

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

*

IN THE MATTER OF:

*

**Quizno’s Franchising LLC and
Quizno’s Franchising II LLC**

*

Case No. **2006-0179**

*

Respondents.

*

* * * * *

CONSENT ORDER

WHEREAS, the Maryland Securities Division (the “Division”) initiated an investigation into the franchise-related activities of Quizno’s Franchising LLC and Quizno’s Franchising II LLC (collectively “Quizno’s”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, Title 14, Subtitle 2, Business Regulation Article, Annotated Code of Maryland (2004 Repl. Vol.) and the rules and regulations promulgated thereunder (the "Maryland Franchise Law"); and

WHEREAS, based on information presented by the Division, the Maryland Securities Commissioner (the "Commissioner") concluded that grounds existed to allege that Quizno’s violated the escrow provisions of the Maryland Franchise Law and an order of the Commissioner, in relation to the offer and sale of Quizno’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, and without Quizno’s admitting or denying any violation of law, the

Commissioner and Quizno's have reached an agreement to enter into this Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

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

II. STATEMENT OF FACTS

2. Quizno's Franchising LLC ("Quizno's LLC") was registered with the Division to offer and sell franchises in Maryland from June 14, 2004 through June 14, 2005.

3. On June 3, 2004, the Commissioner signed an Escrow Order (the "Escrow Order") requiring Quizno's LLC to deposit all initial fees into an escrow account (the "Escrow Account"). In order to comply with the Maryland Franchise Law and the terms of the Escrow Order, Quizno's LLC and a Maryland Bank ("Bank") signed an Escrow Agreement that provides for the establishment of the escrow account and procedures for the release of funds.

4. The Escrow Agreement requires Quizno's LLC to deposit into the escrow account all initial payments made by each franchisee, who is either a resident of the State of Maryland or contracts to operate the franchised business within the State of Maryland, for goods and services received from Quizno's LLC and/or its affiliates. The Escrow Agreement also provides that the Bank shall pay out such funds only upon the occurrence of one of three conditions. Two conditions require a written notice from the Commissioner approving the release. The third condition requires a court order.

5. On February 4, 2005, as a result of a corporate restructuring in the Quizno's franchise system, Quizno's Franchising II LLC ("Quizno's II") was established to become the franchisor under

all new franchises granted for Quizno's restaurants. On March 1, 2005, Quizno's II filed an application with the Division to renew the franchise registration in Maryland for the Quizno's franchise system.

6. The Division reviewed the Quizno's II registration application and, on March 10, 2005, requested that Quizno's II make corrections to its Uniform Franchise Offering Circular ("UFOC"). The Division also requested that Quizno's provide information on all franchise sales in Maryland since June 14, 2004. Such information was to include, among other things, documentation supporting the deposit of funds into the Escrow Account, Escrow Account bank statements, and verification from the bank of the balance in the Escrow Account and the funds applicable to each franchisee.

7. On April 14, 2005, in response to the Division's request for information, Quizno's submitted some documentation relating to the Escrow Account activity. On April 19, 2005, the Division repeated its request for Escrow Account bank statements and other documentation. On April 29, 2005, Quizno's submitted the additional documents the Division requested.

8. The Division reviewed the documents submitted by Quizno's relating to franchise sales from June 14, 2004 through March 31, 2005. The documentation indicates that there were instances when checks received from Quizno's franchisees for initial fees were not deposited into the Escrow Account within 48 hours, as required under the Maryland Franchise Law. The Escrow Order requires that all franchise fees shall, within 48 hours of the receipt of these funds, be placed in a separate trust account until such time as the Commissioner takes further action.

9. Specifically, Quizno's submitted documents supporting the deposit of approximately \$967,025 into the Escrow Account during the period June 14, 2004 through March 31, 2005. Of this amount, Quizno's was unable to verify that 5 checks totalling \$69,550 were deposited within 48 hours

of receipt of the initial fees from franchisees.

10. Included in the \$69,550 total were two checks for Store No. 8373 in the amount of \$31,550 and \$1,450. These checks were dated October 13, 2004 and were not deposited until October 22, 2004 and October 25, 2004, respectively. In addition, checks for Stores No. 8344 and 8345, in the amount of \$2,500 each, were dated September 13, 2004 and not deposited until October 29, 2004. Another check in the amount of \$31,500 for Store No. 8563 was dated January 10, 2005 and not deposited until January 21, 2005.

11. On May 10, 2005, the Division requested additional documentation regarding a withdrawal from the Escrow Account relating to Store No. 8212. Among other things, the Division requested copies of the documents Quizno's submitted to the Bank to obtain the release of the escrowed funds.

12. On May 20, 2005, Quizno's represented that Quizno's had refunded the \$25,000 initial franchise fee paid by franchisees for Store No. 8212. Quizno's deposited the \$25,000 into the escrow account on or about September 1, 2004. On October 29, 2004, franchisees for Store No. 8212 requested that their franchise agreement, which they had signed on August 30, 2004 be withdrawn, since Quizno's had not countersigned the agreement. On December 22, 2004, Quizno's issued a \$25,000 check payable to the franchisees for Store No. 8212 from Quizno's corporate bank account. On December 29, 2004, the Bank issued a check payable to the franchisees for \$25,060.90 from the Escrow Account. Inexplicably, this check was deposited by Quizno's into its corporate bank account on January 5, 2005.

13. Quizno's was unable to provide any written documentation supporting a request to the Commissioner or the Bank for the release of the escrowed funds for Store No. 8212. The Bank was also not able to provide any written documentation from Quizno's or the Commissioner supporting

its release of funds and subsequent delivery to Quizno's of the check made payable to the franchisees. On October 14, 2005, in response to several requests by the Division, the Bank represented that it closed the account for Store No. 8212 on December 29, 2004, because it had not received documents which it requested from the franchisees in accordance with the USA Patriot Act. On November 23, 2005, the Bank was unable to explain to the Division why the franchisees, who were not owners of the Escrow Account, were required to submit the documents.

14. Quizno's represented that it did not apply to the Commissioner for the release of funds deposited for Store No. 8212 because Quizno's had not signed the franchise agreement and had no obligations to the franchisees. Quizno's stated that it did not request the Bank to release the funds and could not control the Bank with respect to its internal policies and procedures. Quizno's, however, did deposit the check from the Bank into its own corporate bank account.

15. On September 2, 2005, Quizno's represented to the Division that, in reviewing initial fees received by Quizno's and its affiliates, in response to the Division's questions, it discovered instances where initial fees were deposited into Quizno's corporate bank accounts rather than the Escrow Account as required by the Escrow Order.

16. Specifically, Quizno's acknowledged that Source One Distribution LLC ("SOD"), Quizno's affiliate, received a check on March 29, 2005 in the amount of \$38,373.38 for final payment on initial equipment for Store No. 7992. This check was deposited into SOD's bank account rather than the Escrow Account.

17. Similarly, a wire transfer in the amount of \$7,342.55 for initial equipment purchased by Store No. 8225 was transferred into SOD's bank account on June 14, 2005 and was not transferred into the Escrow Account within 48 hours of receipt.

18. SOD also received a check on June 15, 2005 in the amount of \$34,902.96 from Store No. 8225 for initial equipment purchased. This check was deposited into SOD's bank account rather than the Escrow Account.

19. On May 23, 2005, SOD deposited into its bank account rather than the Escrow Account a check in the amount of \$52,148.72 for initial equipment purchased by Store No. 8563.

20. Finally, SOD received into its bank account a wire transfer on June 15, 2005 in the amount of \$49,675.89 for initial equipment purchased by Store No. 8667. This payment should have been transferred into the Escrow Account within 48 hours of receipt.

21. Quizno's represented that on August 25, 2005 SOD subsequently transferred into the Escrow Account all of the initial payments received from franchisees which are noted in paragraphs 16 - 20.

22. Quizno's LLC represents that the violations noted in this Consent Order, when Quizno's LLC failed to strictly comply with the escrow provisions of the Maryland Franchise Law and the terms of the Commissioner's Escrow Order and the escrow agreement with the Bank, were inadvertent.

23. Quizno's further represents that, other than its failure to deposit the initial fees noted in this Consent Order into the Escrow Account within the required time period, and its failure to request the release of the escrowed funds from the Commissioner for Store No. 8212, Quizno's has complied with the Maryland Franchise Law and the Escrow Order of the Commissioner.

24. Quizno's represents that it has developed and implemented new franchise law compliance procedures to ensure that it complies in the future with the provisions of the Maryland Franchise Law and the Escrow Order of the Commissioner, and Quizno's has provided a written copy

of those new compliance procedures to the Division.

III. CONCLUSIONS OF LAW

25. Based upon the foregoing, the Maryland Securities Commissioner has concluded that Quizno's violated § 14-217 of the Maryland Franchise Law, Maryland Franchise Regulation (COMAR) Section 02.02.08.08, and the terms of the Commissioner's Escrow Order.

IV. ORDER AND CONSENT

26. THE COMMISSIONER HEREBY ORDERS, AND QUIZNO'S REPRESENTS AND CONSENTS THAT:

- A. Quizno's shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law and the terms of the Escrow Order issued by the Commissioner;
- B. Quizno's shall diligently pursue the completion of its pending application to register the Quizno's II franchise offering in Maryland;
- C. Prior to the date of this Consent Order, Quizno's has submitted to the Division a copy of new compliance procedures approved by the Division that Quizno's has implemented to make sure that it complies with the Maryland Franchise Law and the terms of the Escrow Order issued by the Commissioner;
- D. Quizno's shall employ a franchise law compliance training program or trainer (hereafter the "Monitor") approved by the Division to monitor Quizno's franchise sales activities in Maryland and to Maryland residents for a period of two (2) years from the date of this Consent Order; such monitoring to include at least the following: (I) an annual on site review of Quizno's books, records and record keeping policies and procedures regarding Quizno'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 and compliance with the terms of any Escrow Order issued by the Commissioner; and (iii) an annual report by the Monitor to the Division confirming that the Monitor's review disclosed no evidence that Quizno's is

not in compliance with the requirements of this Paragraph. For purposes of this paragraph, the records of Quizno's must include correspondence with franchisees, records of payments, and any complaints regarding franchise sales. Quizno's must share with the Monitor all relevant non-public information for the purpose of evaluating compliance with the Maryland Franchise Law and the terms of Escrow Orders. The Monitor shall use such information solely for the purpose of performing monitoring duties as outlined in this paragraph and shall disclose such information solely to the Division;

- E. Quizno's shall pay to the Office of the Attorney General the sum of \$5,000.00 as a partial reimbursement of the costs of investigation and resolution of this action; and,
- F. Quizno's acknowledges that this Consent Order is a discloseable order as described under §14-216(c)(9)(i)(4) of the Maryland Franchise Law.

V. JURISDICTION RETAINED

27. 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

28. If Quizno's fails to comply with any term of this Consent Order, the Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it for violating an order of the Commissioner, and may take any other action authorized under the Act or any other applicable law. In any such proceeding in which, after an opportunity for a hearing, the Commissioner or a court finds that Quizno's 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 Quizno's.

VII. MODIFICATION OF CONSENT ORDER

29. The terms of this Consent Order may be modified only by a subsequent order issued by the Commissioner.

BY CONSENT:

Quizno's Franchising LLC

BY: _____

and

Quizno's Franchising II LLC

BY: _____

SO ORDERED:

Melanie Senter Lubin
Maryland Securities Commissioner

DATE OF THIS ORDER:

_____, 2006