

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Frutta Bowls Franchising, LLC,

Case No. 2018-0107

Respondent.

* * * * *

CONSENT ORDER

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 Frutta Bowls Franchising, LLC (“Frutta Bowls”) 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. 2017) (the “Maryland Franchise Law”) and the regulations promulgated thereunder; and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that Frutta Bowls violated the registration and disclosure provisions of the Maryland Franchise Law in relation to offers and sales of franchises to be located 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 Frutta Bowls admitting or denying any violation of law, the Securities Commissioner and Frutta Bowls have reached an agreement to enter into this Consent Order; and

WHEREAS, Frutta Bowls waives its rights to a hearing and any rights 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

2. Frutta Bowls is a New Jersey Limited Liability Company with a principal business address of 2231 Route 9 North, Howell, New Jersey 07731.

3. Frutta Bowls offers and sells franchises for health food eateries that offer bowls and smoothies.

4. On June 15, 2017, Frutta Bowls filed an initial registration application with the Securities Division to offer and sell franchises under the Maryland Franchise Law.

5. On August 22, 2017, the Securities Division sent counsel for Frutta Bowls a comment letter in response to Frutta Bowls' initial franchise registration, identifying at least 53 deficiencies that Frutta Bowls had to correct in order to register the Frutta Bowls franchise offering under the Maryland Franchise Law.

6. In November 2017, Frutta Bowls engaged new attorneys to advise it and to finalize the registration of Frutta Bowls' franchise application under the Maryland Franchise Law.

7. On December 21, 2017, the Securities Division reviewed a corrected franchise registration application filed by Frutta Bowls. Among the comments that the Securities Division

raised was a request for an explanation as to why Frutta Bowls' Franchise Disclosure Document reflects that it granted two New Jersey franchisees the right to develop Frutta Bowls franchise outlets in territories within the State of Maryland, when Frutta Bowls had never been registered to offer and sell franchises under the Maryland Franchise Law.

8. In response to the Securities Division's inquiry, Frutta Bowls advised the Securities Division that it signed a franchise agreement dated July 19, 2017 with Loyal Lab, Inc. ("Loyal Lab"), a Delaware corporation with a principal business address in New Jersey. The franchise agreement that Frutta Bowls entered into with Loyal Lab granted Loyal Lab the right to open a Frutta Bowls franchise to be located in Ocean City, Maryland.

9. Frutta Bowls represents that it provided a Franchise Disclosure Document to Loyal Lab at least fifteen days before Loyal Lab executed its franchise agreement for the Ocean City, Maryland franchise outlet. The form of FDD that Frutta Bowls gave to Loyal Lab, as provided to the Securities Division, does not include all of the disclosures the Securities Division requires for registration under the Maryland Franchise Law and does not include any financial statements, as required under both the Maryland Franchise Law and the FTC Franchise Rule.

10. Frutta Bowls further advised the Securities Division that, on December 7, 2017, Frutta Bowls granted a temporary license to RC, a resident of New Jersey, granting him the right to develop a Frutta Bowls outlet at the University of Maryland.

11. Frutta Bowls represents that the license it granted to RC did not require payment of any license fee or royalty fee to Frutta Bowls. Although RC did not execute a formal franchise agreement with Frutta Bowls in relation to his license to operate a Frutta Bowls outlet at the University of Maryland location, Frutta Bowls' license to RC anticipates that he would sign a

Frutta Bowls franchise agreement once Frutta Bowls registered its franchise offering with the Securities Division, and he would enter into a lease for a Frutta Bowls franchise location.

12. Frutta Bowls represents that it provided a Franchise Disclosure Document to RC in conjunction with granting RC a license to develop a Frutta Bowls at the University of Maryland. The form of FDD that Frutta Bowls gave to RC, as provided to the Securities Division, does not include all of the disclosures the Securities Division requires for registration under the Maryland Franchise Law and does not include any financial statements, as required under both the Maryland Franchise Law and the FTC Franchise Rule.

13. Frutta Bowls acknowledges that at the time Frutta Bowls entered into a franchise agreement with Loyal Lab and granted a license to RC, Frutta Bowls was not registered with the Securities Division to offer or sell franchises under the Maryland Franchise Law.

14. Frutta Bowls represents that, other than the offer and sale of a franchise to Loyal Lab and a license to RC, Frutta Bowls has not offered to sell or sold a Frutta Bowls franchise or license to any Maryland resident or to any other residents related to the operation of a Frutta Bowls outlet to be located in Maryland.

15. Frutta Bowls represents that it has implemented new procedures to ensure that, in the future, it complies with all registration and disclosure requirements under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

16. By engaging in the above activities, the Securities Commissioner has concluded that Frutta Bowls violated §§14-214, 14-216, 14-223, and 14-228 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

17. THE SECURITIES COMMISSIONER HEREBY ORDERS AND FRUTTA BOWLS HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. Frutta Bowls shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Within five (5) days of its receipt of the fully executed Consent Order of the Securities Commissioner, Frutta Bowls shall send to both Loyal Lab and RC (collectively “Maryland Franchisees”) the following: (i) a copy of this signed Consent Order, (ii) a copy of an applicable, effectively registered Maryland FDD for the Frutta Bowls’ franchise offering; and (iii) a letter, in substantially the form attached to this letter as Exhibit 1 notifying the Maryland Franchisees that they have the right to rescind their Frutta Bowls’ franchise/license under the terms stated in that letter.
- C. Frutta Bowls agrees that if a Maryland Franchisee accepts Frutta Bowls’ offer to rescind in response to its Offer to Rescind Franchise/License Agreement required under this Consent Order, Frutta Bowls will complete payments, if any, to that Maryland Franchisee within thirty (30) days of Frutta Bowl’s receipt of that written Acceptance;
- D. Frutta Bowls acknowledges that this Consent Order is a discloseable 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

18. 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

19. If Frutta Bowls 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 Frutta Bowls 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

20. 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 Documents**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

March 12, 2018

BY CONSENT:

Frutta Bowls, LLC

By:
Title:

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

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

Dear _____:

In accordance with discussions our attorneys have had with the Securities Division of the Office of the Attorney General of Maryland (the "Securities Division"), [Insert name of Company] ("we") have agreed to offer rescission to persons who entered into Franchise Agreements or License Agreements with us related to the operation of a Frutta Bowls outlet to be located in Maryland to settle allegations that we entered into a franchise or license agreement in violation of the registration and disclosure provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the Securities 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 or license agreement, we agree to return to you all initial fees you paid us, if any, and cancel all post-term and non-competition obligations you may have to us under the Franchise Agreement or License Agreement for your Maryland Frutta Bowls location, other than those obligations discussed in this letter.

In the event you elect to rescind, we will cancel your Maryland franchise agreement or license 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 within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise/License Agreement.

This offer will remain open for thirty (30) 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 Securities Division (410-576-6368).

Sincerely,

THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE/LICENSE AGREEMENT

1. I, the undersigned licensee, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement/License 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/License Agreement:

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 or licensee under my Franchise or License Agreement for my Maryland outlet.

Date: _____

Franchisee/Licensee