

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *
*
ABCSP Inc., d.b.a. *
Always Best Care Senior Services Case No. 2010-0354 *
*
Respondent, *
*
* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Securities Division”) initiated an investigation into the franchise-related activities of ABCSP Inc., d.b.a. Always Best Care Senior Services (“ABC”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-201 et seq. (2010 Repl. Vol.) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds existed to allege that ABC violated the registration, disclosure and antifraud provisions of the Maryland Franchise Law, in relation to offers and sales of Always Best Care Senior Services franchises in Maryland and to prospective Maryland franchisees; 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 ABC admitting or denying any violation of law, the Commissioner and ABC 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. ABC is a California corporation with a principal business address of 1406 Blue Oaks Blvd, Roseville, California 95747.

3. ABC grants franchises for the operation of businesses that provide non-medical, in-home personal care and assisted living/residential care placement services.

4. In 2006, ABC's predecessor, Newman Capital Investments, LLC, filed a franchise registration application with the Securities Division and was registered to offer and sell franchises under the Maryland Franchise Law from August 7, 2006 through August 7, 2007.

5. ABC filed an initial franchise registration application with the Securities Division on September 11, 2008.

6. On October 17, 2008, the Securities Division responded to that initial registration application with a comment letter to the franchisor or the franchisor's attorney, identifying needed clarifications and deficiencies that ABC had to address before the Securities Division would register the Always Best Care Senior Services franchise offering in Maryland.

7. Between October 17, 2008 and March 30, 2009, ABC or ABC's attorney submitted several corrected franchise registration applications to the Securities Division, and the Securities Division responded with comment letters identifying deficiencies in each of those submissions.

8. ABC was registered by the Securities Division to offer and sell franchises under the Maryland Franchise Law for a one year period, from March 30, 2009 through March 30, 2010.

9. The form of Franchise Disclosure Document (“FDD”) for ABC that the Securities Division registered for use in Maryland included, among other things, audited financial statements as of December 31, 2007, and an unaudited financial statement as of October 31, 2008.

10. The form of FDD for ABC registered for use in Maryland also included a form of state specific addendum identifying several provisions under the Maryland Franchise Law related to the protection of prospective franchisees.

11. The form of FDD for ABC registered in Maryland stated that the franchisor did not make, and did not authorize any of its employees or representatives to make, any representations about a franchisee’s future financial performance of the past performance of company-owned or franchised outlets (collectively a “Financial Performance Claim”).

12. The form of franchise agreement for ABC that the Securities Division registered for use in Maryland included, among other things, a state specific addendum with several modifications to the agreement required under the Maryland Franchise Law.

13. Between January 1, 2009 and March 30, 2010, ABC entered into six (6) Franchise Agreements and one (1) Area Representative Agreement with Maryland residents (collectively “Maryland Franchisees”). Specifically, ABC entered into the following agreements with the following Maryland Franchisees on the following dates:

Charles Kenneth Mehrling	Franchise Agreement	April 28, 2009
Donovan Leone	Franchise Agreement	July 1, 2009
Curtis J. Phillips	Franchise Agreement	August 27, 2009
Terry Stair and Dean Stair	Franchise Agreement	September 1, 2009

(the "Stairs")		
Senior Care Partners, LLC/Patricia Haw	Franchise Agreement	October 28, 2009
EPI Consulting, Inc.	Franchise Agreement	March 10, 2010
Avail Business Ventures, LLC/John K. Bucy	Area Representative Agreement	January 1, 2009

14. None of the Maryland Franchisees received the form of ABC's Franchise Agreement (or Area Representative Agreement) registered by the Securities Division for use in Maryland.

15. In addition, all but one of the Maryland Franchisees received a form of ABC's Franchise Agreement that was missing a Maryland state specific addendum. That missing state specific addendum contained several modifications the Securities Division required the franchisor to make to the franchise agreement for consistency with the Maryland Franchise Law.

16. None of the Maryland Franchisees received the form of ABC's FDD registered by the Securities Division for use in Maryland.

17. Specifically, none of those FDDs distributed to the Maryland Franchisees included the required state specific addendum that identifies several provisions under the Maryland Franchise Law related to the protection of prospective franchisees.

18. The FDDs that ABC distributed to the Maryland Franchisees did not include the audited and unaudited financial statements required under the FTC Franchise Rule and the Maryland Franchise Law.

19. All but one of the Maryland Franchisees received a form of ABC's FDD that included a Financial Performance Claim, although that Financial Performance Claim was neither reviewed by the Securities Division nor included as part of the FDD registered by the Securities Division for use in Maryland. The Financial Performance Claim that the Maryland Franchisees received represented

the gross income, total expenses, and profit margin earned by a single ABC corporate location in 2008.

20. The form of Franchise Agreement the Maryland Franchisees executed included a provision in which those franchisees acknowledge, contrary to the FDD they received, that they had not received any “statements, representations, data, charts, tables, spreadsheets or mathematical calculations or otherwise which stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise, and neither we nor any of our representatives, employees or agents made, nor have you relied on, any promises, representations or warranties as to any profit you may realize in the operation of the franchised business.”

21. ABC entered into the Area Representative Agreement with John K. Bucy on January 1, 2009, before ABC was registered by the Securities Division to offer or sell franchises, including area representative franchises, in Maryland.

22. At least two of the Maryland Franchisees received an ABC FDD before the date ABC was registered by the Securities Division to offer franchises in Maryland.

23. ABC also distributed franchise marketing materials in Maryland that represented the following:

- A 1999 study by the United States Chamber of Commerce found that 86% of franchises opened within the last five years were still under the same ownership and 97% of them were still open for business.

- A U.S. Department of Commerce study conducted from 1971 to 1997 showed that during that same time less than 5% of franchise businesses were closed each year. Compare that to a U.S. Small Business Administration study conducted from 1978 to 1998, which found that 62% of non-franchised businesses closed within the first 6 years of their existence due to failure.

24. As of the date of this Consent Order, two of the Maryland Franchisees, the Stairs and John K. Bucy, have signed Mutual Termination and Release Agreements in which they have terminated their franchise agreement or area representative agreement under mutually agreeable terms.

25. ABC represents that it has implemented new compliance procedures to ensure that, in the future, the franchisor delivers the correct form of FDD to prospective Maryland franchisees.

26. Among other things, ABC has represented the following: (A) ABC has appointed a single individual to serve as its franchise compliance manager; (B) ABC has purchased an electronic franchise disclosure tracking system to keep track of state registration and disclosure requirements; (C) ABC has agreed to send its franchise compliance manager and at least one officer of the franchisor to attend a franchise law compliance program acceptable to the Securities Division; and (D) ABC has terminated the services of its previous legal counsel who advised it on franchise law matters, and ABC has engaged a new legal counsel to advise it in the future on franchise compliance matters.

27. ABC also represents that it has voluntarily agreed to cease the distribution of any marketing materials that include statistics or other representations suggesting that franchised businesses are more likely to succeed than independent businesses.

IV. CONCLUSIONS OF LAW

28. By engaging in the above activities, the Commissioner has concluded that ABC violated §§14-214, 14-216, 14-223, 14-228, 14-229, and 14-230 of the Maryland Franchise Law.

V. ORDER AND CONSENT

29. THE COMMISSIONER HEREBY ORDERS, AND ABC REPRESENTS AND CONSENTS THAT:

- A. ABC shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. ABC shall diligently pursue the application it has filed to register its franchise offering in Maryland;
- C. Within five days of its receipt of a fully executed Consent Order of the Commissioner, ABC shall send a copy of this Consent Order, including Exhibit 1, to the Maryland

Franchisees, other than the Stairs and John K. Bucy with a separate cover letter (“Notice of Rescission Rights”), in a form approved by the Securities Division, informing those Maryland Franchisees that they are being offered an opportunity to rescind their respective ABC franchise agreements under the terms of the Consent Order. The Notice of Rescission Rights shall offer to rescind the ABC franchise agreement if the Maryland Franchisee returns to ABC within thirty (30) days of his receipt of the Notice of Rescission Rights an executed Acceptance of Offer to Rescind Franchise Agreement indicating a desire to accept the offer to rescind the ABC franchise agreement. If any Maryland Franchisee timely returns an Acceptance of Offer to Rescind Franchise Agreement, ABC agrees to complete payments to that Maryland Franchisee within 30 (thirty) days of ABC’s receipt of that written Acceptance. The Notice of Rescission Rights also shall allow a Maryland Franchisee the option, in lieu of accepting the Offer to Rescind Franchise Agreement as described above, to defer the decision whether or not to rescind the ABC franchise agreement until after ABC has effectively registered its franchise offering with the Securities Division and delivers to that Maryland Franchisee an effectively registered Maryland Franchise Disclosure Document.

- D. If, after receiving the Notice of Rescission Rights, any of the above referenced Maryland Franchisee(s) does not return a signed Acceptance of Offer to Rescind Franchise Agreement within thirty (30) days as outlined above, rejects the offer to rescind his Franchise Agreement, or indicates a desire to defer the decision whether or not to rescind his Franchise Agreement, ABC shall send to any such Maryland Franchisee(s), upon ABC’s notification by the Securities Division that ABC’s franchise offering has been effectively registered for use in Maryland: (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 1, notifying that Maryland Franchisee that he has the right to rescind his ABC franchise under the terms stated in that letter.
- E. ABC’s offer of a franchise for the limited purposes described in Paragraph 28 (C) of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law.
- F. ABC shall pay to the Office of the Attorney General a civil monetary penalty of \$35,000.
- G. ABC acknowledge 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.

VI. JURISDICTION RETAINED

- 30. 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.

VII. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

31. If ABC 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 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 Commissioner or a court finds that ABC 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.

VIII. MODIFICATION OF CONSENT ORDER

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

BY CONSENT:

ABCSP, Inc., d.b.a.
Always Best Care Senior Services

By: Michael Newman, President

SO ORDERED:

**Commissioner's Signature is on
File with Original Documents.**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

November 29, 2010

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: [Company] Notice of Offer to Rescind Franchise Agreement/Area Representative Agreement

Dear _____:

In accordance with discussions our attorneys have had with the Division of Securities of the Maryland Attorney General's Office (the "Division"), [Insert name of Company] ("we") have agreed to offer rescission to all Maryland residents who entered into franchises and area representative franchises (collectively "franchises") with us in violation of the provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the 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 franchise, we agree to return to you the franchise fee you paid us, less the cost for any unreturned items and equipment included in the purchase price you paid for the franchise. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for any of the items that you return.

In the event you elect to rescind, you will give up your franchise agreement or area representative agreement. 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 within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise Agreement.

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,

THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT/AREA REPRESENTATIVE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement/Area Representative Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise Registration 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/area representative agreement:

CHECK ONE

_____ I hereby **accept** your offer of rescission and 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 accept** your offer of rescission. I wish to remain a franchisee/area representative under my franchise agreement/area representative agreement.

Date: _____

Franchisee