

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Frost Shades, LLC,

Respondent.

Case No. 2021-0171

* * * * *

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 Frost Shades, LLC (“Frost Shades”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §§14-201 et seq. (2015 Repl. Vol.) (the “Maryland Franchise Law”); 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 Frost Shades violated the registration, disclosure, and filing provisions of the Maryland Franchise Law in relation to the offer and sale of Frost Shades franchises to a Maryland resident; 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 Frost Shades admitting or denying any violation of law, the Securities Commissioner and Frost Shades have reached an agreement to enter into this Consent Order; and

WHEREAS, Frost Shades 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. Frost Shades is a Tennessee limited liability company with a principal business address of 3212 West End Avenue, #201, Nashville, TN 37203.

3. Frost Shades offers franchises for businesses that provide commercial and residential window tinting services.

4. On February 28, 2021, Frost Shades filed an initial franchise registration with the Securities Division. The Securities Division notified Frost Shades that its franchise registration was effective under the Maryland Franchise Law as of May 20, 2021, which registration was due to expire on May 20, 2022.

5. As a condition of registering Frost Shades under the Maryland Franchise Law, the Securities Division required Frost Shades to agree to some type of financial assurance condition. In response, Frost Shades included a provision in its franchise agreement and Maryland Franchise Disclosure Document agreeing to defer receipt of initial fees until the franchisor completed its pre-opening obligations to Maryland franchisees and those franchisees were open

for business.

6. The Maryland Franchise Disclosure Document that Frost Shades filed for registration with the Securities Division in February 2021 discloses that Frost Shades has no Maryland franchisees.

7. Prior to Frost Shades' effective registration under the Maryland Franchise Law, however, on December 21, 2020, Frost Shades had entered into a franchise agreement with "AG", a resident of Frederick, Maryland. The franchise agreement that Frost Shades signed with AG listed the business location and territories granted under AG's franchise agreement as "state of Delaware."

8. Also on December 21, 2020, Frost Shades and AG entered into a confidential addendum to AG's franchise agreement (the "Confidential Addendum") granting AG the right to operate a Frost Shades business in four counties in Maryland when the Frost Shades' franchise registration was approved for use in Maryland.

9. AG has never resided outside of Maryland and had no plans of operating his franchise territory outside of Maryland. AG has advised the Securities Division that these facts were discussed with representatives of Frost Shades, and that the franchisor drafted the Confidential Addendum to AG's franchise agreement in order to memorialize that his franchise territory was always intended to be within Maryland.

10. Frost Shades did not defer receipt of initial fees from AG.

11. AG alleges that the franchisor did not provide the support to him under his franchise agreement. Prior to April 2021, AG obtained legal counsel seeking to terminate his franchise agreement with Frost Shades. AG's legal counsel contacted Frost Shades and raised

questions about AG's franchise agreement.

12. On July 14, 2021, counsel for Frost Shades wrote to the Securities Division to advise that Frost Shades may have committed an "unintentional" issue of non-compliance with the Maryland Franchise Law in the form of a potential unregistered sale of a Frost Shades franchise to a Maryland resident.

13. Specifically, in his July 14, 2021 letter, counsel for Frost Shades advised the Securities Division that on December 21, 2020, Frost Shades entered into the franchise agreement with AG, who may have been a resident of Frederick, Maryland.

14. Counsel for Frost Shades explained to the Securities Division that Frost Shades was not represented by counsel when it entered into its franchise agreement with AG.

15. Frost Shades did not disclose to the Securities Division the Confidential Addendum that AG signed granting him the right to transfer his Delaware territory under his franchise agreement to four counties in Maryland when the franchisor's registration in Maryland was approved.

16. Frost Shades further represents that AG is a franchise broker, and that he and the franchise brokerage firm with which he is affiliated may have received a commission for the sale of the Frost Shades franchise.

17. Frost Shades now represents that, other than its franchise agreement with AG, Frost Shades has not entered into any franchise agreements with any Maryland residents or with any other residents granting them the right to operate a Frost Shades business to be located in whole or in part in Maryland.

18. As part of its review of this matter, the Securities Division also questioned the

accuracy of the financial statements that Frost Shades included in its Maryland Franchise Disclosure Document. Frost Shades agreed to review those financial statements with the Certified Public Accountant who signed the audit opinion related to those financial statements and obtain new audited financial statements, if necessary.

19. Frost Shades also represents that it has suspended all offers and sales of its franchise offering in Maryland or to any Maryland resident pending the resolution of this matter and until it has obtained new audited financial statements prepared in accordance with generally accepted accounting principles by a licensed Certified Public Accountant.

III. CONCLUSIONS OF LAW

20. By engaging in the above activities, the Securities Commissioner has concluded that Frost Shades violated sections 14-214, 14-216, 14-223, and 14-231 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

21. THE SECURITIES COMMISSIONER HEREBY ORDERS AND FROST SHADES HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. Frost Shades shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Frost Shades will promptly file and diligently pursue an amendment to its Maryland franchise registration, which amended registration will include, among other updated disclosures, newly audited financial statements that comply with Maryland's Franchise Regulations.
- C. Within ten (10) days of its receipt of a fully executed Consent Order of the Securities Commissioner, Frost Shades shall send by Federal Express to AG the following: (i) a copy of this executed Consent Order; and (ii) a letter, in

substantially the form attached to this Consent Order as Exhibit 1, informing AG that his is being offered an opportunity to rescind his franchise agreement with Frost Shades under the terms of this Consent Order;

- D. Frost Shades 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

22. 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

23. If Frost Shades 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 Frost Shades 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

24. 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**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

December 10, 2021

BY CONSENT:

Frost Shades, LLC

By: Leo Goldberger, CEO

FORM
(On Company Letterhead)

Via Federal Express

Re: Rescission Offer

Dear _____:

In accordance with discussions our attorneys have had with the Division of Securities of the Maryland Attorney General's Office (the "Securities Division"), Frost Shades, LLC ("we") have agreed to offer rescission to you of your Franchise Agreement. This offer of rescission is made in settlement of the administrative proceeding that the Securities Division could 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 your Frost Shades Franchise Agreement, we agree to return to you the initial fees you paid us under that Franchise Agreement but less any broker commissions that were paid to you as a result of your signing of the Franchise Agreement. You will give up any rights to use our trademarks, and you may not use or disclose any of our trade secrets and any of our confidential and proprietary information. If you rescind, we will refund your initial fees within thirty (30) days after we receive your Acceptance of Offer to Rescind.

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 Division (410-576-6368).

Sincerely,

Enclosure: Consent Order

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

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 and agree to not use your trademarks 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 at this time.** I wish to remain a franchisee under my Franchise Agreement.

Date: _____

Franchisee