

ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

**Caffebene, Inc.,**

Respondent.

Case No. 2017-0040

\* \* \* \* \*

**FINAL ORDER TO CEASE AND DESIST**

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 Caffebene, Inc. (“Caffebene”) and its former president, Sun Kwon Kim 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, on the basis of that investigation by the Securities Division, on March 22, 2017, the Maryland Securities Commissioner (the “Securities Commissioner”) issued an Order to Show Cause against Respondents, finding that grounds existed to allege that Respondents violated the registration, disclosure, and antifraud provisions of the Maryland Franchise Law and the 2015 Consent Order of the Securities Commissioner (“2015 Consent Order”) entered into to resolve offers to sell and sales of Caffebene franchises in Maryland; and

WHEREAS, on April 5, 2017, in response to the Securities Commissioner’s Order to Show Cause, Respondent Caffebene filed an Answer to the Order to Show Cause; and

WHEREAS, the Securities Division and Caffebene entered into an agreement to settle the

Securities Division's allegations against Caffebene; and

WHEREAS, on November 9, 2017, the Securities Commissioner issued a Consent Order ("2017 Consent Order") against Caffebene in which she concluded that Caffebene violated both the 2015 Consent Order and sections 14-214, 14-216, 14-223, and 14-229 of the Maryland Franchise Law; and

WHEREAS, under the 2017 Consent Order, the Securities Commissioner ordered and Caffebene agreed that Caffebene would pay the sum of \$5,000 to the Office of the Attorney General of Maryland as a civil monetary penalty; and

WHEREAS, prior to entering into the 2017 Consent Order, the Securities Commissioner required Caffebene to make payment of the \$5,000 civil monetary penalty; and

WHEREAS, on or about October 13, 2017, Caffebene delivered to the Securities Division a check made payable to the Maryland Attorney General in the amount of \$5,000 in satisfaction of the civil monetary penalty Caffebene agreed to pay under the 2017 Consent Order; and

WHEREAS, on or about November 14, 2017, the Office of the Attorney General received notification from Bank of America that the \$5,000 check that Caffebene remitted on or about October 13, 2017 was returned for the reason "Not Sufficient Funds"; and

WHEREAS, On November 29, 2017, counsel for the Securities Division sent a letter by certified mail to Caffebene, with a copy to Caffebene's counsel, notifying Caffebene that its \$5,000 check for the civil monetary penalty required under the 2017 Consent Order was returned as unpaid for insufficient funds and requiring that Caffebene pay that amount by December 20, 2017; and

WHEREAS, on or before December 7, 2017, Caffebene received the Securities Division's November 29, 2017 certified letter; and

WHEREAS, on January 8, 2018, the Securities Commissioner issued an Order to Show

Cause (the “2018 Order to Show Cause”) against Caffebene alleging that Caffebene failed to pay the \$5,000 civil monetary penalty required under the 2017 Consent Order and ordering Caffebene to show cause why a final order should not be entered ordering Caffebene to permanently cease and desist from offering franchises in violation of the Maryland Franchise Law and the 2015 and 2017 Consent Orders; and

WHEREAS, on January 23, 2018, counsel for the Securities Division received an e-mail from Christine Kim (“Kim”), identifying herself as “Accounting Manager” for Caffebene, advising the Securities Division that Caffebene was no longer represented by legal counsel, and requesting additional time to pay funds owed by Caffebene; and

WHEREAS, on January 24, 2018, counsel for the Securities Division sent Kim a letter advising her: that if Caffebene wished to contest the allegations in the 2018 Order to Show Cause, Caffebene may file an Answer and Request for Hearing with the Securities Commissioner; that if Caffebene failed to request a hearing in response to the 2018 Order to Show Cause, the Securities Commissioner would enter a Final Order directing that Caffebene permanently cease and desist from violations of the Maryland Franchise Law and the 2015 and 2017 Consent Orders; and that, under the Maryland Rules of Civil Procedure, a person other than an individual may enter an appearance only by an attorney, so that, as a corporate entity, Caffebene must obtain legal counsel to appear on its behalf in order to contest the allegations in the 2018 Order to Show Cause; and

WHEREAS, on February 9, 2018, Kim sent an e-mail to counsel to the Securities Division requesting additional time to pay the civil monetary penalty to the Maryland Attorney General and representing that Caffebene would make the payment before the end of February 2018; and

WHEREAS, in response to Kim’s February 9, 2018 e-mail, counsel to the Securities Division responded that Caffebene still must respond to the 2018 Order to Show Cause; and

WHEREAS, on February 27, 2018, the Securities Commissioner held a telephone conference with Kim and counsel for the Securities Division, where Kim agreed that, by March 8, 2018, Caffebene would remit a bank check in the amount of \$5,000 made payable to Office of the Attorney General and, between March 8, 2018 and July 31, 2018, make additional payments in satisfaction of a \$49,500 debt Caffebene owed to a Maryland franchisee, and the Securities Commissioner agreed that if Caffebene made those payments, she would dismiss the 2018 Order to Show Cause against Caffebene; and

WHEREAS, on March 8, 2018, Kim advised the Securities Division that Caffebene would not be able to make the payments to the Office of the Attorney General or the Maryland franchisee by March 8, 2018 as previously agreed, and Kim requested that the Securities Commissioner allow Caffebene to make those payments by the end of March 2018; and

WHEREAS, on March 14, 2018, counsel for the Securities Division advised Kim that the Securities Commissioner had requested written confirmation by March 16, 2018 that Caffebene made a request to the Korean bankruptcy court for the release of funds to allow Caffebene to make the payments Caffebene agreed to make under the 2017 Consent Order; and

WHEREAS, on March 19, 2018, counsel for the Securities Division advised Kim that she had not supplied written confirmation of Caffebene's bankruptcy court request and requested that Caffebene advise him of an estimated date when Caffebene could make the promised payments; and

WHEREAS, on March 20, 2018, Kim advised the Securities Division that she would be meeting with an official from Caffebene's affiliate on March 22, 2018 and would advise the Securities Division immediately after that date regarding Caffebene's payment obligations; and

WHEREAS, on March 27, 2018, the Securities Commissioner sent an e-mail to Kim and

counsel for the Securities Division advising Kim that she had failed to meet the deadline for information leading to the resolution of the 2018 Order to Show Cause; that Caffebene must file, by April 6, 2018, an Answer and Request for Hearing in response to the 2018 Order to Show Cause; and that the failure to file that Answer by April 6, 2018 would result in a default order imposing the penalties sought in the 2018 Order to Show Cause; and

WHEREAS, on March 28, 2018, Kim advised the Securities Division that she had met with an official from Caffebene and would report back to the Securities Division “soon”; and

WHEREAS, as of the date of this Final Order to Cease and Desist, Caffebene has not made any payment to the Office of the Attorney General towards the \$5,000 civil monetary penalty Caffebene agreed to pay under the 2017 Consent Order and did not pay the Maryland franchisee as Caffebene had agreed; and

WHEREAS, Caffebene has not filed an Answer or Request for Hearing in response to the 2018 Order to Show Cause; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Final Order to Cease and Desist;

NOW, THEREFORE, THE SECURITIES COMMISSIONER FINDS AND ORDERS:

#### I. JURISDICTION

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

#### II. RESPONDENT

2. Caffebene is a New York corporation with a last known principal business

address of 1021 Hudson Avenue, Ridgefield, NJ 07657.

3. Caffebene offers or has offered franchises for stores that sell coffee, gelato, waffles, gourmet sandwiches and related products.

### III. CONCLUSIONS OF LAW

4. Caffebene violated the 2015 and 2017 Consent Orders issued by the Maryland Securities Commissioner.

5. Caffebene violated sections 14-214, 14-216, 14-223, and 14-228 of the Maryland Franchise Law.

### IV. SANCTIONS

6. NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. Caffebene permanently cease and desist from violating the Maryland Securities Act.

B. Caffebene is assessed a civil monetary penalty of \$5,000, which is the amount Caffebene agreed to pay as a civil monetary penalty under the 2017 Consent Order.

### V. JURISDICTION RETAINED

7. Jurisdiction is retained by the Commissioner for the purpose of enabling any party to this Order to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Order.

VI. NOTICE OF RIGHT TO APPEAL

8. Pursuant to the Code of Maryland Regulations, COMAR 02.02.06.24, any Respondent has the right to file an appeal of this Order with the appropriate circuit court of Maryland. Any appeal must be filed within 30 days from the date this Order is mailed by the Securities Division.

**SO ORDERED:**

**Commissioner's Signature  
On File w/Original Documents**

Dated: April 11, 2018

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MELANIE SENTER LUBIN  
SECURITIES COMMISSIONER