

ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

**Caffebene, Inc.,**

and

**Sun Kwon Kim,**

Respondents.

Case No. 2017-0040

\* \* \* \* \*

**CONSENT ORDER**  
**(as to Caffebene, Inc.)**

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into the franchise-related activities of Caffebene, Inc. and its former president, Sun Kwon Kim (collectively, “Respondents”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §14-201 et seq. (2015 Repl. Vol. and Supp. 2016) (the “Maryland Franchise Law”) and the regulations promulgated thereunder; and

WHEREAS, on the basis of that investigation, on March 22, 2017, the Maryland Securities Commissioner (the “Securities Commissioner”) issued an Order to Show Cause against Respondents, finding that grounds existed to allege that Respondents violated the registration, disclosure, and antifraud provisions of the Maryland Franchise Law, and/or a Consent Order of the Securities Commissioner in relation to offers to sell and sales of Caffebene franchises in Maryland; and

WHEREAS, on April 5, 2017, in response to the Securities Commissioner's Order to Show Cause, Respondent Caffebene, Inc. ("Caffebene") filed an Answer to the Order to Show Cause and requested a hearing; and

WHEREAS, the Securities Commissioner and Caffebene have reached an agreement in this action whereby Caffebene, without trial or final adjudication of any issue of fact or law, and without Caffebene admitting or denying any violation of law, consents to the terms of this Consent Order; and

WHEREAS, Caffebene waives its right to a hearing and any right it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, it is hereby agreed, and the Securities Commissioner hereby orders:

#### I. JURISDICTION

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

#### II. FINDINGS OF FACT

##### **A. Respondents**

2. Caffebene is a New York corporation formed in 2010 with a current principal business address of 1021 Hudson Avenue, Ridgefield, NJ 07657.

3. Caffebene offers franchises for stores that sell coffee, gelato, waffles, gourmet sandwiches and related products.

4. Sun Kwon Kim ("Kim") was formerly the President, Chairman, and Chief

Executive Officer of Caffebene.

## **B. The 2015 Consent Order**

5. On May 2, 2013, Caffebene filed an initial application with the Securities Division to register its franchise offering under the Maryland Franchise Law.

6. The Securities Division reviewed Caffebene's initial application and responded with a comment letter outlining several deficiencies, to which Caffebene never responded.

7. On January 13, 2014, the Securities Division notified Caffebene that its registration application was deemed abandoned.

8. In April 2014, counsel for Caffebene acknowledged to the Securities Division that Caffebene had previously entered into a franchise agreement dated November 26, 2013 with "WS," a Maryland resident, granting WS the right to open and operate a Caffebene franchise to be located in Maryland.

9. On June 16, 2014, Caffebene filed a new application to register the Caffebene franchise offering under the Maryland Franchise Law.

10. On January 29, 2015, the Securities Commissioner entered into a Consent Order (the "2015 Consent Order") with Caffebene to resolve the alleged violations of the Maryland Franchise Law resulting from Caffebene's offer and sale of an unregistered franchise to WS.

11. Under the 2015 Consent Order, the Securities Commissioner concluded that Caffebene violated sections 14-214, 14-216, 14-223, and 14-228, of the Maryland Franchise Law in relation to the offer and sale of a Caffebene franchise to WS in Maryland.

12. As part of the 2015 Consent Order, Caffebene agreed to immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law.

13. Caffebene also agreed that it would diligently pursue the completion of its initial franchise registration in Maryland and make two separate rescission offers to WS in the format required under the 2015 Consent Order.

14. Caffebene represented in the 2015 Consent Order that, other than the offer and sale of a franchise to WS described in that Order, Caffebene had not offered or sold any franchises in Maryland or to any Maryland residents.

15. Caffebene also represented that it had implemented new procedures to ensure that, in the future, Caffebene complies with the registration, disclosure and antifraud provisions of the Maryland Franchise Law.

16. Kim signed the 2015 Consent Order on behalf of Caffebene.

17. Caffebene's initial franchise registration was made effective by the Securities Division on March 6, 2015.

18. In April 2015, counsel for Caffebene represented to the Securities Division that Caffebene made the rescission offers to WS required under the 2015 Consent Order and that WS opted not to rescind his Caffebene franchise agreement.

### **C. The March 2014 Unregistered Franchise Sale to GC**

19. In December 2016, the Securities Division received information that, contrary to the representations Respondents made in the 2015 Consent Order, Caffebene had entered into more than one franchise agreement in Maryland prior to the date of the 2015 Consent Order.

20. According to GC, a resident of Baltimore, Maryland, in March 2014, two Caffebene representatives came to Baltimore, Maryland to meet with GC to discuss her purchase of a Caffebene franchise.

21. GC originally discussed with the Caffebene representatives the potential for

opening a Caffebene location in Maryland.

22. The Caffebene representatives suggested that GC should open two Caffebene outlets in Georgia rather than Maryland.

23. The Caffebene representatives advised GC that Caffebene would assist her in finding locations for her Caffebene outlets in Georgia.

24. On March 25, 2014, GC signed a franchise agreement granting her the right to open two Caffebene franchises to be located in Duluth, Georgia.

25. GC paid Caffebene a total fee of \$55,000 under her Caffebene franchise agreement: a \$10,000 deposit when she signed her franchise agreement, and \$45,000 on April 16, 2014.

26. GC never received a copy of a Caffebene Franchise Disclosure Document.

27. GC never received assistance from Caffebene to find a location in Georgia for her Caffebene outlet or training from Caffebene to operate a Caffebene franchise.

28. GC never opened a Caffebene outlet.

29. At the time Caffebene entered into the January 29, 2015 Consent Order with the Securities Commissioner, Caffebene never disclosed to the Securities Division that Caffebene had made an offer and sale of a Caffebene franchise to GC, a Maryland resident, in March 2014.

30. Caffebene's offer and sale of a franchise to GC in March 2014 is contrary to Respondents' express representation in the 2015 Consent Order that, other than the offer and sale of a franchise to WS, Caffebene had not offered or sold any franchises in Maryland or to any Maryland residents.

#### **D. Representations and Acknowledgments by Caffebene, Inc.**

31. Caffebene acknowledges that between March 2014 and July 2014, it entered into a total of four (4) franchise agreements with Maryland residents, including GC ("collectively "2014

Maryland Franchisees”), for the operation of Caffebene franchises.

32. At the time Caffebene entered into franchise agreements with the 2014 Maryland Franchisees, Caffebene was not registered to offer or sell franchises under the Maryland Franchise Law.

33. Caffebene accepted initial fees from the 2014 Maryland Franchisees in amounts of between \$30,000 and \$60,000.

34. None of the 2014 Maryland Franchisees ever opened a Caffebene franchise.

35. Caffebene represents that, prior to the issuance of the Securities Commissioner’s Order to Show Cause in this matter, Caffebene had fully refunded the initial fees that each of the 2014 Maryland franchisees had paid under their Caffebene franchise agreement, other than GC.

36. Caffebene represents that, after the issuance of the Securities Commissioner’s Order to Show Cause in this matter, Caffebene entered into a written agreement with GC in which the parties agreed that the Caffebene franchise agreement that GC purchased in 2014 would be rescinded, and, no later than July 31, 2018, Caffebene would refund all of the initial fees that GC paid under her Caffebene franchise agreement.

37. Caffebene represents that its current management has been effective as of December 2016 and that none of its officers or its franchise sales representatives who currently offer and sell Caffebene franchises as of the date of this Consent Order were involved in the offer or sale of franchises on behalf of Caffebene in 2014.

38. Caffebene represents that, as of December 2015, it has engaged new legal counsel to ensure that, in the future, Caffebene complies with all registration and disclosure requirements of the Maryland Franchise Law.

### III. CONCLUSIONS OF LAW

39. By engaging in the above activities, the Commissioner has concluded that Caffebene violated the 2015 Consent Order and §§14-214, 14-216, 14-223, 14-228, and 14-229 of the Maryland Franchise Law.

### IV. ORDER AND CONSENT

40. THE COMMISSIONER HEREBY ORDERS AND CAFFEBENE HEREBY CONSENTS AS FOLLOWS:

- A. Caffebene shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Caffebene acknowledges that its rescission offers to the 2014 Maryland Franchisees shall not act as a waiver or release of any private causes of action those franchisees may have under the Maryland Franchise Law;
- C. Caffebene may not offer or sell franchises in Maryland, and will not file an application with the Securities Division to re-register its franchise offering, until Caffebene provides to the Securities Division proof that it has completed payments due under the rescission to CG described in Paragraph 36;
- D. If, after completing rescission payments to GC as required in this Consent Order, Caffebene seeks to offer to sell or sell any franchises in Maryland in the future, before submitting an application with the Securities Division to re-register its franchise offering, Caffebene shall first require its officers and any others who will directly engage in the offer or sale of franchises in Maryland to attend and complete a franchise law compliance training program approved by the Securities Division;
- E. Caffebene shall pay the sum of \$5,000 to the Office of the Attorney General of Maryland as a civil monetary penalty; and
- F. Caffebene acknowledges that this Consent Order is a disclosable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

### V. JURISDICTION RETAINED

41. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

42. If Caffebene fails to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it for violating an order of the Securities Commissioner, and may take any other action authorized under the Maryland Franchise Law or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or a court finds that Caffebene has violated this Consent Order, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the Consent Order shall be deemed admitted and may be introduced into evidence against it.

VII. MODIFICATION OF CONSENT ORDER

43. The terms of this Consent Order may be modified only by a subsequent order issued by the Securities Commissioner.

**SO ORDERED:**

**Commissioner's Signature on  
File w/Original Document**

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MELANIE SENTER LUBIN  
SECURITIES COMMISSIONER

**DATE OF THIS ORDER:**

November 9, 2017

**BY CONSENT:**

Caffebene, Inc.

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By: \_\_\_\_\_, President