

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

*

IN THE MATTER OF:

*

Bimbo Foods Bakeries Distribution, LLC,
f/k/a Bimbo Foods Bakeries Distribution, Inc.,

*

Case No. 2014-0348

Respondent

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* * * * *

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 Bimbo Foods Bakeries Distribution, LLC, f/k/a. Bimbo Foods Bakeries Distribution, Inc. (“BFBD”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §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 “Commissioner”) concluded that grounds existed to allege that BFBD violated the registration, disclosure, and anti-fraud provisions of the Maryland Franchise Law, in relation to offers and sales of BFBD 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 BFBD admitting or denying any violation of law, the Commissioner and BFBD 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. BFBD is a Delaware limited liability company with a principal business address of 255 Business Center Drive, Horsham, Pennsylvania 19044.

3. BFBD offers and sells franchises that sell and distribute bakery products.

4. In August 2014, the Securities Division received information suggesting that during the period April 16, 2013 to March 12, 2014 BFBD may have offered and sold BFBD franchises subject to the Maryland Franchise Law without registering that offering with the Securities Division, or filing an exemption from registration, and without providing to prospective Maryland franchisees an effectively registered or effectively exempt Franchise Disclosure Document ("FDD") applicable to the BFBD franchise offering.

5. Based on the Securities Division's records, BFBD filed exemptions from registration under the Maryland Franchise Law for its BFBD franchise offerings that were effective for the time periods April 16, 2012 through April 16, 2013, and then March 12, 2014 through March 12, 2015.

6. The Securities Division has no record that BFBD ever filed a franchise registration, or any exemption from registration, under the Maryland Franchise Law for its BFBD franchise offering during the period April 16, 2013 to March 12, 2014.

7. In September 2014, the Securities Division requested that BFBD submit information concerning any BFBD franchise offers and sales activities in Maryland from April 16, 2013 to March 12, 2014.

8. On October 3, 2014, in response to the Securities Division's September 2014 letter,

counsel for BFBD submitted a response and documents requested by the Division. This documentation included a copy of an FDD with an effective date disclosed on the cover page as February 15, 2012, and three BFBD franchise agreements signed during the period April 16, 2013 and March 12, 2014 between BFBD and Maryland residents who purchased a BFBD franchise to be located in Maryland ("Maryland Franchisees").

9. Specifically, LL of Lavale, MD, received a BFBD FDD on August 2, 2013 and signed a franchise agreement with BFBD as of August 26, 2013. LL paid BFBD an initial franchise fee of \$50,000. AGS of Bowie, MD, signed a franchise agreement with BFBD with an effective date of July 29, 2013 and paid BFBD an initial franchise fee of \$186,403. BFBD did not submit an acknowledgment of receipt signed by AGS, so it had no record of AGS receiving a BFBD FDD. JW of Brooklyn Park, MD, received a BFBD FDD on June 21, 2013 and signed a franchise agreement with BFBD as of September 2, 2013. JW paid BFBD an initial franchise fee of \$88,375.

10. The BFBD FDDs given to the Maryland Franchisees were neither effectively registered nor effectively exempt under the Maryland Franchise Law.

11. The BFBD FDD dated February 15, 2012 given to the Maryland Franchisees included a Financial Performance Representation in Item 19 that was not in accordance with the FTC Franchise Rule or the Maryland Franchise Law. Specifically, Item 19 disclosed that an Exhibit included a pro forma of income and expenses to consider in the operation of the franchise. Item 19 also included disclaimers that are prohibited by the FTC Franchise Rule and the Maryland Franchise Law. Item 19 did not include the disclosure of the basis and material assumptions of the FPR required under the FTC Franchise Rule and the Maryland Franchise Law. Additionally, the Exhibit contained prohibited disclaimers related to a "Distributorship Worksheet" to be included in the FDD, and a blank page with the caption "Insert Pro Forma."

12. BFBD did not submit to the Division copies of Pro Formas included in FDDs provided to the Maryland Franchisees. Counsel for BFBD represented that BFBD does not retain copies of the individual Pro Formas given to prospective franchisees.

13. On November 28, 2014, Counsel for BFBD submitted additional documents. This submission included, among other things, documents relating to eleven (11) transfers of existing BFBD franchises from BFBD franchisees to new BFBD franchisees residing or operating in Maryland (“Maryland Transferees”). Ten (10) transfers occurred during the period April 16, 2013 to March 12, 2014, and one was effective as of March 16, 2014. Counsel for BFBD represented that BFBD does not provide FDDs to a transferee franchisee. Documents submitted reflect that each Maryland Transferee signed a new franchise agreement with BFBD. Only one (1) Maryland Transferee received a BFBD FDD.

14. Certain documents that BFBD submitted to the Securities Division, specifically those captioned “Final Closing Statement,” include an amount captioned “BFBD 2% Transfer Fee” for ten (10) of the eleven (11) Maryland Transferees. The amount of the transfer fee was included in the amount “Payable to BFBD” for nine (9) Maryland Transferees and included in the total amount the Maryland Transferees financed through AdvantaFirst Capital Financial Services, LLC (“AFC”) and/or Distribution Services of America (“DSA”).

15. BFBD represents that, other than the Maryland Franchisees and Maryland Transferees identified in this Consent Order, BFBD did not offer or sell a BFBD franchise during the period April 16, 2013 to March 12, 2014.

III. CONCLUSIONS OF LAW

16. By engaging in the above activities, the Commissioner has concluded that BFBD violated §§14-214, 14-216, 14-223, 14-224, 14-228, and 14-229 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

17. THE COMMISSIONER HEREBY ORDERS, AND BFBD REPRESENTS AND CONSENTS THAT:

- A. BFBD shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. BFBD shall file a franchise registration, or notice of exemption from registration, if applicable, under the Maryland Franchise Law for its BFBD franchise offering;
- C. Within five days of its receipt of a fully executed Consent Order of the Commissioner, BFBD shall send to the Maryland Franchisees and Maryland Transferees a copy of the signed Consent Order along with a "Notice of Rescission Rights," in the form attached as Exhibit 1, informing the Maryland Franchisees and Maryland Transferees that they are being offered an opportunity to immediately rescind their respective BFBD Franchise Agreements under the terms of this Consent Order. BFBD agrees to complete payments to any Maryland Franchisee or Maryland Transferee who accepts BFBD's offer to rescind his or her franchise purchase in response to the Notice of Rescission Rights within 30 (thirty) days of BFBD's receipt of that written Acceptance;
- D. Unless all Maryland Franchisees and Maryland Transferees accept BFBD's offer to rescind his or her franchise purchase in response to the Notice of Rescission Rights, BFBD shall diligently pursue the registration (or exemption from registration) of its BFBD franchise offering with the Securities Division and, upon notification by the Securities Division that BFBD's franchise offering has been effectively registered or effectively deemed exempt in Maryland, send to the Maryland Franchisees and Maryland Transferees who did not previously accept BFBD's offer to rescind the following: (i) a copy of the applicable, effectively registered or effectively exempt Maryland BFBD Franchise Disclosure Document; and (ii) a letter, in substantially the form attached to this letter as Exhibit 2, notifying that Maryland Franchisee or Maryland Transferee that, now that BFBD is effectively registered to offer franchises in Maryland, or effectively deemed exempt from registration, the Maryland Franchisees and Maryland Transferees have a second opportunity to rescind their BFBD Franchise Agreement under the terms stated in that letter;

- E. BFBD's offer of a franchise for the limited purposes described in Paragraph 17(C) of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law;
- F. BFBD shall pay the Office of the Attorney General the sum of \$50,000 as a civil monetary penalty; and
- G. BFBD 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

18. 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

19. If BFBD 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 BFBD 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

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

BY CONSENT:

Bimbo Foods Bakeries Distribution, LLC,
f/k/a Bimbo Foods Bakeries Distribution, Inc.

By:

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

November 4, 2015

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 Office of the Attorney General of Maryland (the "Securities Division") and the enclosed Consent Order, Bimbo Foods Bakeries Distribution, LLC, f/k/a/ Bimbo Foods Bakeries Distribution, Inc. ("BFBD" or "we") have agreed to offer rescission to all Maryland franchisees and Maryland transferees who entered into franchises with us in the form of BFBD Franchise Agreements during the period April 16, 2013 to March 12, 2014 pursuant to the terms of the enclosed Consent Order. 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, or if you have previously terminated the agreement because of transfer or sale, we agree to return to you all initial fees and transfer fees you paid, including amounts you paid for your handheld computer and printer, less the balance outstanding at the time of rescission or termination of your agreement of any loans that you may have obtained from AdvantaFirst Capital Financial Services, LLC ("AFC") and Distribution Services of America ("DSA") to finance your franchise purchase. We will also cause to be canceled the outstanding amount of any such loans.

In the event you elect to rescind, you will give up your BFBD 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 and cause AFC and DSA to cancel any applicable loans within thirty (30) days after we receive your Acceptance of Offer to Rescind. If you have previously terminated your agreement, we will make payments within thirty (30) days of the date of this letter. We will also void any general release you were required to sign in connection with the sale or transfer of 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 Securities Division (410-576-6368).

If you do not rescind your franchise now, or do not return the acceptance or refusal of Offer to Rescind Franchise, you will be given a second opportunity to rescind your franchise, after we have completed the registration or exemption process. When that registration or exemption is complete, we will send you a copy of a registered or effectively exempt Franchise Disclosure

Document and a new letter offering to rescind your franchise purchase under the same terms outlined in this letter.

Sincerely,
BFBD

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Notice of Rescission Rights 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 (or has been effectively deemed exempt from registration).

Date: _____

Franchisee

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Offer to Rescind Franchise

Dear :

As you recall, Bimbo Foods Bakeries Distribution, LLC, f/k/a/ Bimbo Foods Bakeries Distribution, Inc. (“BFBD” or “we”) agreed to offer rescission to all Maryland franchisees and Maryland transferees who entered into franchises with us in the form of BFBD Franchise Agreements pursuant to the Consent Order we previously sent you. 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 fees and transfer fees you paid, including amounts you paid for your handheld computer and printer, less the balance outstanding at the time of rescission or termination of your agreement of any loans that you may have obtained from AdvantaFirst Capital Financial Services, LLC (“AFC”) and Distribution Services of America (“DSA”) to finance your franchise purchase. We will also cause to be canceled the outstanding amount of any such loans.

In the event you elect to rescind, you will give up your BFBD 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 and cause AFC and DSA to cancel any applicable loans within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise.

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 Securities Division (410-576-6368).

Sincerely,

BFBD

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 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:

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 current BFBD Franchise Agreement.

Date: _____

_____ Franchisee