent growth in the number of US franchises—many franchisors like Fox are asking themselves just how sure this model is.

A 2010 report by the US Census Bureau found that franchise businesses accounted for more than 10 percent of businesses with paid employees in the 295 industries for which data was collected in 2007. That means that, nationally, 453,326 establishments were either franchisee- or franchisor-owned businesses, and, according to the International Franchise Association (IFA), that accounts for just over 8 million workers earning more than $304 billion in pay, and participating in almost $802 billion in sales. It's not just fast-food joints, either. Franchises provide almost every kind of product and service, from pet-poop scooping and gum removal to pre-schools. Like virtually every other sector, franchising has taken a hit during the recession. Yet, in addition to that projected national increase, IFA estimates that in 2012, there were 3,913 franchise businesses just here in Westchester County.

Clearly, they're a popular option for entrepreneurs new and experienced. Many would-be franchisees see established product demand, client bases, infrastructure, and, above all, results—a sure-fire firm willing to share its success with anyone possessing enough pluck to ask for a piece. But is that all there is to see? Are franchises always the right choice? "The myth that buying a franchise, especially a big-name franchise, bestows some sort of magical protection on the franchisee is both false and dangerous," says Sean Kelly, a 20-year franchising veteran and publisher of Unhappy Franchisee (unhappyfranchisee.com), a website devoted to the pitfalls of franchising.

Putnam County resident George Sichler would probably agree. He and his wife thought they were on the right track before purchasing their former Mount Kisco franchise, Whiskers and Paws, which home-delivered cat and dog food. The first several months went smoothly, but when the franchisor ran out of money, "the proprietary products I ordered and paid for were not filled," Sichler says. "I placed an order for about eight thousand dollars' worth of product and never got it; I was totally defrauded," says Sicher, calling the owner "a con man." Sichler says his startup costs were about $25,000. →

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"Then, I spent another twenty or twenty-five thousand dollars on product and five or ten thousand dollars on miscellaneous expenses." In all, he spent around $60,000.

Although "extremely satisfied" with his current franchisor, residential Realtor Jonathan Lerner, broker for Real Living Five Corners in Scarsdale, also says his first franchisor relationship, with another residential real estate group, was problematic. Lerner and other former franchise owners are plaintiffs in a litigation suit against the franchisor, alleging fraud and various violations. "We did everything right as a real estate office, but the franchise didn't give us what they promised—just excuses—so we terminated the contract."

How could things go so wrong? Mario Herman, a Washington, DC, franchise lawyer, says that, although most franchisors grasp the ramifications of failing to comply with laws regarding financial disclosure, "unscrupulous franchisors will always evade the law and defraud, regardless of the potential consequences. Self-policing only goes so far in the franchise industry." And, says Fox, because the income of franchise isn't audited, franchisors can't present anticipated earnings, which can lead to murky projections.

Even when franchisors are on the level, franchisees can be their own worst enemies. David Kaufmann, founding member and senior partner of New York City's Kaufmann Gildin Robbins & Oppenheim LLC and a writer of New York's Franchise Disclosure Law, says, "You'd be shocked at how many prospective franchisees don't read the [financial-disclosure document], cover to cover. That's a fatal error. That document's designed to provide all material information—good and bad —that any prospective franchisee should know. If you don't read it, don't claim ignorance as a defense later."

In addition, even if a franchisor is financially upfront and a franchisee is savvy, things can still head south. Sometimes franchisors fail to provide support for their franchisees, especially when it comes to locations, says Kelly. The reason is that franchisees generally want to limit competition between franchisees of the same firm, while franchisors want to achieve market saturation. Fox says that "Sandler claims to protect territories by population, but, in Westchester, there have been three franchises at one time and [the company's] not concerned whether you're a mile or twenty miles apart. In major cities, you not only compete against other training companies, but regularly find yourself competing against another Sandler franchisee."

Encroachment, Kelly says, "is one of the most contentious issues in franchising. "Most franchisors want to maximize revenue and lock out the competition. They might require a franchisee to open multiple units within a relatively close proximity, or allow other franchisees to open competing locations within their trade area. Prospective franchisees should insist on well-defined, protected territories for each of their locations, and resist development deals that force them to 'cannibalize' the sales at their existing locations."

Yet some say the prevalence of the self-cannibalizing franchisor phenomenon is over-stated. "A good franchisor will not put units too close, where it begins to impact the individual shop," says Lerner, who says that adding franchises can be part of a "brand-awareness" strategy that ultimately benefits all the franchisees. Even Kelly says that locations, while potentially contentious at some times, are mostly an easier part of the process.

"Most franchisors provide site-selection criteria," he says, "including type of locations, traffic and demographics, and pricing guidelines that the franchisee and his commercial real estate broker can use to find a suitable site. The franchisee then submits the chosen location—or locations—to the franchisor for approval. Good franchisors are very engaged in this process, helping the franchisee find an optimal location at a favorable rent. Some franchisors, like those with mall-based concepts, actually find the locations and negotiate the terms on behalf of their franchisees."

And there are many franchisors ready to praise their franchisees and their arrangements. Fewer than 10 percent of franchise agreements are either terminated or transferred annually, IFA spokesperson Matt Haller says. Kaufmann adds that "buying a franchise is complicated, but franchising's enormously profitable for both franchisor and franchisee."

In contrast to Fox, who cites lack of proper support from his franchisor as a reason for his franchise's failure, Kevin Rooney, co-owner of TGA – Premier Junior Golf and Premier Youth Tennis of Westchester County, says his franchisor was pivotal as he prepared to open in 2008. "When my partner and I got started, it was definitely overwhelming," says Rooney, who was only 22 at the time. "We had to overcome obstacles that most young adults our age don't have, but we learned. The franchise's CEO and COO helped us in areas like business development, general business support, and customer presentations."

Rooney describes his upfront costs as reasonable, but daunting for someone his age who'd never owned a business. "I had to buy a lot of equipment, carry the proper insurance, and hire and train staff." He says he spent between $35,000 and $45,000. "But I knew if I ran a quality business and committed my time and energy to its growth, I could make it back, in no time."

Rooney also mentions that due diligence was a big part of his success. Though eager to obtain a franchise, "I had a lawyer look over the FDD," Rooney says, referring to the franchise disclosure document that franchisors are required by law to provide potential franchisees prior to starting up. "If properly prepared by the franchisor, the FDD should contain extensive information about existing franchisees—including their names, addresses, and contact information—and the number of franchise outlets that were closed, sold, or terminated in the last fiscal year," says Charles Internicola, a New York City-based business and franchise lawyer.

Internicola has a few pointers for those who want to end up more like Rooney and less like Fox. Prospective franchisees, he says, should begin by researching franchises or working with a franchise broker and looking for a company that fits with their available investment capital, business skills, and interests. Once they've identified a strong candidate, those looking to own a franchise should visit the franchisor's headquarters, where they can meet the franchisor's staff on what many franchisors call "discovery day." Afterwards, prospective franchisees usually have a good idea about whether they wish to proceed, but they shouldn't just leap blindly. "At that point, they need to do their due diligence and review the FDD with their legal representative before signing a franchise agreement," he says.

Even after all that, if a franchisor thinks the franchise looks promising but the specifics of the paperwork might put him or her at a disadvantage, Kelly suggests it may well be worth haggling over the details. "Due to the down economy and lack of available funding, franchising is a buyer's market" he says. "Franchisors are much more open to negotiating the terms of their franchise agreements. While no franchisor wants to negotiate, few are in a position to refuse a qualified prospect based on reasonable requests. And

Our Top Franchises

So what are the most popular franchises around here? Well, food's big—really big, from usual suspects like Dunkin' Donuts—which tops the list with a whopping 56 units in the County—to locally founded Carvel. And that's not much of a surprise. According to the International Franchise Association, "quick-service" restaurants currently have the most establishments, employees, and economic output across the nation—to the tune of more than $200 billion for the sector, according to one recent estimate. Other successful franchise models include personal services and business services, and we've got some of those as well. Check out the top 15 below, courtesy of the public relations firm FranPR:

Franchise	Units in Westchester
Dunkin' Donuts:	56
Subway	50
McDonald's	25
Carvel	24
Ameriprise	22
The UPS Store	16
Kumon	15
Combination Dunkin' Donuts/Baskin-Robbins	13
KFC	12
Nathan's Famous	12
Better Homes and Gardens Real Estate	11
Applebee's	10
Valvoline	10
Blockbuster	9
Century 21	9

if a franchisor is unwilling or unable to yield on contract provisions that the franchisee strongly objects to, the prospective franchisee should shake hands and walk away."

Ed Nardella, president and owner of Paul Davis Restoration in Pound Ridge, and his wife, Nancy, know the drill. Before purchasing their franchise, "we employed lawyers, as well as an accountant, and I spent considerable time with the previous owner. You need to dig as deeply as you can, and you have two levels of due diligence: Find out about the franchise operation on a macro level and, on a micro level, investigate the details of that particular operation." Once approved by the company but prior to starting operations, new owners of an existing Paul Davis franchise must take a six-week training course at its training center, adds Nardella. "Additionally, the franchisor provides ongoing support in marketing, operations, and further training." Today, Nardella's franchise is in top 10 percent of the offices in his network.

Lerner was leery about another go-round with a franchisor, but he did his best to apply what he learned about the necessity of deep investigation from his first time around. "We spent several months researching the new company, visiting their offices and franchisees," he says. "I must have spent weeks on the road and visited

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twenty locations to make sure it was exactly what they said it was." Even Fox reports that his feelings about Sandler aren't entirely negative, and he has since resumed his own training and coaching business, MyEureka Solutions, LLC in Mamaroneck.

Whatever the case, most franchise owners seem to realize there are no guarantees. "I don't think any business is a sure thing in this economy," says Debbie Gartner, owner of a Floor Coverings International franchise in Elmsford. "It seems that there are plenty of new businesses—both franchises and non-franchised—that fail."

Kelly adds: "Franchisees must understand that when you buy a good franchise, you get benefits, like name recognition, as well as the burden of franchise and advertising fees, weekly royalties, and strict rules to follow. It's imperative to make sure that the tangible benefits of being part of the franchise system far outweigh the restrictions."

Still, for many, there's always an aspect that's hard to weigh so impartially. George Sichler, for instance, says he has had better luck with his current franchisor, DoodyCalls, a pooper-scooper service based in Mount Kisco. "I never thought I'd join another franchise," he says, "but the owner was such a nice guy." ●

Chuck Green has been a writer and reporter for more than 30 years, specializing in topics such as business, real estate, finance, sustainability, and healthcare. He's contributed to various publications including the Chicago Tribune, *the* Los Angeles Times, WallStreetJournal.com, Bloomberg BusinessWeek, *the* San Francisco Chronicle, *and the* Washington Post.