

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

BK LOBSTER, INC.,

Respondent.

*

*

*

*

Securities Division No. 2022-0088
OAH No. OAG-SD-50-24-04033

* * * * *

FINAL 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 BK Lobster, Inc. (“BK Lobster”) 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”) concluded that grounds existed to allege that BK Lobster violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of franchises under the Maryland Franchise Law; and

WHEREAS, on January 5, 2023, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) entered into a Consent Order (“2023 Consent Order”) with BK Lobster to resolve the alleged violations of the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of franchises under the Maryland Franchise Law; and

WHEREAS, under the 2023 Consent Order, the Securities Commissioner concluded that BK Lobster violated sections 14-214, 14-216, 14-231 of the Maryland Franchise Law; and

WHEREAS, under the BK Consent Order, the Securities Commissioner ordered, and BK Lobster consented and agreed, among other things, to send a notice of rescission rights to a Maryland Franchisee and, if that Maryland Franchisee did not rescind its BK Lobster franchise agreement in response to that notice of rescission rights, to promptly file and diligently pursue an application to register the BK Lobster franchise offering under the Maryland Franchise Law; and

WHEREAS, the Maryland Franchisee did not rescind its BK Lobster franchise agreement in response to the notice of rescission rights, and, as a result, BK Lobster was obligated under the 2023 Consent Order to promptly file and diligently pursue an application to register the BK Lobster franchise offering under the Maryland Franchise Law; and

WHEREAS, after approximately nine (9) months, despite multiple requests from the Securities Division, BK Lobster failed to file an application to register the BK Lobster franchise offering under the Maryland Franchise Law; and

WHEREAS, on October 4, 2023, the Securities Commissioner issued an Order to Show Cause against BK Lobster for violating the 2023 Consent Order and the Maryland Franchise Law; and

WHEREAS, on October 10, 2023, BK Lobster, by Rodney Bonds filed a response and request for a hearing on the Order to Show Cause; and

WHEREAS, on February 12, 2024, the Securities Commissioner referred this matter to the Office of Administrative Hearings (“OAH”) for a hearing and proposed decision; and

WHEREAS, on February 13, 2024, OAH sent a Notice of Prehearing Conference to the parties at their addresses of record, which notice indicated that the Prehearing Conference was

set for 9:30 a.m. on Friday, March 8, 2024, in person at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland and that a party's failure to appear for the Prehearing Conference might result in a decision against that party; and

WHEREAS, the Notice of Prehearing Conference was not returned to OAH by the United States Postal Service as undeliverable or for any other reason; and

WHEREAS, on March 4, 2024, Assistant Attorney General Oludolapo Osikomaiya, on behalf of the Securities Division, filed a Prehearing Statement with OAH; and

WHEREAS no attorney entered an appearance on behalf of BK Lobster with OAH, and BK Lobster did not file a Prehearing Statement with OAH; and

WHEREAS, on March 8, 2024, the Honorable Robert B. Levin convened the Prehearing Conference at the Offices of Administrative Hearing, and, while Mr. Osikomaiya appeared on behalf of the Securities Division, neither Mr. Bonds nor anyone else representing or purporting to represent BK Lobster appeared at that Prehearing Conference; and

WHEREAS, after more than fifteen (15) minutes, Mr. Osikomaiya, on behalf of the Securities Division, moved for the entry of a default order against BK Lobster for its failure to appear at the Prehearing Conference; and

WHEREAS, neither Mr. Bonds nor anyone else representing or purporting to represent BK Lobster requested a postponement of the Prehearing Conference or otherwise contacted OAH before (or after) the Prehearing Conference date; and

WHEREAS, the OAH Rules of Procedure provide that if, after receiving proper notice, a party fails to attend or participate in a prehearing conference, an administrative law judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party, Code of Maryland

Regulations (COMAR) 28.02.01.23A; and

WHEREAS, the Securities Division's Procedures for Administrative Hearings provide that if, after receiving notice of a Prehearing Conference, a party fails to appear at the conference, the Securities Commissioner may proceed to hold the conference in that party's absence or hold the absent party in default and issue a proposed or final decision and order against the defaulted party; and

WHEREAS, on March 13, 2024, Judge Levin issued a Proposed Default Order in this matter proposing that BK Lobster be found in default and that the Securities Commissioner issue a final default order directing BK Lobster to permanently cease and desist from the offer and sale of franchises in Maryland in violation of the January 5, 2023 Consent Order between BK Lobster and the Securities Commissioner and sections 14-216, and 14-231 of the Maryland Franchise Law; and

WHEREAS, Judge's Levin's Proposed Default Order notified BK Lobster that BK Lobster, by an attorney, may file a written motion for reconsideration of the Proposed Default Order, stating grounds for such request within fifteen (15) days after service of the Proposed Default Order by filing the motion for reconsideration with the Securities Commissioner, 200 St. Paul Place, Baltimore, Maryland 21202 with a copy to Mr. Osikomaiya at that same address, and further notified BK Lobster that if BK Lobster does not file a motion for reconsideration that does not show good cause to excuse the default, or if BK Lobster does not file a motion for reconsideration within fifteen (15) days after service of the Proposed Default Order, the Securities Commissioner shall issue a Final Order of Default; and

WHEREAS, OAH mailed and emailed a copy of the Proposed Default Order to BK Lobster on March 13, 2024; and

WHEREAS, more than fifteen (15) days has elapsed since service of the Proposed Default Order, and BK Lobster has not filed a motion for reconsideration or any other response to the Proposed Default Order with the Securities Commissioner; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Final Order;

NOW, THEREFORE, THE SECURITIES COMMISSIONER FINDS AND 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. The Findings of Fact, Conclusions of Law, and Consent and Order set forth in paragraphs A. through N. herein were made in the 2023 Consent Order. Pursuant to paragraph 19 of that Order, in any proceeding brought to sanction BK Lobster for failure to comply with any terms of the order, the Statement of Facts and the Conclusions of Law shall be deemed admitted and may be introduced into evidence against BK Lobster.

A. BK Lobster is a New York corporation formed in January 2019 with a principal business address of 535 Nostrand Boulevard, Brooklyn, New York 11216.

B. From January 2020 through December 2020 BK Lobster offered and sold franchises for casual dining seafood bars specializing in gourmet lobster rolls, seafood and complementary food and beverages using the name “BK Lobster.”

C. In November 2020, BK Lobster formed an affiliate, BK Lobster Franchise Systems, Inc. BK Lobster licensed to BK Lobster Franchise the rights to use the BK Lobster system, trademarks and other intellectual property in the offer and

sale of BK Lobster franchises throughout the United States.

- D. BK Lobster Franchise is a New York Corporation with a principal business address of 11040 Pembroke Road, Miramar, Florida 33025.
- E. The chief executive officer of both BK Lobster and BK Lobster Franchise is Mr. Bonds.
- F. On May 25, 2022, BK Lobster Franchise filed an initial application to register its franchise offering under the Maryland Franchise Law.
- G. Along with that initial application, the attorney for BK Lobster Franchise reported that BK Lobster may have violated the registration and disclosure requirements of the Maryland Franchise Law in the offer and sale of BK Lobster franchises in Maryland or to Maryland buyers. The attorney for BK Lobster included with the initial application to the Securities Division copies of two franchise agreements that BK Lobster signed with Maryland entities or individuals (collectively “Maryland Franchisees”).
- H. The Franchise Agreements with the Maryland Franchisees are described below:
 - i. On August 7, 2020, BK Lobster entered into a franchise agreement with Brooklyn Billies Real Estate Club, LLC, a Maryland limited liability company (“Brooklyn Billies”), in which that entity was granted the right to own and operate a BK Lobster Restaurant to be located at 2226 Eastern Avenue, Baltimore, Maryland 21231.
 - ii. On September 30, 2021, BK Lobster entered into a franchise agreement with three individuals, “VS,” “SG,” and “TC” (“SGC Group”), residents of Baltimore Maryland, in which SGC Group was granted the right to own and operate a BK Lobster franchise at a location within the Washington, D.C. area.
- I. Under BK Lobster’s franchise agreements with the Maryland Franchisees, the Maryland Franchisees paid BK Lobster an initial franchise fee of \$10,000 and a training fee of \$5,000.

- J. Brooklyn Billies secured a location to open an outlet for a BK Lobster franchise restaurant. SGC Group never opened an outlet for a BK Lobster franchise restaurant and did not pursue finding a location for their BK Lobster franchise.
- K. The Securities Commissioner determined that the franchise agreements that BK Lobster entered into with the Maryland Franchisees are “franchises” under the Maryland Franchise Law, and that neither BK Lobster nor BK Lobster Franchise ever registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law.
- L. The Securities Commissioner found that, although BK Lobster gave the Maryland Franchisees copies of a Franchise Disclosure Document (“FDD”) before those Maryland Franchisees entered into franchise agreements with BK Lobster, those FDDs were incomplete, were not reviewed by the Securities Division, and did not include all of the disclosures required under the Maryland Franchise Law.
- M. The Securities Commissioner concluded that BK Lobster violated sections 14-214, 14-216, and 14-231 of the Maryland Franchise Law.
- N. The Securities Commissioner ordered, and BK Lobster consented to the following, among other relief:
- i. Within ten (10) days of its receipt of the fully executed 2023 Consent Order, BK Lobster agreed to send to Brooklyn Billies: (i) a copy of that fully executed consent order; and (ii) a letter, captioned Notice of Rescission Rights, informing Brooklyn Billies that it was being offered an opportunity to rescind its BK Lobster franchise agreement under the terms of that consent order.
 - ii. If Brooklyn Billies did not opt to rescind its BK Lobster franchise agreement in response to BK Lobster’s Notice of Rescission rights, BK Lobster would promptly file and diligently pursue an application to register the BK Lobster franchise offering under the Maryland Franchise Law. For purposes of the 2023 Consent Order, “diligently pursue” means that an applicant submits a substantive response to each Securities Division comment letter regarding a registration

application no later than 30 days after the applicant's receipt of that comment letter;

iii. If BK Lobster was required to register its franchise offering under the 2023 Consent Order, upon notification by the Securities Division that BK Lobster's franchise offering was effectively registered for use in Maryland, BK Lobster would send to Brooklyn Billies the following: (i) a copy of Brooklyn Billies applicable, effectively registered Maryland FDD; and (ii) a second letter, captioned "Offer to Rescind Franchise," notifying Brooklyn Billies that it was being given a second opportunity to rescind their BK Lobster franchise agreement under the terms of this Consent Order.

3. On January 20, 2023, legal counsel to BK Lobster represented to the Securities Division that it sent to Brooklyn Billies a copy of the fully executed 2023 Consent Order and the Notice of Rescission Rights.

4. On April 13, 2023, legal counsel to BK Lobster represented to the Securities Division that, although Brooklyn Billies did not respond to the initial Notice of Rescission Rights within the term required under that Notice, a representative of Brooklyn Billies verbally informed Mr. Bonds that Brooklyn Billies did not wish to rescind its BK Lobster franchise agreement in response to that Notice of Rescission Rights.

5. As a result of Brooklyn Billies' option not to rescind its franchise agreement in response to the initial Notice of Rescission Rights, under the 2023 Consent Order, BK Lobster was required to "promptly file and diligently pursue" an application to register the BK Lobster franchise offering under the Maryland Franchise Law in order to make an effective rescission offer to Brooklyn Billies in the form of an Offer to Rescind Franchise.

6. On April 13, 2023, BK Lobster's legal counsel informed the Securities Division that it no longer represented BK Lobster and directed the Securities Division to contact Mr. Bonds directly.

7. On April 20, 2023, the Securities Division contacted Mr. Bonds and reminded

him that, under the 2023 Consent Order, because Brooklyn Billies did not rescind its BK Lobster franchise in response to the initial notice of rescission, BK Lobster must now “promptly file and diligently pursue” an application to register the BK Lobster franchise offering under the Maryland Franchise Law.” Then, once the BK Lobster franchise offering was effectively registered in Maryland, it must send to Brooklyn Billies a second form of rescission offer, captioned Offer to Rescind Franchise in the form attached to the 2023 Consent Order.

8. Also on April 20, 2023, the Securities Division advised Mr. Bonds that BK Lobster had no pending application to register its franchise offering under the Maryland Franchise Law because a registration application that BK Lobster’s former legal counsel filed with the Securities Division in May 2022 had been abandoned. Therefore, Mr. Bonds should file a new franchise registration application as soon as possible, since the 2023 Consent Order directs that “diligently pursue” means within 30 days, generally.

9. On April 20, 2023, Mr. Bonds represented to the Securities Division that he would be able to file a franchise registration application for BK Lobster within 60 days.

10. BK Lobster did not file a franchise registration application with the Securities Division in June 2023.

11. On June 27, 2023, the Securities Division again reminded Mr. Bonds of BK Lobster’s obligation to “promptly file” and “diligently pursue a franchise registration application with the Securities Division in order to fulfill BK Lobster’s obligation to make a rescission offer to Brooklyn Billies.

12. On June 28, 2023, Mr. Bonds represented to the Securities Division that he was updating his franchise disclosure information with a new franchise attorney, and he expected he should be able to file a franchise registration application for BK Lobster in 3 to 4 weeks.

13. BK Lobster did not file a franchise registration application with the Securities Division in July 2023.

14. On August 3, 2023, the Securities Division notified Mr. Bonds that if BK Lobster did not make a good faith effort to file a franchise registration application by the end of August 2023, the Securities Division would ask the Securities Commissioner to issue an Order to Show Cause ordering it to show cause why BK Lobster was not in violation of the terms of the 2023 Consent Order.

15. On August 11, 2023, Mr. Bonds informed the Securities Division that he was having a dispute with his current legal counsel, and that he was either going to resolve that dispute or obtain new legal counsel to file a franchise registration application.

16. BK Lobster did not file a franchise registration application with the Securities Division in August 2023 and, as of the date of this Final Order, has never filed a franchise registration application.

III. CONCLUSIONS OF LAW

The Securities Commissioner concludes that:

17. BK Lobster is in default and has waived its right to a hearing in this matter.

18. BK Lobster violated a Consent Order of the Securities Commissioner.

19. As found in the 2023 Consent Order, BK Lobster violated §§14-214, 14-216, and 14-231 of the Maryland Franchise Law.

IV. SANCTIONS

20. BK Lobster shall permanently cease and desist from offer and sale of franchises in violation of the January 5, 2023 Consent Order between BK Lobster and the Securities Commissioner.

21. BK Lobster shall permanently cease and desist from offer and sale of franchises in violation of sections 14-216 and 14-213 of the Maryland Franchise Law.

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 this Final Order.

VI. NOTICE OF APPEAL RIGHTS

23. Pursuant to Code of Maryland Regulations, COMAR 02.02.06.24, BK Lobster has the right to file an appeal of this Final Order with the Circuit Court of Maryland. Any appeal must be filed within thirty (30) days from the date this Final Order is mailed by the Securities Division.

SO ORDERED:

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

Dated: June 21, 2024

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER