

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

*

IN THE MATTER OF: *

*

Taco Del Mar Franchising Corp., * Case No. 2008-0543

Respondent. *

* * * * *

CONSENT ORDER

WHEREAS, the Maryland Securities Division (the "Division") initiated an investigation into the franchise-related activities of Taco Del Mar Franchising Corp. ("Taco Del Mar") under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. 14-201 et seq. (2004 Repl. Vol. and Supp. 2008) (the "Maryland Franchise Law"); and

WHEREAS, based on information presented by the Division, the Maryland Securities Commissioner (the "Commissioner") concluded that grounds existed to allege that Taco Del Mar violated the registration and disclosure provisions of the Maryland Franchise Law, in relation to the offer and sale of Taco Del Mar franchises in Maryland; and

WHEREAS, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and without Taco Del Mar admitting or denying any violation of law, the Commissioner and Taco Del Mar have reached an agreement to enter into this Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to Section 14-210(a) of the Maryland Franchise Law.

II. STATEMENT OF FACTS

2. Taco Del Mar is a Delaware corporation with a principal office address of 2414 Southwest Andover Street, Suite D-101, Seattle, Washington 98106. Taco Del Mar offers both individual franchises and master development franchises to operate Mexican restaurants under the Taco Del Mar name and trademarks.

3. Taco Del Mar's individual franchise offering grants franchisees the right to operate one Taco Del Mar franchised restaurant at a specific location.

4. Taco Del Mar's master development franchise grants master developers the right and obligation to assist Taco Del Mar in the development and ongoing management of a number of franchised restaurants within a specific territory.

5. On April 13, 2007, Taco Del Mar filed two initial franchise registration applications with the Division to offer franchises in Maryland: one registration to offer and sell individual franchises; and another registration to offer and sell master development franchises.

6. The Division reviewed both of Taco Del Mar's initial registrations and, on May 24, 2007, sent Taco Del Mar comment letters outlining deficiencies the franchisor had to correct in order to register the Taco Del Mar franchise offering and the master development franchise offering in Maryland.

7. On October 9, 2007, Taco Del Mar filed responses to the Division's comment letters with revised franchise registration applications for both the Taco Del Mar franchise offering and master development franchise offering.

8. On October 16, 2007 the Division reviewed Taco Del Mar's responses to the Division's May 24, 2007 comment letters and sent Taco Del Mar additional comment letters outlining further

deficiencies the franchisor had to correct in order to register the Taco Del Mar franchise offering and master development franchise offering in Maryland.

9. On May 14, 2008, after having received no response from Taco Del Mar to the Division's October 16, 2007 comment letters, the Division advised Taco Del Mar that the registration applications for both the Taco Del Mar franchise offering and master development franchise offering were deemed abandoned.

10. On May 12, 2008, Taco Del Mar refiled with the Division an initial registration application to offer the Taco Del Mar individual franchise offering in Maryland.

11. The Division reviewed Taco Del Mar's refiled initial registration application and, on June 24, 2008, sent Taco Del Mar a comment letter outlining deficiencies the franchisor had to correct in order to register the Taco Del Mar franchise offering in Maryland. At that time, the Division also noted that, based on the franchise disclosure document Taco Del Mar filed with its registration application, the franchisor appeared to have offered and sold franchises in Maryland in violation of the Maryland Franchise Law. The Division asked for additional information from Taco Del Mar regarding all offers and sales of its individual franchise offering and master franchise offering in Maryland and to Maryland franchisees.

12. In response to the Division's June 24, 2008 comment letter, counsel for Taco Del Mar confirmed that Taco Del Mar sold 1 master development franchise and 2 individual franchises in Maryland or to Maryland residents when Taco Del Mar was not registered to offer or sell franchises under the Maryland Franchise Law.

13. Specifically, on September 30, 2006, Tom Murphy ("Murphy") of Moorefield, West Virginia entered into a Master Development Franchise Agreement with Taco Del Mar for a

development territory comprising portions of western Pennsylvania and Allegany County, Maryland. Murphy paid Taco Del Mar a \$90,000 development fee in conjunction with his purchase of a master development franchise. Taco Del Mar and Murphy later executed an Addendum to Murphy's Master Franchise Development Agreement to expand the territory to include all of western Maryland, as well as parts of West Virginia and Pennsylvania.

14. On August 1, 2007, an LLC owned by Murphy entered into an individual franchise agreement with Taco Del Mar in conjunction with his purchase of a Taco Del Mar franchise to be located in LaVale, Maryland. Murphy did not pay a separate franchise fee to Taco Del Mar under his unit franchise agreement because Taco Del Mar waived the franchise fee required under that unit franchise agreement. Murphy opened his individual Taco Del Mar franchise in LaVale, Maryland in October 2007.

15. Although Taco Del Mar represents that it distributed a franchise disclosure document to Murphy before his purchase of a master development franchise, the form of the disclosure document was not registered with the Division and did not contain all disclosures required under the Maryland Franchise Law. In addition, Taco Del Mar is unable to locate the acknowledgment of receipt reflecting the date that it distributed a franchise disclosure document to Murphy.

16. On April 7, 2007, Suzanne Todd ("Todd") of Cumberland, Maryland entered into an individual franchise agreement with Taco Del Mar and paid the franchisor a \$20,000 franchise fee in conjunction with her purchase of a Taco Del Mar franchise to be located in Frostburg, Maryland.

17. Todd opened her Taco Del Mar franchise in Frostburg, Maryland in December 2007.

18. Although Taco Del Mar and Murphy represent that Murphy distributed a franchise disclosure document to Todd before her purchase of an individual franchise, the form of the disclosure

document was not registered with the Division and did not contain all disclosures required under the Maryland Franchise Law. In addition, Taco Del Mar is unable to locate the acknowledgment of receipt reflecting the date that Murphy distributed a franchise disclosure document to Todd.

19. Taco Del Mar represents that it has ceased offering franchises and master development franchises in Maryland and will not offer or sell any additional franchises or master development franchises in Maryland or to any Maryland residents until Taco Del Mar has completed the registration of its franchise offerings with the Division

20. Taco Del Mar further represents that, other than the sales to Murphy and Todd described in this Consent Order (hereafter collectively “Maryland Franchisees”), Taco Del Mar did not offer or sell any Taco Del Mar franchises or master development franchises in Maryland or to any Maryland residents.

IV. CONCLUSIONS OF LAW

21. By engaging in the above activities, the Commissioner has concluded that Taco Del Mar violated §§ 14-214, 14-216 and 14-223 of the Maryland Franchise Law, and Maryland Franchise Regulations (COMAR) Section 02.02.08.04.

V. ORDER AND CONSENT

22. THE COMMISSIONER HEREBY ORDERS, AND TACO DEL MAR REPRESENTS AND CONSENTS THAT:

- A. Taco Del Mar shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Taco Del Mar shall diligently pursue its pending application to register its individual franchise offering in Maryland;
- C. Within five (5) days of the date of this Consent Order, Taco Del Mar shall send a copy

of this Consent Order, including Exhibit 1, to the Maryland Franchisees with a cover letter (“Notice of Rescission Rights”), in a form approved by the Division, informing those individuals that they are being offered an opportunity to rescind their respective Franchise Agreement and/or Master Franchise Development Agreement under the terms of the Consent Order. The Notice of Rescission Rights shall offer to rescind such agreement under the terms of the Consent Order, if that Maryland Franchisee returns to Taco Del Mar within fifteen (15) days of the Maryland Franchisee’s receipt of the Notice of Rescission Rights an executed Acceptance of Offer to Rescind Franchise Agreement/Master Franchise Development Agreement indicating the Maryland Franchisee’s desire to accept the offer to rescind the franchise. Taco Del Mar agrees to make payments to any Maryland Franchisee who returns an Acceptance of Offer to Rescind Franchise Agreement/Master Franchise Development Agreement in no more than three (3) equal installments starting no later than 30 (thirty) days and ending no later than ninety (90) days of Taco Del Mar’s receipt of that written Acceptance. The Notice of Rescission Rights also shall allow the Maryland Franchisees the option, in lieu of accepting the Offer to Rescind Franchise Agreement/Master Franchise Development Agreement as described above, to defer the decision whether or not to rescind the Franchise Agreement and/or Master Franchise Development Agreement until after Taco Del Mar has effectively registered its applicable franchise offering with the Division and delivers to the Maryland Franchisees an effectively registered Maryland franchise disclosure document.

- D. If, after receiving the Notice of Rescission Rights, any Maryland Franchisee does not return to Taco Del Mar a signed Acceptance of Offer to Rescind Franchise Agreement/Master Franchise Development Agreement within fifteen (15) days as outlined above or indicates a desire to defer the decision whether or not to rescind the Franchise Agreement/Master Franchise Development Agreement, Taco Del Mar shall file and/or diligently pursue completion of the applicable franchise registration application with the Division and, upon notification by the Division that Taco Del Mar’s franchise offering has been effectively registered for use in Maryland, send to any such Maryland Franchisee: (i) a copy of the applicable, effectively registered Maryland franchise disclosure document; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, notifying that Maryland Franchisee/Master Franchise Developer that he or she has the right to rescind his or her respective Franchise Agreement/Master Franchise Development Agreement under the terms stated in that letter;
- E. Taco Del Mar’s offer of a franchise for the limited purposes described in Paragraph 22 C of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law;
- F. Taco Del Mar acknowledge that this Consent Order is a discloseable order as described under the Maryland Franchise Law and Item 3 of the Uniform Franchise Offering Circular Guidelines and the Amended FTC Franchise Rule.

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: [Company] Notice of Offer to Rescind Franchise Agreement/Master Franchise Development Agreement

Dear _____:

In accordance with discussions our attorneys have had with the Division of Securities of the Maryland Attorney General's Office (the "Division"), [Insert name of Company] ("we") have agreed to offer rescission to all Maryland residents who entered into Franchise Agreements and/or Master Franchise Development Agreements with us and other residents who entered into Franchise Agreements and/or Master Franchise Development Agreements for franchises to be located in Maryland. This offer of rescission is made in settlement of the administrative proceeding that the Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your Franchise Agreement and/or Master Franchise Development Agreement, we agree to return to you the initial fees and/or development fee you paid, less the cost for any unreturned items and equipment included in the purchase price you paid us for the franchise. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for any of the items that you return.

In the event you elect to rescind, we will cancel your Franchise Agreement and/or your Master Franchise Development Agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments to you in no more than three (3) equal installments starting no later than 30 (thirty) days and ending no later than ninety (90) days after we receive your Acceptance of Offer to Rescind your Franchise Agreement/Master Franchise Development Agreement.

This offer will remain open for fifteen (15) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period. If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

Sincerely,

THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT/
MASTER FRANCHISE DEVELOPMENT AGREEMENT

1. I, the undersigned Franchisee, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement/Master Franchise Development Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document.
3. I hereby make the following choice to accept or refuse your offer to rescind my Franchise Agreement/Master Franchise Development Agreement:

For franchise agreement check here _____

For master franchise development agreement check here _____

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you.

_____ I do **not accept** your offer of rescission. I wish to remain a Franchisee/Master Franchise Developer under my Franchise Agreement/Master Franchise Development Agreement.

Date: _____

Franchisee

Master Franchise Developer