

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Caffebene, Inc.,

Respondent.

Case No. 2017-0040

* * * * *

ORDER TO SHOW CAUSE

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. (“Caffebene”) and its former president, Sun Kwon Kim 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, the basis of that investigation by the Securities Division, 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 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 filed an Answer to the Order to Show Cause; and

WHEREAS, the Securities Division and Caffebene entered into an agreement to settle the

Securities Division's allegations against Caffebene; and

WHEREAS, on November 9, 2017, the Securities Commissioner issued a Consent Order (the "2017 Consent Order") against Caffebene in which she concluded that Caffebene violated a previous Consent Order of the Securities Commissioner and §§ 14-214, 14-216, 14-223, and 14-229 of the Maryland Franchise Law; and

WHEREAS, under the 2017 Consent Order, the Securities Commissioner ordered and Caffebene agreed that Caffebene would pay the sum of \$5,000 to the Office of the Attorney General of Maryland as a civil monetary penalty; and

WHEREAS, Caffebene has failed to pay the sum of \$5,000 to the Office of the Attorney General of Maryland as a civil monetary penalty;

NOW, THEREFORE, the Securities Commissioner hereby orders Caffebene to show cause why a final order should not be entered ordering it to permanently cease and desist from offering franchises in violation of the Maryland Franchise Law and Consent Orders of the Securities Commissioner.

The Securities Commissioner alleges the following as a basis for this Order:

I. JURISDICTION

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

II. STATEMENT OF FACTS

A. Respondents

2. Caffebene, Inc. ("Caffebene") is a New York corporation formed in 2010 with a

last known principal business address of 1021 Hudson Avenue, Ridgefield, NJ 07657.

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

4. On November 19, 2017, the Securities Commissioner issued a Consent Order (the “2017 Consent Order”) against Caffebene in which she concluded that Caffebene violated a previous Consent Order of the Securities Commissioner issued on January 29, 2015 (the “2015 Consent Order”) and §§14-214, 14-216, 14-223, and 14-229 of the Maryland Franchise Law.

5. Under the 2017 Consent Order, among other terms, the Securities Commissioner ordered and Caffebene agreed that Caffebene would pay a civil monetary penalty to the Office of the Attorney General in the amount of \$5,000. A copy of the 2017 Consent Order is attached to this Order to Show Cause as Exhibit 1.

6. On October 18, 2017, Caffebene sent a \$5,000 check dated October 13, 2017 to the Maryland Attorney General as payment of the civil monetary penalty required under the 2017 Consent Order.

7. The Office of the Attorney General deposited Caffebene’s \$5,000 check into the Office’s account at Bank of America on or around November 14, 2017.

8. On November 19, 2017, after receiving notice that the Office of the Attorney General received \$5,000 Caffebene’s check as payment of the civil monetary penalty due under the 2017 Consent Order, the Securities Commissioner signed the 2017 Consent Order.

9. On November 20, 2017, the Securities Commissioner received notification from Bank of America that Caffebene’s \$5,000 check was returned as “unpaid for insufficient funds.”

10. On November 28, 2017, counsel for the Securities Division sent an e-mail to counsel for Caffebene to advise her that the \$5,000 check from Caffebene for the civil monetary

penalty due under the Consent Order was returned as unpaid for insufficient funds.

11. On November 29, 2017, counsel for the Securities Division sent a letter by certified mail to Caffebene, with a copy to Caffebene's counsel, notifying Caffebene that its \$5,000 check for the civil monetary penalty required under the Consent Order was returned as unpaid for insufficient funds and demanding payment of that amount by December 20, 2017.

12. Caffebene received the Securities Division's November 29, 2017 certified letter on or before December 7, 2017.

13. Caffebene has never responded to the Securities Division's e-mail or certified letter advising that Caffebene's \$5,000 check was returned for insufficient funds and that it must pay the \$5,000 civil monetary penalty due under the 2017 Consent Order.

14. Caffebene has never paid the \$5,000 to the Office of the Attorney General as required under the Consent Order or contacted the Securities Division to discuss payment of the civil monetary penalty assessed under the 2017 Consent Order. Attached to this Order to Show Cause as Exhibit 2 is an Affidavit of the Custodian of Records of the Securities Division of the Maryland Attorney General's Office confirming that the \$5,000 check that Caffebene paid to the Office of the Attorney General in October 2017 was returned for insufficient funds and that no further payments have been received from Caffebene by the Office of the Attorney General.

15. Under the 2017 Consent Order, the Securities Commissioner retained jurisdiction over this matter for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

16. Under the 2017 Consent Order, if Caffebene fails to comply with any term of that Consent Order, the Securities Division may bring administrative or judicial proceedings against it to enforce the Consent Order or to sanction it for violating an order of the Securities Commissioner.

In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner finds that Caffebene violated the 2017 Consent Order, the Statement of Facts and violations of the Maryland Franchise Law alleged in the 2017 Consent Order are deemed admitted and may be introduced into evidence against Caffebene.

17. By failing to pay the \$5,000 civil monetary penalty due under the 2017 Consent Order, Caffebene has failed to comply with the terms of that 2017 Consent Order.

COUNT ONE
(Violation of Consent Order of Securities Commissioner)

WHEREAS, Caffebene entered into the 2017 Consent Order with the Securities Commissioner to resolve alleged violations of the Maryland Franchise Law and the 2015 Consent Order in relation to offers and sales of Caffebene franchises in Maryland; and

WHEREAS, under the 2017 Consent Order, the Securities Commissioner concluded that Caffebene violated sections 14-214, 14-216, 14-223, and 14-228 of the Maryland Franchise Law and the 2015 Consent Order; and

WHEREAS, under the 2017 Consent Order, Caffebene represented, among other things, that Caffebene would pay the sum of \$5,000 to the Office of the Attorney General as a civil monetary penalty; and

WHEREAS, Caffebene's \$5,000 check to the Office of the Attorney General was returned for insufficient funds, and Caffebene has not replaced that check or otherwise made payment of the civil monetary penalty required under the 2017 Consent Order;

NOW THEREFORE, IT IS HEREBY ORDERED, that Caffebene show cause why it should not be ordered to permanently cease and desist from the offer and sale of franchises in

Maryland in violation of the provisions of the Maryland Franchise Law and of Consent Orders of the Securities Commissioner.

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that the respondent in this action shall file with the Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state. The Answer also shall indicate whether a respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any respondent to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. Failure of any respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing that Respondent to permanently cease and desist from violation of the Maryland Franchise Law.

DATE OF THIS ORDER

January 8, 2018

SO ORDERED:

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

Melanie Senter Lubin
Securities Commissioner