

BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Best Western International, Inc.,

Case No. 2018-0237

Respondent.

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into alleged franchise-related activities of Best Western International, Inc. (“Best Western”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §14-201 et seq. (2015 Repl. Vol. and Supp. 2017) (the “Maryland Franchise Law”) and the regulations promulgated thereunder; and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that Best Western violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of Best Western franchises in Maryland in the form of membership agreements 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 Best Western admitting or denying any violation of law, the Securities Commissioner and Best Western have reached an agreement to

enter into this Consent Order; and

WHEREAS, Best Western waives its rights to a hearing and any rights to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, it is hereby agreed, and the Securities Commissioner hereby orders:

I. JURISDICTION

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

II. FINDINGS OF FACT

Background

2. Best Western is a membership marketing association incorporated as a nonprofit corporation under the laws of Arizona with a principal business address located at 6201 N. 24th Parkway, Phoenix, Arizona 85016.

3. Best Western members have independently owned and operated member hotels that have used the Best Western International System and Trademarks in the United States since approximately 1946.

4. Best Western has entered into membership agreements with Maryland members since at least 1966. From 1966 to the date of this Consent Order, Best Western has entered into approximately forty-nine (49) membership agreements with new Maryland members.

5. As of the date of this Consent Order, there are eighteen (18) active Best Western branded hotels located in Maryland that have entered into Best Western membership agreements.

6. Best Western has never registered to offer or sell franchises under the Maryland

Franchise Law.

7. In 2016, a wholly-owned subsidiary of Best Western, SureStay, Inc., filed a franchise registration application with the Securities Division for the brands SureStay, SureStay Plus, and SureStay Signature Collection. SureStay, Inc. renewed its franchise registration in Maryland in 2017 and 2018.

8. On March 28, 2018, Best Western entered into a master license agreement with BWI Licensing Inc. (“BWI”) that allows BWI to use, and grant franchisees the right to use, the Best Western International Marks and System in North America.

9. On April 10, 2018, BWI filed an initial registration application with the Securities Division with a Franchise Disclosure Document (“Conversion FDD”) related to the conversion of Best Western memberships into franchises.

10. Under Best Western’s Conversion FDD, existing Best Western members will be given the right to convert to a Best Western franchise without paying any application fees, initial fees or entrance fees, if the members vote to convert from the membership marketing association model to a franchise model.

11. If the Best Western members do not vote to convert from a membership marketing association to a franchise as described in the Conversion FDD, Best Western intends to continue to conduct business in Maryland under the current membership model but will file and register that current membership model under the Maryland Franchise Law and comply with all provisions of the Maryland Franchise Law.

12. Best Western acknowledges that there is no express exclusion from the definition of franchise or exemption from registration under the Maryland Franchise Law for a non-profit entity or relating to a marketing or retail cooperative or membership agreements.

Representations by Best Western

13. Best Western represents that from January 1, 2013 to the present, Best Western entered into membership agreements with a total of twelve (12) Maryland entities, including some Maryland entities that Best Western had contingently approved for membership. Two (2) of the transactions involving two (2) of those Maryland entities (“Exempt Maryland Member”) were exempt from disclosure under the Maryland Franchise Law because the Maryland entities had previously owned and operated an existing Best Western property at the time it entered into its most recent membership agreement with Best Western. The other ten (10) Maryland entities are referred to in this Consent Order as the “Qualifying Maryland Members.”

14. Three (3) of the Qualifying Maryland Members are no longer Best Western members as of the date of this Consent Order. The other seven (7) Qualifying Maryland Members are currently Best Western members or are contingently-approved applicants.

15. Best Western confirms that after January 1, 2013, other than the ten (10) Qualifying Maryland Members and the two (2) Exempt Maryland Members, and other than renewing memberships of Best Western members originally affiliated with Best Western prior to January 1, 2013, Best Western has not entered into any membership agreements with any Maryland entities or with any other entities related to hotel properties located in Maryland.

16. Best Western represents that it has engaged an attorney experienced with franchise law compliance matters and that, in the future, it will comply with all registration and disclosure requirements under the Maryland Franchise Law.

17. Best Western agrees that it will diligently pursue an application with the Securities Division to register the Best Western membership agreement as a franchise.

18. Best Western further represents and agrees that, in the future, it will comply with

all registration and disclosure provisions under the Maryland Franchise Law.

III. COMMISSIONER'S CONCLUSIONS OF LAW

19. For purposes of this Consent Order, the Securities Commissioner has concluded that, by engaging in the above activities, Best Western violated the registration and disclosure provisions, §§ 14-214, 14-216, and 14-223 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

20. THE COMMISSIONER HEREBY ORDERS AND BEST WESTERN HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. Best Western shall immediately and permanently cease and desist from the offer and sale of Best Western membership agreements in Maryland unless and until it complies with the Maryland Franchise Law;
- B. As of the date of this Consent Order, Best Western shall reimburse the Office of the Attorney General the sum of Sixteen Thousand Five Hundred Dollars (\$16,500) for unpaid franchise filing fees that would have been applicable to Best Western franchise registration applications for the period 1985 to the present;
- C. Within fifteen (15) days of its receipt of the fully executed Consent Order of the Securities Commissioner, Best Western shall send to the seven (7) Qualifying Maryland Members currently operating under membership agreements with Best Western a copy of this signed Consent Order and a rescission letter in a form attached to this Consent Order as Exhibit 1 offering to immediately rescind the member's membership agreement and refund the Best Western entrance fee that member paid;
- D. Within thirty (30) days of its receipt of the fully executed Consent Order of the Securities Commissioner, Best Western shall send to each of the three (3) Qualifying Maryland Members who are no longer part of the Best Western system an unconditional refund of the Best Western entrance fee that it paid.
- E. Best Western shall pay the Office of the Attorney General a civil monetary penalty in the amount of Two Hundred Ninety-Seven Thousand Dollars (\$297,000) for the alleged violations set forth in this Consent Order, as provided below:
 - i. The civil monetary penalty shall be reduced by up to Two Hundred Seventy-Two Thousand Dollars (\$272,000) for: (a) the total amount of rescission payments that Best Western offers to make to Qualifying Maryland Members who are still Best Western members or contingently-approved applicants; and (b) the amount of the refund that

Best Western shall make to the Qualifying Maryland Members who are no longer Best Western members or contingently-approved applicants;

- ii. If Best Western offers rescission payments and makes a refund to the Qualifying Maryland Members in amounts totaling Two Hundred Seventy-Two Thousand Dollars (\$272,000), the civil monetary penalty payable to the Office of the Attorney General shall be reduced to Twenty Five Thousand (\$25,000);
 - iii. Payment of the civil monetary penalty shall be due at the expiration of the time for Qualifying Maryland Members to respond to the Offer to Rescind Franchise/Membership Agreement, or December 31, 2018, whichever is earlier;
- F. Best Western agrees that if any current Qualifying Maryland Member accepts Best Western's offer to rescind its membership agreement in response to the Offer to Rescind Franchise/Membership Agreement, Best Western will complete payments to that Qualifying Maryland Member within thirty (30) days of Best Western's receipt of that written Acceptance; and
- G. Best Western 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

21. 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

22. If Best Western 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 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 Best Western 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

23. 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 Document**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

August 23, 2018

BY CONSENT:

Best Western International, Inc.

By: David Kong
President and CEO

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

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

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"), [Insert name of Company] ("we") have agreed to offer rescission to any persons who entered into a Membership Agreement with us related to the operation of a Best Western International hotel in Maryland to settle allegations that we entered into a franchise in violation of the registration and disclosure 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 membership agreement, we agree to return to you the entrance fees you paid us and cancel all post-term and non-competition obligations you may have to us, if any, under your membership agreement, other than those obligations discussed in this letter.

In the event you elect to rescind, we will immediately cancel your Membership 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/Membership 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).

Sincerely,

THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE/MEMBERSHIP AGREEMENT

1. I, the undersigned membership, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement/Membership 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/Membership 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 or member under my Membership Agreement.

Date: _____

Franchisee/Member