BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:	*	
Prosperity System, Inc., d.b.a. Pizza Boli's	*	Case No. 2021-0119
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 Prosperity System, Inc., d.b.a. Pizza Boli's ("Prosperity") 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 Prosperity violated the registration and disclosure provisions of the Maryland Franchise Law, prior Consent Orders and a Consent Agreement, and an Escrow Order of the Securities Commission, in relation to offers and sales of Pizza Boli's 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, the Securities Commissioner and Prosperity have reached an agreement to enter this Consent Order; and

WHEREAS, Prosperity 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 admits to the Findings of Fact and Conclusions of Law contained in 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. Respondent

2. Prosperity is a Maryland corporation with a principal business address of 3 Greenwood Place, Suite 208, Pikesville, MD 21208.

3. Prosperity offers and sells franchises for restaurants using the name Pizza Boli's that sell pizza and other foods.

4. Prosperity has been registered with the Securities Division to offer franchises under the Maryland Franchise Law at various times beginning in 1997.

B. Background

5. In January 2002, Prosperity entered into a Consent Order with the Securities Commissioner to resolve alleged violations of the registration and disclosure provisions of the Maryland Franchise Law. In that first Consent Order, Prosperity agreed, among other things, to make rescission offers to five unregistered Maryland franchisees, send an employee to a

franchise law compliance program, and stop offering or selling franchises in violation of the Maryland Franchise Law.

6. In April 2002, Prosperity entered into a second Consent Order with the Securities Commissioner to resolve alleged violations of the registration and disclosure provisions of the Maryland Franchise Law when, after Prosperity employees and officers completed a franchise law compliance program, the franchisor advised the Securities Division of three additional unregistered sales in addition to the unregistered sales that were the subject of the first Consent Order. In that second Consent Order Prosperity agreed, among other things, to employ a franchise law compliance training program or trainer to monitor the company's franchise sales activity in Maryland for a period of two years and stop offering or selling franchises in violation of the Maryland Franchise Law.

7. After additional violations were alleged of the Maryland Franchise Law, in May 2004, Prosperity entered into a Consent Order for Permanent Injunction with the Circuit Court for Baltimore City and related Consent Agreement ("2004 Consent Agreement") with the Securities Commissioner, to resolve alleged violations of the registration and disclosure provisions of the Maryland Franchise Law when the franchisor offered and sold two franchises in Maryland at time its franchise registration had lapsed with the Securities Division, and it had a new franchise application pending registration. In that 2004 Consent Agreement, Prosperity consented to entry of a permanent injunction, and agreed to: make rescission to the unregistered franchisees; pay $5,000 to the Securities Division for administrative expenses related to its investigation; and permanently cease and desist from engaging in acts and practices that violate the Maryland Franchise Law, any regulation adopted thereunder, and any orders passed thereunder.

8. In 2017, when Prosperity was subject to an Escrow Order of the Securities Commissioner, the Securities Division received information that Prosperity did not escrow initial fees it received that a Maryland franchisee paid to Prosperity under a franchise agreement made in connection with conversion of an existing pizza restaurant to a Pizza Boli's restaurant. To resolve this issue, Prosperity provided an undertaking to the Securities Division that the franchisor would not in the future, and as long as it was subject to an Escrow Order of the Securities Commissioner, accept initial fees from any franchisee or transferee if Prosperity provides to the franchisee any pre-opening obligations, whether training, location assistance or otherwise.

C. Offer and Sale of Unregistered Franchises in 2018

9. Prosperity was not registered to offer franchises under the Maryland Franchise Law for several months between July 25, 2018 and December 8, 2018.

10. In May 2021, counsel for Prosperity advised the Securities Division that it had come to the franchisor's attention that, during the previous three years, Prosperity may have sold franchises that did not comply with the Maryland Franchise Law and an Escrow Order of the Securities Commissioner.

11. Specifically, Prosperity acknowledged to the Securities Division that on July 31, 2018, Prosperity entered into a franchise agreement with a Waldorf, Maryland franchisee four (4) days after Prosperity's franchise registration under the Maryland Franchise Law had expired.

12. Prosperity further acknowledged that on November 28, 2018, Prosperity entered into a franchise agreement with a Ft. Washington, Maryland franchisee after Prosperity filed an application to register its franchise offering under the Maryland Franchise Law but before that registration was made effective by the Securities Division.

D. Prosperity is Subject to an Escrow Order

13. Since at least 1999, Prosperity has been subject to an Escrow Order (the "Escrow Order") of the Securities Commissioner pursuant to COMAR 02.02.08.08C, requiring Prosperity to deposit all franchise fees, within 48 hours of the receipt of those funds, into a separate trust account with a national bank located in Maryland or a Maryland bank or trust company.

14. Under the Escrow Order, any application for the release of escrowed funds must be made to the Securities Commissioner upon demonstration that the franchisor has completed its pre-opening obligations with respect to each franchise for which the release of funds is sought.

15. In 2018, Prosperity entered into an Escrow Agreement with Bank of America, N.A. to establish an Escrow Account ("Prosperity Escrow Account") to fulfill Prosperity's obligations under the Escrow Order.

16. Under the Bank of America Escrow Agreement, as required under COMAR 02.02.08.08C, Prosperity was to deposit into the Prosperity Escrow Account all monies obtained from each franchisee who was either a resident of the State of Maryland or who contracted to operate a franchise business within the State of Maryland.

17. Under COMAR 02.02.08.08D, funds placed in an Escrow Account under an Escrow Order of the Securities Commissioner must remain escrowed until the Securities Commissioner authorizes the release of those funds.

18. Under COMAR 02.02.08.08E, in order to obtain funds held in an Escrow Account, a franchisor must file with the Securities Division, among other things, a franchisor's application to the Securities Commissioner to authorize the released of escrowed funds to the franchisor, along with: (a) a statement by the franchisor that all proceeds from the sale of

franchises have been placed with the depositary in accordance with the terms and conditions of the Escrow Order; (b) a statement of the depositary setting forth the aggregate amount of escrowed funds deposited with the depositary and the franchisor's account number; (c) a list of franchisees and the amounts held in the escrow account for the account of each franchisee; and (d) with respect to each franchisee for which a release of funds is sought, the amount of funds sought to be released and a written certification from the franchisee stating the amount of funds to be released and acknowledging that the franchisor has completely performed its obligations under the franchise agreement to provide real estate, improvements, equipment, inventory, training or other items.

19. Under the Bank of America Escrow Agreement, Bank of America was to pay out funds from the Prosperity Escrow Account only upon receipt of a written notice from the Securities Commissioner that she takes no exception to the release of funds to Prosperity.

E. Prosperity Failed to Comply with the Escrow Order

20. Prosperity acknowledged to the Securities Division that between December 2017 and January 2019, Prosperity accepted franchise fees from three (3) Maryland franchisees who entered into franchise agreements subject to registration under the Maryland Franchise Law, but Prosperity failed to deposit those fees into the Prosperity Escrow Account as required under the Escrow Order and COMAR 02.02.08.08D.

21. The three Maryland franchisees who entered into franchise agreements with Prosperity from whom Prosperity received franchise fees that Prosperity did not deposit into the Prosperity Escrow Account as required under the Escrow Order are in the following Maryland locations: Waldorf, Ft. Washington, and Lexington Park, respectively.

22. Prosperity further acknowledged to the Securities Division that on January 12, 2018, it entered into a franchise agreement with a Lanham, Maryland franchisee (referred to as "Glen Dale") and deposited the $34,000 initial franchise fee that the franchisee paid to Prosperity into the Prosperity Escrow Account, but Prosperity later transferred those funds from the Prosperity Escrow Account into the franchisor's non-escrow bank account. Prior to transferring the funds received from the Glen Dale franchisee from the Prosperity Escrow Account to Prosperity's non-escrow bank account, Prosperity did not seek nor obtain a written release from the Securities Commissioner that she takes no exception to the release of those funds as required under COMAR 02.02.08.08E and the Bank of America Escrow Agreement.

23. Prosperity represents that, as of the date of this Consent Order, Prosperity has completed all pre-opening obligations for all of the franchisees from whom it accepted franchise fees required to be deposited into the Prosperity Escrow Account under the Escrow Order.

24. Prosperity also represents that the Glen Dale, Ft. Washington, Lexington Park, and Waldorf franchise locations have all opened for business.

25. Prosperity further represents that, prior to the date of this Consent Order, Prosperity has deposited into the Prosperity Escrow Account the amount of franchise fee that it accepted from the owner of the Waldorf franchise location, and it will not seek the release of those funds from the Prosperity Escrow Account without complying with the Escrow Order.

26. Prosperity represents to the Securities Division that the franchise law compliance issues related to this Consent Order resulted, in part, from difficulties encountered by the fact that the franchisor's management is small and individual management staff fulfills different duties related to the operation of the franchise business.

27. Prosperity also represents that it has taken steps to ensure future compliance with the Maryland Franchise Law and the Escrow Order.

28. Prosperity further represents and agrees that, in the future, it shall comply with all provisions under the Maryland Franchise Law and, where applicable, the Escrow Order.

III. CONCLUSIONS OF LAW

29. By engaging in the above activities, the Securities Commissioner has concluded that Prosperity violated §§ 14-214, 14-216, and 14-223 of the Maryland Franchise Law, the Escrow Order, and the 2004 Consent Agreement.

IV. ORDER AND CONSENT

30. THE SECURITIES COMMISSIONER HEREBY ORDERS AND PROSPERITY HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

A. Prosperity shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law and the Escrow Order;

B. Within thirty (30) days of its receipt of a fully executed Consent Order of the Securities Commissioner, Prosperity shall submit to the Securities Division a franchise disclosure document ("Rescission FDD") for use only for making rescission offers required under this Consent Order to the Waldorf Maryland Franchisee and the Ft. Washington Maryland Franchisee (collectively "Unregistered Maryland Franchisees"), which FDD shall be prepared in accordance with the Maryland Franchise Law. The Securities Division shall review the FDD and promptly notify Prosperity if the FDD is sufficient for making rescission offers to the Unregistered Maryland Franchisees;

C. If the Securities Division notifies Prosperity that the Rescission FDD submitted for review is not sufficient for rescission purposes under this Consent Order, Prosperity shall submit a substantive response to each Securities Division comment letter regarding the Rescission FDD no later than 30 days after Prosperity's receipt of that comment letter;

D. Within ten (10) days upon notification by the Securities Division that Prosperity's

Rescission FDD is sufficient for recission purposes under this Consent Order, Prosperity shall send by Federal Express to the Unregistered Maryland Franchisees: a copy of the executed Consent Order; a copy of the reviewed FDD; and an Offer to Rescind Franchise in substantially the form attached as Exhibit 1;

E. The Securities Commissioner has determined that Prosperity's offer to rescind its franchise agreements with the Unregistered Maryland Franchisees for the limited purposes described in this Paragraph is exempt from the registration provisions of the Maryland Franchise Law;

F. Prosperity agrees that the Securities Division will not register the Prosperity franchise offering under the Maryland Franchise Law for offers and sales of new franchises unless a financial statement with an unqualified audit opinion from a licensed Certified Public Accountant is included in Prosperity's FDD;

G. Prosperity agrees to engage the services for a franchise law compliance program or trainer (hereafter the "Monitor") approved by the Securities Division to monitor Prosperity's franchise sales activities in Maryland and to Maryland residents for a period of five (5) years from the date of this Consent Order or the franchisor's notice of effective registration under the Maryland Franchise Law, whichever is later; such monitoring to include at least the following:

(i) an annual on-site review of Prosperity's books, records and recordkeeping policies and procedures regarding Prosperity's obligations under the Maryland Franchise Law;

(ii) submission of monthly reports regarding any sales of franchises with documentation, where applicable, demonstrating as to each sale compliance with the Maryland Franchise Law;

(iii) an annual report by the Monitor to the Securities Division confirming that the Monitor's review disclosed no evidence that, after May 1, 2021, Prosperity is not in compliance with the requirements of this Paragraph or the Maryland Franchise Law or the Escrow Order, if then applicable;

(iv) an annual review of Prosperity's documentation of sums paid to Prosperity by franchisees in connection with the operation of the franchisor, including royalties, advertising charges and other sums due from franchisee as well as rebates and other sums due to Prosperity from approved suppliers based on purchases made by franchisees; and

(v) an annual review of Prosperity's accounting of advertising expenditures. For purposes of this paragraph, the records of Prosperity must include correspondence with franchisees and prospective franchisees, records of payments and deposits into, and withdrawals from the Escrow Account, and any complaints regarding franchise sales. Prosperity must share with the Monitor all relevant non-public information ("Prosperity Non-Public Information") for the purpose of evaluating compliance with the Maryland Franchise Law except that Prosperity shall not be required to share information subject to attorney-client privilege. If Prosperity withholds any materials from the Monitor on the basis of privilege, Prosperity shall submit a privilege log to the Monitor and, if the

Monitor requests, meet and confer with the Monitor about the basis of the privilege claim. If Prosperity and the Monitor disagree about the privilege as to any materials, a final determination regarding the application of the privilege shall be made by the Securities Commissioner. The Monitor shall use the Prosperity Non-Public Information solely for the purpose of performing monitoring duties as outlined in this paragraph, shall disclose Prosperity Non-Public Information solely to the Securities Division, and shall sign a confidentiality agreement with Prosperity agreeing to the limitation on use and disclosure of Prosperity Non-Public Information other than to the Securities Division as allowed in this paragraph. The Monitor shall provide Prosperity with a copy of any reports the Securities Division agrees to share with Prosperity;

H. Prosperity agrees to pay the Office of the Attorney General the sum of Thirty-Five Thousand Dollars ($35,000) as a civil monetary penalty for the violations described in this Consent Order;

I. If the Securities Commissioner concludes, after either holding a hearing or providing Prosperity the opportunity for a hearing, that Prosperity has committed after the date of this Consent Order any material violations of the registration or disclosure provisions of the Maryland Franchise Law, any Escrow Order of the Securities Commissioner, or the Consent Agreement, Prosperity agrees to the entry of a Consent to a Permanent Injunction against violations of the Maryland Franchise Law against Prosperity in the Circuit Court for Baltimore City and to pay an additional civil monetary penalty to the Office of the Attorney General in the amount of $50,000 for each such violation; and

J. Prosperity 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

31. 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

32. If Prosperity 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 Prosperity has violated the 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

33. 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:

July 19, 2024

BY CONSENT:

Prosperity System, Inc. d.b.a. Pizza Boli's

By:
Title:

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

_____
_____
_____

Re: **[Company] Offer to Rescind Franchise Agreement**

Dear _____:

As required under the enclosed Consent Order, [Insert Name of Company] ("we") agreed to offer rescission to you of your franchise agreement with us. 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 your franchise agreement, we agree to return to you the initial fees you paid us and cancel all post-term and non-competition obligations you may have to us under the Franchise Agreement. If you rescind, your franchise agreement will terminate, and you will give up any rights to use our trademarks, and you may not use or disclose any of our trade secrets or any of our confidential and proprietary information. If you rescind, we will make payments to you 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 Tade Osikomaiya, Assistant Attorney General, at the Division (410-576-7039).

Sincerely,

_____
[The Company]

cc: Consent Order
Franchise Disclosure Document (For Rescission Purposes Only)

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

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

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks, patents, 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 under my franchise agreement.

Date:_____ _____

Franchisee