

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Tasty Baking Company,

Respondent,

Case No. 2019-0086

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an inquiry into the franchise-related activities of Tasty Baking Company (“Tasty”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-201 et seq. (2015 Repl. Vol. and Supp. 2018) (the “Maryland Franchise Law”); and

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

WHEREAS, Tasty 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 ORDERED AND DECREED:

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

2. Tasty is a Pennsylvania corporation with a principal business address of 4300 South 26th Street, Philadelphia, Pennsylvania 19112.

3. Tasty offers and sells franchises in the form of distributorships to independent operators who sell and distribute bakery products.

4. Tasty has been registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law, or filed an exemption from registration, for various periods since 2003. Tasty's most recent franchise registration in Maryland was made effective on January 22, 2015 and expired January 22, 2016.

5. On October 31, 2018, Tasty refiled an initial application to register the Tasty franchise offering under the Maryland Franchise Law.

6. On December 3, 2018, the Securities Division responded to Tasty's franchise registration application with a comment letter outlining deficiencies that Tasty had to address before the Securities Division would register the Tasty franchise offering.

7. Among the comments the Securities Division made in its December 3, 2018 comment letter was a request for an undertaking that that the franchisor had not offered or sold any franchises in Maryland after January 22, 2016.

8. On April 12, 2019, counsel for Tasty acknowledged that Tasty had offered and sold franchises in Maryland during the franchisor's period of lapsed registration. Specifically, Tasty acknowledged that after January 22, 2016, Tasty sold franchises to four (4) distributors located in Maryland ("Maryland Distributors").

9. Tasty further acknowledged that in November 2018, one of the Maryland Distributors, the owner of Amir's Cakes, Inc. ("Amir"), sold his distribution rights to Faltaos, Inc. ("Faltaos") for more than the purchase price Amir paid to Tasty.

10. Amir and Faltaos entered into an Assignment/Assumption Agreement granting Faltaos the distribution rights that Amir had under his Distributor Agreement with Tasty. Tasty did not require Faltaos to enter into a new Distributor Agreement with Tasty, but Amir paid Tasty a 2% administrative fee related to the assignment of Amir's Distributor Agreement.

11. Tasty further acknowledged that in March 2019, another one of the Maryland Distributors, the owner of Nuebauer Distribution, Inc. ("Nuebauer"), sold his distribution rights to Johnson General Services, Inc. ("Johnson") for more than the purchase price Nuebauer paid to Tasty.

12. Nuebauer and Johnson entered into an Assignment/Assumption Agreement granting Johnson the distribution rights that Nuebauer had under his Distributor Agreement with Tasty. Tasty did not require Johnson to enter into a new Distributor Agreement with Tasty, but Nuebauer paid Tasty a 1% administrative fee related to the assignment of Nuebauer's Distributor Agreement.

13. Tasty further acknowledged that in September 2019, another one of the Maryland Distributors, the owner of Daisy Mae Distribution, Inc. ("Paglia"), sold his distribution rights to K&B Distributing, Inc. ("Kefauver") for more than the purchase price Paglia paid to Tasty.

14. Paglia and Kefauver entered into an Assignment/Assumption Agreement granting Kefauver the distribution rights that Paglia had under the Distributor Agreement with Tasty. Tasty did not require Kefauver to enter into a new Distributor Agreement with Tasty. Tasty did not charge Paglia with any administrative fee related to the assignment of Paglia's Distributor Agreement.

15. Tasty represents that, other than offers to sell and sales of distribution rights to the Maryland Distributors described in this Consent Order, Tasty did not offer or sell a Tasty franchise in Maryland or to any Maryland residents after January 22, 2016.

III. CONCLUSIONS OF LAW

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

IV. ORDER AND CONSENT

17. THE COMMISSIONER HEREBY ORDERS, AND TASTY REPRESENTS AND CONSENTS THAT:

- A. Tasty shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Within ten (10) days of its receipt of a fully executed Consent Order of the Commissioner, Tasty shall send to the one remaining Maryland Distributor, St. Maria Corporation (Owner: Reda Saweeres) a copy of the signed Consent Order along with a "Notice of Rescission Rights," in the form attached as Exhibit 1, informing Mr. Saweeres that he is being offered an opportunity to immediately rescind his Tasty Distributor Agreement under the terms of this Consent Order. If Mr. Saweeres accepts Tasty's offer to rescind his Distributor Agreement in response to the Notice of Rescission Rights, Tasty agrees to complete payment to him within 30 (thirty) days of Tasty's receipt of that written Acceptance;
- C. Tasty shall diligently pursue the registration of its Tasty franchise offering with the Securities Division. Upon notification by the Securities Division that Tasty's franchise offering has been effectively registered in Maryland, if Mr. Saweeres did not previously accept Tasty's offer to rescind, Tasty shall send him the following: (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 2, notifying Mr. Saweeres that, now that Tasty is effectively registered to offer franchises in Maryland, Mr. Saweeres has a second opportunity to rescind his Tasty Distributor Agreement under the terms stated in that letter;

- D. Tasty's offer of a franchise for the limited purposes described in Paragraph 17(B) of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law;
- E. Tasty shall return to Amir, with no conditions, the 2% administrative fee Amir paid to Tasty related to the assignment of his Distributor Agreement to Faltaos, along with a copy of this Consent Order;
- F. Tasty shall return to Nuebauer, with no conditions, the 1% administrative fee Nuebauer paid to Tasty related to the assignment of his Distributor Agreement to Johnson, along with a copy of this Consent Order.
- G. Tasty shall pay the Office of the Attorney General the sum of \$500.00 as a civil monetary penalty; and
- H. Tasty 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 Securities 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 Tasty 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 Tasty 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.

DATE OF THIS ORDER

October 4, 2019

SO ORDERED:

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

Melanie Senter Lubin
Securities Commissioner

BY CONSENT:

Tasty Baking Company

By: Tom Bux, General Manager

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Franchise Notice of Rescission Rights

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") and the enclosed Consent Order, Tasty Baking Company ("Tasty" or "we") have agreed to offer rescission to all current Maryland distributors who entered into franchises with us in the form of Distributor Agreements after January 22, 2016, when our franchise registration in Maryland last expired. 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 Distributor Agreement, we agree to return to you all initial franchise fees you paid, less the balance outstanding at the time of rescission or termination of your agreement of any loans that you may have obtained from TBC Financial Services, Inc. ("TBC") to finance your franchise purchase. We will also cause to be canceled the outstanding amount of any such loans.

In the event you elect to rescind, you will give up your Tasty Distributorship. 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 and cause TBC to cancel any applicable loans within thirty (30) days after we receive your Acceptance of Offer to Rescind.

If you do not rescind your franchise now, or do not return the acceptance or refusal of Offer to Rescind Franchise, you will be given a second opportunity to rescind your franchise, after we have completed the registration process. When that registration is complete, we will send you a copy of our latest registered Franchise Disclosure Document and a new letter offering to rescind your franchise purchase under the same terms outlined in this letter.

Please check the appropriate place below and return a signed copy of this letter to the undersigned. This offer will remain open for thirty (30) days from the date you receive this letter. If you do not respond within those 30 days, the offer expires, and we assume you have rejected this offer of rescission.

If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Securities Division (410-576-6368). Sincerely,

Tasty Baking Company

Enclosure (Consent Order)

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Rescission Offer 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.

CHECK ONE

_____ I hereby **accept** your offer of rescission. I 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 wish to accept your offer of rescission.** I wish to remain a distributor under my current Tasty Distributor Agreement. I understand that I will be given a second opportunity to rescind my franchise purchase once the franchisor has effectively registered its franchise offering with the Securities Division under the Maryland Franchise Law.

Date: _____

Distributor

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Franchise Rescission Offer

Dear :

As you recall, Tasty Baking Company (“Tasty” or “we”) agreed to offer rescission to all current Maryland distributors who entered into franchises with us in the form of Distributor Agreements after January 22, 2016 under the Consent Order we previously sent you. 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 Distributor Agreement, we agree to return to you all initial franchise fees you paid, less the balance outstanding at the time of rescission or termination of your agreement of any loans that you may have obtained from TBC Financial Services, Inc. (“TBC”) to finance your franchise purchase. We will also cause to be canceled the outstanding amount of any such loans.

In the event you elect to rescind, you will give up your Tasty Distributorship. 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 and cause TBC to cancel any applicable loans within thirty (30) days after we receive your Acceptance of Offer to Rescind.

Please check the appropriate place below and return a signed copy of this letter to the undersigned. This offer will remain open for thirty (30) days from the date you receive this letter. If you do not respond within those 30 days, the offer expires, and we assume you have rejected this offer of rescission.

If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Securities Division (410-576-6368).

Sincerely,

Tasty Baking Company

cc: Maryland FDD

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Rescission Offer 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.

CHECK ONE

_____ I hereby **accept** your offer of rescission. I 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 wish to accept your offer of rescission.** I wish to remain a distributor under my current Tasty Distributor Agreement.

Date: _____

Distributor