

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

In the Matter of: *

SMS FRANCHISE, LLC, d.b.a. *
New York City Bagel & Sandwich Shop, *
*
JOSEPH V. SMITH, * Case Number 2020-0113
DENNIS KENNETH MASON, *
*
Respondents. *

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**SUMMARY ORDER TO CEASE AND DESIST
AND ORDER TO SHOW CAUSE**

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 SMS Franchise, LLC, Joseph V. Smith, and Dennis Kenneth Mason (collectively "Respondents") 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, as a result of that investigation, the Maryland Securities Commissioner (the "Securities Commissioner") has found grounds to allege that Respondents violated and may continue to violate a Final Order to Cease and Desist issued by the Securities Commissioner in relation to offers to sell and sales of New York City Bagel & Sandwich Shop franchises in Maryland; and

WHEREAS, the Securities Commissioner has found grounds to further allege that Respondents violated and may continue to violate the anti-fraud and registration provisions of the Maryland Franchise Law in relation to offers to sell, and sales of New York City Bagel &

Sandwich Shop franchises in Maryland;

WHEREAS, the Securities Commissioner has determined that immediate action against Respondents is in the public interest;

NOW, THEREFORE, pursuant to section 14-210 of the Maryland Franchise Law, it is hereby

ORDERED, that Respondents immediately cease and desist from the offer to sell or sale of any franchise in Maryland and to any Maryland residents, pending a hearing in this matter or until such time as the Securities Commissioner modifies or rescinds this Order; and it is further

ORDERED, that each Respondent show cause why a final order should not be entered against that person, ordering that person to permanently cease and desist from offering or selling franchises in violation of a Final Order to Cease and Desist by the Securities Commissioner and the Maryland Franchise Law.

The Securities Commissioner alleges the following as a basis for this Order:

I. JURISDICTION

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

II. STATEMENT OF FACTS

A. Background

2. SMS Franchise, LLC, ("SMS Franchise") is a New Jersey limited liability company with a principal business address of 2 University Plaza, Hackensack, New Jersey 07601.

3. SMS Franchise is the most recent in a series of corporate entities owned or controlled by Joseph V. Smith ("Smith") that he used to offer to sell and sell franchises throughout the United States in violation of both federal and state franchise laws.

4. Smith is the C.E.O. and sole member of SMS Franchise.

5. Smith and SMS Franchise offer and sell franchises under the name New York City Bagel & Sandwich Shops (“NYC Bagel”).

6. Smith also previously owned New York Bagel Enterprises, Inc. (“NY Bagel Enterprises”), a New York corporation, and SMS, Inc. (“SMS”), a New Jersey corporation, both of which are predecessors or affiliates of SMS Franchise.

7. SMS and Smith previously offered and sold franchises under the name New York Bagel Cafe & Deli. The franchises that SMS offered and sold are nearly identical to the franchises offered and sold by SMS Franchise.

8. Dennis Kenneth Mason (“Mason”) is or was a franchise sales agent for franchise offerings, including NYC Bagel and New York Bagel Cafe & Deli.

9. Upon information and belief, Mason has used other names, including the alias “Bryan Scofield.”

B. The Maryland Final Order to Cease and Desist

10. On October 8, 2015, the Securities Commissioner issued a Final Order to Cease and Desist against NY Bagel, SMS, Smith, and Mason, concluding that they violated the anti-fraud, registration and disclosure provisions of the Maryland Franchise Law.

11. Under the Final Order to Cease and Desist, the Securities Commissioner found that, while not registered to offer franchises in Maryland, Smith posted an advertisement in a Baltimore “Craigslist” advertisement for opportunities for individuals to open and operate their own bagel café franchise.

12. Under the Final Order to Cease and Desist, the Securities Commissioner further found that on April 23, 2015, Smith, on behalf of SMS, sold a franchise in the form of a License

Agreement to “Mike H,” a Maryland resident, granting Mike H the right to operate a retail bagel café in Ocean City, Maryland under the name New York Bagel Cafe & Deli. At the time of the sale to Mike H, SMS was not registered to offer or sell franchises in Maryland.

13. The Securities Commissioner also found that Mason told Mike H that by purchasing a New York Bagel Cafe & Deli, his cafe could earn \$1,500 per day.

14. The Securities Commissioner further found that Mike H paid SMS an initial fee of \$17,500, and agreed to pay ongoing royalties of \$500 per month, that Smith signed the SMS License Agreement as president of SMS, and that Mason witnessed Smith’s signature on the SMS License Agreement.

15. In her Final Order to Cease and Desist, the Securities Commissioner concluded as follows:

a. Respondents NY Bagel [Enterprises], SMS, Smith, and Mason violated section 14-228 of the Maryland Franchise Law by advertising, offering and selling in Maryland a franchise as defined under section 14-201 of the Maryland Franchise Law without registering the franchise with the Commissioner as required under the Maryland Franchise Law.

b. Respondents Smith, Mason and SMS violated section 14-223 of the Maryland Franchise Law by offering and selling in Maryland a franchise without giving the prospective franchisee a copy of the offering prospectus required under the Maryland Franchise Law.

c. Respondents NY Bagel [Enterprises], SMS, Smith, and Mason violated section 14-229 of the Maryland Franchise Law by making material misrepresentations of fact and/or omissions of material fact about the New York Bagel Cafe & Deli franchise offering.

d. Respondents Mason and SMS violated 14-229 of the Maryland Franchise Law and COMAR 02.02.08.16(D) by making oral or written statements concerning the potential earnings from operation of a New York Bagel Cafe & Deli franchise without making the required disclosures about those potential earnings in the offering prospectus given to a prospective franchisee.

e. Respondents NY Bagel [Enterprises], Smith, and SMS violated section 14-

225 of the Maryland Franchise Law and COMAR 02.02.08.16(D) placing advertisements offering to sell a New York Bagel Cafe & Deli franchise without submitting a copy of that advertisement to the Commissioner before publication .

16. In her Final Order to Cease and Desist, the Securities Commissioner ordered Respondents to permanently cease and desist from violations of the Maryland Franchise Law.

C. Other State Law Enforcement Actions Against Smith and NYC Bagel Predecessor

17. On September 30, 2016, the Virginia State Corporation Commission issued a Rule to Show Cause against New York Bagel Enterprises, Smith, and Mason alleging fraud in connection with the sale of New York Bagel Enterprises franchises in Virginia.

18. On March 10, 2017, the Virginia State Corporation Commission issued a Judgment Order against New York Bagel Enterprises, Smith, and Mason after they failed to appear at a hearing on the Rule to Show Cause. The Judgment Order assessed a total of \$675,000 in fines and \$20,899.33 in costs against New York Bagel Enterprises, Smith, and Mason, ordered restitution for New York Bagel Enterprises franchises in Virginia, and permanently enjoined New York Bagel Enterprises from operating any franchises in Virginia.

19. New York Bagel Enterprises, Smith, and Mason failed to pay any portion of the judgment and fines ordered by the Virginia State Corporation Commission or any restitution to Virginia franchisees.

20. On September 15, 2017, the Securities Administrator of the Washington State Department of Financial Institutions issued a Final Order to Cease and Desist (“Washington Final Order”) as to New York Bagel Enterprises and Smith, as well as their agents and employees, for violating the registration and anti-fraud provisions of the Washington Franchise Investment Protection Act.

21. In the Washington Final Order, the Washington Securities Administrator found that

New York Bagel Enterprises and Smith failed to disclose to Washington franchisees to whom they sold franchises material facts regarding the following legal and financial history relating to the New York Bagel Enterprises franchise offering:

- a. From 1987 to 2009, Dennis K. Mason filed for bankruptcy twice. He was also named as a defendant in at least ten commercial lawsuits, nearly all alleging fraud in connection with the offer and sale of franchises. The Superior Court of New Jersey destroyed the records for three of these cases, but the defendants were found liable or settled the claims in the other seven lawsuits.
- b. In 2011, an arbitrator ruled against New York Bagel Enterprises, ordering the company to fully refund the franchisee's \$29,500 franchise fee.
- c. In 2011, an arbitrator awarded a franchisee a \$22,000 judgment against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises franchise.
- d. In 2011, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason in connection with his purchase of a New York Bagel Enterprises franchise. In 2013, a court ruled that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated the New Jersey Franchise Practices Act and the New Jersey Consumer Fraud Act and entered a judgment against the defendants.
- e. In 2011, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of contract in connection with the sale of a New York Bagel Enterprises franchise in Pennsylvania. In 2012, the parties settled the lawsuit.
- f. In 2012, a franchisee sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for violations of the North Carolina Deceptive Trade Practices Act in connection with the defendant's sale of a New York Bagel Enterprises franchise. In 2013, a court entered default judgment of \$839,976.96 against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason, finding that the defendants willfully violated the North Carolina Deceptive Trade Practices Act.
- g. In 2012, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dermis K. Mason for violations of New York State General Business Law in connection with the sale of a New York Bagel Enterprises franchise in New York. In 2014, a judge ruled that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason violated New York State General Business Law.
- h. In 2013, an arbitrator issued a franchisee an award against New York Bagel

Enterprises, Joseph V. Smith, and Dennis K. Mason in a dispute related to the franchisee's New York Bagel Enterprises franchise.

i. In 2013, franchisees sued New York Bagel Enterprises and Joseph V. Smith for violations of the New Jersey Franchise Practices Act, fraud, unjust enrichment, and breach of contract in connection with the sale of a New York Bagel Enterprises franchise in New Jersey. A default judgment was entered against New York Bagel Enterprises and Joseph V. Smith that same year.

j. In 2015, franchisees sued New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason for fraud, negligent misrepresentation, violations of the New Jersey Consumer Fraud Act and the New Jersey Franchise Practices Act, breach of contract, and unjust enrichment in connection with the sale of a New York Bagel Enterprises franchise. In 2016, a default judgment was entered against New York Bagel Enterprises.

k. In 2015, the Securities Division of the Office of the Attorney General of Maryland issued an Order to Show Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason alleging fraud in connection with the sale of a New York Bagel Enterprises franchise in Maryland. In 2015, the Maryland Securities Commissioner issued a Final Order against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason after they failed to respond to the Order to Show Cause. The Final Order ordered that New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason permanently cease and desist from violations of the Maryland Franchise Law.

l. In 2016, the State Corporation Commission of the Commonwealth of Virginia issued a Rule to Show Cause against New York Bagel Enterprises, Joseph V. Smith, and Dennis Mason alleging fraud in connection with the sale of New York Bagel Enterprises franchises in Virginia. In 2017, the State Corporation Commission issued a Judgment Order against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason after they failed to appear at a hearing on the Rule to Show Cause. The Judgment Order assessed a total of \$675,000 in fines and \$20,899.33 in costs against New York Bagel Enterprises, Joseph V. Smith, and Dennis K. Mason, ordered restitution for New York Bagel Enterprises franchises in Virginia, and permanently enjoined New York Bagel Enterprises from operating any franchises in Virginia.

22. The Washington Securities Administrator also found that many of the franchisees involved in the lawsuits described in the Washington Final Order first learned about the opportunity to purchase a franchise through online advertisements and that, in many instances, the plaintiffs in the civil actions described in the Washington Final Order had been unable to collect on their judgments, and that Smith, Mason, and New York Bagel Enterprises were not current in

many of the settlement payments relating to those civil actions.

C. Continuing Offers and Sales of Franchises in Violation of Maryland Franchise Law and the Final Order to Cease and Desist

23. In November 2018, Jashim U, a resident of Baltimore County Maryland who was temporarily living in Prince George's County, Maryland, near Washington, DC, responded to an advertisement on www.craigslist.com ("Craigslist") for an opportunity to own and operate a bagel shop in Washington, DC.

24. An individual calling himself Bryan Scofield ("Scofield") responded to JU's inquiry and told him about an opportunity to buy a NYC Bagel franchise. Schofield said that NYC Bagel already had several franchise outlets open in several states.

25. In January 2019, Scofield sent Jashim U a package of information about the NYC Bagel franchise to JU's work address in Prince George's County, Maryland (although that address was listed as Washington, DC). That package included a proposed franchise agreement and a Franchise Disclosure Document for SMS Franchise.

26. The cover letter from SMS Franchise that Scofield sent to Jashim U stated that "We will have your store open as soon as possible and get the real estate, site location process going immediately."

27. Smith represented to Jashim U that SMS Franchising would refund his \$27,500 franchise fee if Jashim U could not open his NYC Bagel franchise.

28. Smith included provisions in Jashim U's franchise agreement confirming that Jashim U's franchise fee was fully refundable if he could not secure financing or if the parties could not agree on a location for Jashim U's NYC Bagel franchise outlet.

29. Scofield instructed Jashim U where to send his signed franchise agreement and told

him payment must be “cashier’s check (only)” for \$27,500, representing the franchise fee for his NYC Bagel franchise.

30. Scofield used the e-mail address franchiserep@gmail.com to correspond with Jashim U. That same e-mail address was used by someone with the initials “D. K. M.”

31. Scofield instructed Jashim U to send his agreement and his cashier’s check via FedEx to “Dennis M.” in the Franchise Department of NYC Bagel.

32. On January 28, 2019, Jashim U sent a package via FedEx from an address in Catonsville, Maryland to SMS Franchise. That package included a signed franchise agreement for a NYC Bagel franchise and a cashier’s check made payable to SMS Franchise for \$27,500.00.

33. Jashim U was unable to secure financing for his NYC Bagel outlet, and he provided documentation to Smith confirming that he could not secure financing. When Jashim U requested that SMS Franchise refund his franchise fee as provided under his franchise agreement, Smith and Mason stopped responding to him.

34. The Franchise Disclosure Document that Jashim U received from SMS Franchise discloses three civil actions against the franchisor but no state enforcement actions or restrictive orders relating to the franchisor, the franchise offering, or any persons affiliated with the franchisor.

35. The SMS Franchise Disclosure Document also states that the franchisor does not intend to offer franchises in any of the 14 states, including Maryland, with a franchise registration and disclosure law, but it intends to offer franchises in all the other states.

36. SMS Franchise has never been registered to offer franchises under the Maryland Franchise Law.

COUNT ONE
AGAINST RESPONDENTS SMITH AND MASON
(Violations of an order of the Securities Commissioner)

WHEREAS, Respondents Smith and Mason are the subjects of an Final Order to Cease and Desist of the Securities Commissioner (“the Final Order to Cease and Desist”) finding that they violated the anti-fraud, registration, and disclosure provisions of the Maryland Franchise Law, in relation to the advertisement, offer to sell, and sale of New York Bagel Enterprises franchises in Maryland; and

WHEREAS, Respondents Smith and Mason have offered to sell and sell franchises to Maryland residents in violation of the Securities Commissioner’s Final Order to Cease and Desist and in violation of the very same provisions of the Maryland Franchise Law the Securities Commissioner found those Respondents to have violated in her Final Order to Cease and Desist;

NOW, THEREFORE, IT IS HEREBY ORDERED, that Respondents Smith and Mason immediately cease and desist from offering and selling franchises in Maryland in violation of an order of the Commissioner in the form of the Final Order to Cease and Desist; and it is further ORDERED, that Respondents Smith and Mason show cause why a final order should not be issued against each of them directing them to permanently cease and desist from engaging in activities that violate the Final Order to Cease and Desist of the Securities Commissioner.

COUNT TWO
AGAINST RESPONDENTS SMS FRANCHISE, SMITH, AND MASON
(Violation of Registration Provisions)

WHEREAS, section 14-228 of the Maryland Franchise Law makes it unlawful for any person to offer to sell, through advertisement or otherwise, or sell a franchise in Maryland or to a

Maryland resident unless the offering has been registered with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in Maryland; and

WHEREAS, Respondents advertised, offered to sell a franchise, and sold a franchise to a Maryland resident without registering the offering with the Commissioner;

NOW, THEREFORE, IT IS HEREBY ORDERED, that Respondents immediately cease and desist from offering and selling franchises in Maryland in violation of the registration provisions of section 14-228 of the Maryland Franchise Law; and it is further

ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in Maryland in violation of the registration provisions of section 14-228 of the Maryland Franchise Law.

COUNT THREE
AGAINST RESPONDENTS SMS FRANCHISING, SMITH, and MASON
(Fraud and Misrepresentation in connection with the offer or sale of franchises)

WHEREAS, section 14-229 of the Maryland Franchise Law prohibits any person, in connection with the offer to sell or sale of a franchise, directly or indirectly, to employ a device, scheme or artifice to defraud; make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, in connection with the offer to sell and sale of a franchise to a prospective Maryland franchisee, Respondents made material misrepresentations of fact and/or omissions of material fact about the NYC Bagel franchise offering, including failing to disclose state law enforcement orders against Smith, Mason, and/or SMS Franchising's predecessors, including the

Securities Commissioner's Final Order to Cease and Desist; and

WHEREAS, in connection with the offer and sale of franchise, Respondents made material misrepresentations of fact and/or omissions of material fact about the NYC Bagel franchise offering by failing to disclose to a prospective Maryland franchisee a significant number of civil lawsuits against Smith, Mason, and/or SMS Franchising's predecessors and unpaid civil judgments obtained by other franchisees and the Virginia Corporations Commission against Smith, Mason, and SMS Franchising's predecessor; and

WHEREAS, in connection with the offer and sale of franchise, Respondents SMS Franchising and Smith made material misrepresentations of fact and/or omissions of material fact about the NYC Bagel franchise by falsely stating to a prospective Maryland franchisee that if he could not secure franchising or could not locate a site for his franchise, SMS Franchising would refund his franchise fee;

NOW, THEREFORE, IT IS HEREBY ORDERED, that Respondents immediately cease and desist from offering and selling franchises in Maryland in violation of the anti-fraud provisions of section 14-229 of the Maryland Franchise Law; and it is further

ORDERED, that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the anti-fraud provisions of section 14-229 of the Maryland Franchise Law.

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that Respondents shall file with the Commissioner a written Answer to

this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether a respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any respondent to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. Failure of any respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing Respondents to permanently cease and desist from violation of the Maryland Franchise Law.

SO ORDERED:

**Commissioner's Signature is on File
w/Original Documents**

October 5, 2020

Dated

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER