

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *
*
Vocelli, LLC, *
successor to Vocelli Pizza, L.P. * Case No. 2013-0146
*
Respondent. *
*
* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an inquiry into the franchise-related activities of Vocelli, LLC, successor to Vocelli Pizza, L.P. (“Vocelli”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG §14-201 et seq. (2010 Repl. Vol. and Supp. 2012) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds exist to allege that Vocelli violated the amendment, disclosure and antifraud provisions of the Maryland Franchise Law, and a previous Consent Order of the Commissioner, in relation to the offer and sale of a Vocelli Pizza franchise 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 Vocelli admitting or denying any violation of law, the Commissioner and Vocelli 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

A. Background

2. Vocelli is a Pennsylvania limited liability company with a principal business address of 1005 South Bee Street, Pittsburgh, PA 15220.

3. On December 31, 2012, Vocelli acquired substantially all of the assets, including the existing franchise agreements, of Vocelli Pizza, L.P., Vocelli's predecessor.

4. Vocelli offers and sells franchises for pizza carry-out and delivery parlors, and dine-in eating quick service restaurants.

5. Vocelli has been registered to offer and sell franchises under the Maryland Franchise Law for most time periods beginning in 2004 to November 2, 2012.

6. On April 6, 2004, Vocelli consented to the entry of a Consent Order of the Maryland Securities Commissioner (the "2004 Consent Order") to resolve alleged violations of the disclosure and antifraud provisions of the Maryland Franchise law in relation to the offer and sale of Vocelli franchises in Maryland.

7. In the 2004 Consent Order, the Securities Commissioner concluded, and Vocelli neither admitted nor denied, that Vocelli failed to disclose in Uniform Franchise Offering Circulars (now called Franchise Disclosure Documents, or "FDDs") distributed to Maryland franchisees that four (4) of Vocelli's officers, directors or key management personnel had filed for bankruptcy

protection under the United States Bankruptcy Code.

8. Under the 2004 Consent Order, Vocelli represented and consented, among other things, that Vocelli would permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law; that it would enroll an employee with responsibility for franchise compliance matters in a franchise law compliance training program approved by the Securities Division; and that it would prepare and implement new compliance procedures to ensure future compliance with the registration and disclosure provisions of the Maryland Franchise Law.

B. Vocelli's Failure to Amend its FDD

9. Vocelli was last registered with the Securities Division to offer franchises under the Maryland Franchise Law between November 2, 2011 and November 2, 2012.

10. On November 9, 2012, counsel for Vocelli submitted a re-filed initial franchise registration application with the Securities Division, since Vocelli's previously registered franchise renewal had expired on November 2, 2012.

11. Between November 19, 2012 and April 12, 2013, the Securities Division sent several comment letters to counsel for Vocelli identifying deficiencies in Vocelli's franchise registration application.

12. On March 27, 2013, an attorney ("New Counsel") contacted the Securities Division and represented that he was recently retained by Vocelli on franchise matters. New Counsel wrote to the Securities Division to advise it of facts regarding Vocelli's franchise registration in Maryland and a 2012 sale of an existing Vocelli Pizza franchised outlet located in Crofton, Maryland.

13. Specifically, New Counsel represented to the Securities Division that, on March 21, 2012, Vocelli terminated a management agreement that Vocelli had with Bruce Reed Business Trust,

the franchisor of Brusters ice cream stores (“Brusters”), in which Brusters was responsible for the general management of Vocelli, including franchise sales compliance and franchise agreement administration.

14. New Counsel states that after March 21, 2012, Vocelli prepared a separate disclosure addendum to accompany its FDDs, including its Maryland-registered FDD, with information disclosing that Brusters and its management personnel were no longer affiliated with Vocelli and that Vocelli had undertaken other management changes.

15. Vocelli never filed an amendment of its November 2, 2011 Maryland-registered FDD (“MD FDD”), as required under the Maryland Franchise Law, to disclose the changes in its management personnel or the ending of its affiliation with Brusters.

16. New Counsel also represented that Vocelli hired a new Chief Executive Officer as of June 25, 2012, and that, on or after June 21, 2012, Vocelli informed all Vocelli franchisees by memorandum of Vocelli’s hiring of a new Chief Executive Officer.

17. Vocelli never filed an amendment of its MD FDD, as required under the Maryland Franchise Law, to disclose the hiring of a new Chief Executive Officer.

C. Vocelli Maryland Franchise Sale in 2012

18. New Counsel further represented to the Securities Division that in 2012, the owners of an existing Vocelli pizza franchise located in Crofton, Maryland entered into an agreement to sell their Vocelli franchised outlet to Babcock Searle Inc. (“Babcock Searle”), a Maryland corporation with a principal office in Crofton, Maryland.

19. New Counsel represented that, while Vocelli did not initiate the search for a new owner for the Crofton, Maryland Vocelli franchise, as a condition of Vocelli’s approval of the sale

of the Crofton, Maryland franchise to Babcock Searle, Vocelli required Babcock Searle to enter into Vocelli's then-current form of franchise agreement.

20. New Counsel also represented that, on September 20, 2012, Vocelli provided Babcock Searle with a copy of Vocelli's MD FDD with an effective date in Maryland of November 2, 2011.

21. New Counsel states that Vocelli included with the Maryland-registered FDD that it provided to Babcock Searle a separate addendum disclosing the changes in Vocelli's management personnel and the ending of its affiliation with Brusters.

22. On October 19, 2012, Babcock Searle signed an Acknowledgment and Receipt of Disclosure Update, acknowledging that Babcock Searle had received an addendum to the November 2, 2011 FDD Babcock Searle received.

23. New Counsel further states, however, that Vocelli did not include with the Maryland-registered FDD that it provided to Babcock Searle any addendum disclosing Vocelli's hiring of a new Chief Executive Officer.

24. Babcock Searle executed a Vocelli franchise agreement on October 19, 2012.

25. New Counsel represents that Babcock Searle did not pay any franchise fees to Vocelli under Babcock Searle's franchise agreement.

26. Vocelli represents that it has implemented new procedures to ensure that, in the future, the franchisor complies with the amendment, disclosure and antifraud provisions of the Maryland Franchise Law.

27. Vocelli further represents that, other than the sale to Babcock Searle, Vocelli did not offer or sell any franchises in Maryland or to any Maryland residents after March 21, 2012.

III. CONCLUSIONS OF LAW

28. By engaging in the above activities, the Commissioner has concluded that Vocelli violated §§14-220, 14-216 and 14-223 and 14-229 of the Maryland Franchise Law and the 2004 Consent Order of the Maryland Securities Commissioner.

IV. ORDER AND CONSENT

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

- A. Vocelli shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Vocelli shall diligently pursue the completion of the re-filed initial application to register its franchise offering in Maryland. For purposes of this Agreement “diligently pursue” means that an applicant submits a substantive response to a Securities Division comment letter regarding a registration application no later than 15 days after the applicant’s receipt of the comment letter;
- C. Within five (5) days of its receipt of the fully executed Consent Order of the Commissioner, Vocelli shall send Babcock Searle a copy of this signed Consent Order, along with a Notice of Rescission Rights, in the form attached as Exhibit 1, informing Babcock Searle that it is being offered an opportunity to immediately rescind its Vocelli franchise agreement under the terms of this Consent Order;
- D. Upon notification by the Securities Division that Vocelli’s pending re-filed initial application has been effectively registered for use in Maryland, if Babcock Searle has not already rescinded its Vocelli franchise in response to the Notice of Rescission Rights, Vocelli shall send to Babcock Searle the following: (i) a copy of the applicable, effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 2, notifying Babcock Searle that, now that Vocelli is effectively registered to sell franchises in Maryland, Babcock Searle has a second opportunity to rescind its Vocelli franchise agreement under the terms stated in that letter;

- E. Vocelli agrees that if Babcock Searle accepts Vocelli's offer to rescind its franchise purchase in response to the Notice of Rescission Rights or a subsequent Offer to Rescind Franchise Agreement required under this Consent Order, Vocelli will complete any payments Vocelli is required to make to Babcock Searle under this Consent Order within thirty (30) days of Vocelli's receipt of either written Acceptance;
- F. Vocelli's offer of a franchise for the limited purposes described in Paragraph 29C of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law;
- G. Vocelli shall pay the Office of the Attorney General the sum of \$5,000 as a civil monetary penalty;
- H. Vocelli acknowledges 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.

V. 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.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

31. If Vocelli 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 Vocelli 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

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

SO ORDERED:

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

_____, 2013

BY CONSENT:

VOCELLI, LLC

By: _____
Title: _____

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Notice of Rescission Rights

Dear _____:

In accordance with discussions our attorneys have had with the Securities Division of the Maryland Attorney General's Office (the "Securities Division"), [Insert name of Company] ("we") have agreed to offer rescission to any Maryland residents to whom we sold franchises in violation of the provisions of the Maryland Franchise Law. 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 and terminate your franchise, we agree to return to you all initial franchise fees, training fees, and transfer fees you paid us, if any. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for those items.

In the event you elect to rescind, you will give up your franchise 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.

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).

If you do not rescind your franchise now, you will be given a second opportunity to rescind your franchise, after we have completed the registration process. When that registration is complete, we will send you a copy of a registered FDD and a new letter offering to rescind your franchise purchase under the same terms outlined in this letter.

Sincerely,
THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

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 or my right to accept a subsequent rescission offer at a later time.

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 wish to accept your offer of rescission at this time.** I understand that I will be given a second opportunity to rescind my franchise purchase once the franchisor has effectively registered its franchise offering with the Securities Division under the Maryland Franchise Law.

Date: _____

_____ Franchisee

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

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

Dear _____:

As you recall, [Insert name of Company] ("we") have agreed to offer rescission to any Maryland residents who entered into franchise agreements (collectively "franchises") with us in violation of the provisions of the Maryland Franchise Law. You previously received a "Notice of Rescission Rights" from us offering to rescind your franchise immediately. Now that we have completed the registration of our franchise, we are giving you this second opportunity to rescind your franchise, along with a copy of a Maryland Franchise Disclosure Document. We are making this offer 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 all initial franchise fees, training fees, and transfer fees you paid us, if any. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for those items.

In the event you elect to rescind, you will give up your franchise 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 2

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

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 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