

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

In the Matter of:

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Bambu Desserts and Drinks, Inc.,

*

Case Number 2015-0307

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 investigation into the franchise-related activities of Bambu Desserts and Drinks, Inc. (“Bambu, Inc.”), and Scott Bachman (“Bachman”) 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 exist to allege that Bambu, Inc. (“Respondent”) and Bachman violated the registration and disclosure provisions of the Maryland Franchise Law, in relation to the offer and sale of a Bambu Desserts and Drinks franchise to be located in Maryland; and

WHEREAS, Bachman has agreed that, as a condition of dismissing Bachman from this proceeding, Bachman shall, within thirty (30) days from the date of this Consent Order, enroll in and complete a franchise law compliance training program approved by the Securities Division; and

WHEREAS, the Commissioner has determined that there is good cause to vacate the Order to Show Cause against Bachman; 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 Bambu, Inc. or Bachman admitting or denying any violation of law, the Commissioner and Bambu, Inc. 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 and over Respondent and Bachman pursuant to section 14-210 (a) of the Maryland Franchise Law.

II. FINDINGS OF FACT

1. Bambu, Inc. is a dissolved California corporation with a principal business address of 181 2nd Avenue, Suite 460, San Mateo, California 94401.

2. Scott Bachman represented to at least one prospective franchisee that he was the Chief Operating Officer of Bambu, Inc. and signed correspondence using that title, although Bambu, Inc. represents that Bachman was never an officer of that entity.

3. Bambu, Inc. has never been registered to offer and sell franchises under the Maryland Franchise Law

4. Prior to June 2014, Bambu, Inc. entered into certain Business Agreements with distributors granting those distributors the right to operate a Bambu Desserts and Drinks business.

5. In June 2014, Bambu, Inc. began offering and selling franchises.

6. In May 2015, Bambu Franchising, LLC (“Bambu Franchising”) purchased the assets of Bambu, Inc., including Bambu, Inc.’s Business Agreements.

7. In August 2015, the Securities Division received information that Bambu, Inc.

may have offered or sold in Maryland a franchise in the form of a Business Agreement.

8. In September 2015, in response to a request for information, counsel for Bambu Franchising advised the Securities Division that Bambu, Inc. had not offered or sold any franchises, including Business Agreements, in Maryland, but that Bambu, Inc. did offer a right of first refusal to a Virginia resident to open a Bambu Desserts and Drinks distributorship in a territory that included Maryland.

9. Specifically, on March 7, 2013, Bambu, Inc. entered into a Business Agreement with a Virginia corporation (“Virginia Distributor”) granting the Virginia Distributor the right to open and operate a Bambu Desserts and Drinks business at a location in Falls Church, Virginia.

10. Under the March 7, 2013 Business Agreement with the Virginia Distributor, Bambu, Inc. also granted the Virginia Distributor the “option of first right of refusal” to secure a second location within a 20 mile radius of the Virginia Distributor’s original Falls Church location (“Extended Territory”) which territory could include parts of Maryland.

11. On June 14, 2013, Bambu, Inc. notified the Virginia Distributor that a 3rd party had requested to open a Bambu Desserts and Drinks business in Rockville, Maryland, but that the Virginia Distributor could exercise her option of first right of refusal to open a second Bambu Desserts and Drinks business in the Extended Territory by paying a non-refundable reservation fee of \$5,000 to Bambu, Inc.

12. Bachman signed the June 14, 2013 notice from Bambu, Inc. to the Virginia Distributor.

13. On July 2, 2013, the Virginia Distributor exercised her option of first right of refusal to open a second Bambu Desserts and Drinks location in the Extended Territory, which territory

included parts of Maryland, by paying a \$5,000 reservation fee to Bambu, Inc.

14. The Virginia Distributor never opened a second Bambu Desserts and Drinks location in the Extended Territory and never received a refund of her \$5,000 reservation fee.

15. The option of first right of refusal that Bambu, Inc. granted to the Virginia Distributor to open a Bambu Desserts and Drinks location in the Extended Territory constituted the offer and sale of a “franchise” as described under the Maryland Franchise Law.

16. The Virginia Distributor never received a copy of a Maryland-registered Franchise Disclosure Document prior to paying the \$5,000 reservation fee to Bambu, Inc.

17. Bambu, Inc. represents that, other than the sale to the Virginia Distributor of an option to own and operate a Bambu Desserts and Drinks location within a 20-mile radius of her Falls Church, Virginia location that could have been located in Maryland, Bambu, Inc. did not offer to sell or sell any franchises, including Business Agreements, to be located in Maryland or to any Maryland residents.

III. CONCLUSIONS OF LAW

18. By engaging in the above activities, the Securities Commissioner has concluded that Bambu, Inc. violated §§14-214, 14-216, 14-223 and 14-228 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

19. THE SECURITIES COMMISSIONER HEREBY ORDERS, AND BAMBU, INC. REPRESENTS AND CONSENTS THAT:

- A. Bambu, Inc. shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. Bambu, Inc., through Bambu Franchising, shall repay the Virginia Distributor the \$5,000 reservation fee that she paid for the option to own and operate a Bambu Desserts and Drinks location in the Extended Territory which territory included

parts of Maryland;

- C. Bambu, Inc. represents that it will take no action against the Virginia Distributor for failing to open a Bambu Desserts and Drinks location in the Extended Territory which territory included parts of Maryland under the option of first right of refusal;
- D. Bambu, Inc. acknowledges that this Consent Order is a disclosable 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

20. Jurisdiction shall be retained by the Securities 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

21. If Respondent or Bachaman fails to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against that person to enforce this Consent Order or to sanction that person for violating an order of the Securities 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 Securities Commissioner or a court finds that Respondent or Bachman has violated this Consent Order, the Findings of Fact and the violations of the Maryland Franchise Law alleged in the Consent Order shall be deemed admitted and may be introduced into evidence against that person.

VII. MODIFICATION OF CONSENT ORDER

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

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

August 15, 2016

BY CONSENT:

Bambu Desserts and Drinks, Inc.

By: _____
Kimhong Thi Nguyen, Principal

ACKNOWLEDGED AND AGREED:

Scott Bachman