

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Tommy's Express LLC
dba Tommy's Express Car Wash

Respondent.

Case No. 2022-0187

* * * * *

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 Tommy's Express LLC/dba Tommy's Express Car Wash ("Tommy's") under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §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 "Securities Commissioner") has concluded that grounds exist to allege that Tommy's violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of a franchise under the Maryland Franchise Law; 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 Tommy's admitting or denying any violation of law, the Securities Commissioner and Tommy's have reached an agreement to enter into this Consent Order; and

WHEREAS, Tommy's waives its right 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

2. Tommy's is a Michigan limited liability company with a principal business address located at 240 East 8th Street, Holland, Michigan 49423.

3. Tommy's offers and sells franchises for car washing services such as car cleaning, waxing, polishing and detailing services using the primary service mark "Tommy's."

4. Tommy's was registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law from April 17, 2017 through April 17, 2018 and from January 14, 2019 through January 14, 2020.

5. On January 9, 2020, Tommy's filed an application with the Securities Division to renew its then-current franchise registration under the Maryland Franchise Law.

6. On January 13, 2020 and July 15, 2020, the Securities Division reviewed Tommy's renewal application and issued comments to that application that the franchisor needed to address before the Securities Division would renew Tommy's's franchise offering. Tommy's

did not respond to the comments issued by the Securities Division on July 15, 2020.

7. On January 15, 2021, the application filed by Tommy's on January 9, 2020 was deemed abandoned by the Securities Division.

8. On July 16, 2021, Tommy's filed a new initial franchise registration application with the Securities Division.

9. On August 16, 2021, the Securities Division reviewed Tommy's's July 16, 2021 initial franchise registration application and issued comments to that application that the franchisor needed to address before the Securities Division would register Tommy's's franchise offering. Among the comments the Securities Division made in its August 16, 2021 letter was a request that the franchisor submit an undertaking stating that the franchisor had not offered or sold any franchises after its Maryland registration expired on January 14, 2020.

10. Tommy's did not respond to the Securities Division's August 16, 2021 comment letter.

11. On February 12, 2022, the franchise registration application Tommy's filed on July 16, 2021 was deemed abandoned by the Securities Division.

12. On September 8, 2022, Tommy's filed with the Securities Division an application for a sophisticated franchisee exemption under the Maryland Franchise Law.

13. On September 16, 2022, the Securities Division reviewed Tommy's's franchise exemption application and issued comments to that application that the franchisor needed to address. In its September 16, 2022 comment letter, the Securities Division noted that it had come to its attention that Tommy's may have offered and sold franchises either to be operated in Maryland or to a resident of Maryland when Tommy's was not registered to offer and sell franchises in Maryland.

14. On October 13, 2022, counsel for Tommy's sent an email to the Securities Division acknowledging that Tommy's offered and sold franchises in Maryland during the period it was not registered under the Maryland Franchise Law.

15. Specifically, Tommy's acknowledged that on November 18, 2018, while Tommy's was not registered under the Maryland Franchise Law, Tommy's offered and sold a franchise to E&S Ventures, LLC, a Maryland entity ("E&S Ventures") for the right to operate a Tommy's franchise to be located in Severna Park, Maryland. Counsel for Tommy's represented that E&S Ventures paid Tommy's \$30,000 in initial franchise fees under its franchise agreement.

16. Tommy's also acknowledged that on July 14, 2021, while Tommy's was not registered under the Maryland Franchise Law, Tommy's offered and sold a franchise to Olympus Pines, FF Wash 1, LLC ("Olympus Pines"), a Delaware limited liability company, for the right to operate a Tommy's franchise to be located in Waldorf, Maryland. Counsel for Tommy's represented that Olympus Pines paid Tommy's \$40,000 in initial franchise fees under its franchise agreement.

17. On October 17, 2022, the Securities Division emailed counsel for Tommy's and requested copies of the franchise disclosure documents ("FDDs") given to E&S Ventures and Olympus Pines, the relevant franchise agreements, an explanation for the unregistered franchise sales, and the steps taken by the franchisor to prevent future unregistered franchise sales.

18. On March 16, 2023, counsel for Tommy's emailed the Securities Division a letter dated March 16, 2023. Counsel stated that Tommy's could not find any electronic evidence that an FDD was provided to any member of E&S Ventures prior to the execution of E&S Venture's franchise agreement. Counsel included a copy of an FDD that Tommy's represented that it gave to Olympus Pines prior to that franchisee's signing of its franchise agreement.

19. On March 17, 2023, the Securities Division emailed counsel for Tommy's and reiterated its request for an explanation for the unregistered franchise sales in Maryland and copies of the franchise agreements signed by E&S Ventures and Olympus Pines.

20. On March 20, 2023, counsel for Tommy's emailed the Securities Division stating that the unregistered franchise sales in Maryland occurred under Tommy's's previous director of franchise development who did not diligently track state registration expirations. Tommy's counsel stated that that individual is no longer employed with Tommy's. Tommy's included in that email copies of the franchise agreements Tommy's signed with both E&S Ventures and Olympus Pines.

21. On April 4, 2023, counsel for Tommy's emailed the Securities Division stating that Tommy's discovered one additional potential unregistered franchise sale in Maryland.

22. On May 30, 2023, counsel for Tommy's represented to the Securities Division that, on August 28, 2019, Tommy's executed a Transfer Agreement in which Tommy's consented to the transfer of E&S Venture's franchise agreement to BlueSky Severna CW OpCo, LLC, a Maryland limited liability company ("CW"). Tommy's counsel further represented that, on August 10, 2022, while Tommy's was not registered under the Maryland Franchise Law, Tommy's resold the franchise that E&S Ventures had transferred to CW to a new entity, BlueSky Severna Car Wash, LLC, a Delaware limited liability company with a principal office located in Clarksburg, Maryland ("BlueSky Severna").

23. Counsel for Tommy's submitted a copy of the Transfer Agreement between E&S Ventures and CW and the Franchise Agreement between Tommy's and BlueSky Severna. Counsel stated that Tommy's does not have any electronic evidence that an FDD was provided to BlueSky Severna prior to the date of its franchise agreement.

24. Tommy's represented to the Securities Division that neither CW nor Blue Sky Severna paid any initial franchise fees or transfer fees to Tommy's.

25. Counsel for Tommy's represented to the Securities Division that Olympus Pines paid Tommy's and its affiliates a total of \$783,858.95 for equipment, building and site planning. The Tommy's franchise outlet purchased by Olympus Pines is currently under construction.

26. Tommy's's counsel represented to the Securities Division that BlueSky Severna paid Tommy's and its affiliates \$44,500 for site planning. As of the date of this Consent Order, BlueSky Severna is pursuing the necessary permits and municipal approvals needed for site development of its Tommy's franchise outlet.

27. The Securities Commissioner has determined that Tommy's sold unregistered franchises to E&S Ventures, Olympus Pines, CW, and BlueSky Severna (collectively "Maryland Franchisees").

28. Although Tommy's gave Olympus Pines an FDD before Olympus Pines entered into its Franchise Agreement with Tommy's, the FDD was not reviewed by the Securities Division or registered under the Maryland Franchise Law.

29. Tommy's represents that, other than the franchise agreements with the Maryland Franchisees, Tommy's did not offer or sell a franchise in Maryland or to any Maryland residents during the period it was not properly registered in Maryland.

30. Tommy's represents and agrees that, in the future, it will comply with all provisions under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

31. By engaging in the above activities, the Securities Commissioner has concluded

that Tommy's violated §14-214, 14-216, and 14-223 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

32. THE SECURITIES COMMISSIONER HEREBY ORDERS AND TOMMY'S
HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. Tommy's shall remit to the Office of Attorney General, as a civil monetary penalty, the sum of Five Thousand Dollars (\$5,000.00);
- B. Within ten (10) days of its receipt of a fully executed Consent Order of the Securities Commissioner, Tommy's shall send to each of the Maryland Franchisees the following: (i) a copy of this Consent Order; and (ii) a letter, in substantially the form attached to this letter as Exhibit 1, captioned "Notice of Rescission Rights," notifying the Maryland Franchisees that they are been offered an opportunity to immediately rescind their Tommy's franchise agreements under the terms of this Consent Order and, if they opt to rescind, receive a refund of the initial fees they paid Tommy's, if any, and the amount they paid Tommy's for equipment and services they purchased from Tommy's and its affiliates as of the date of acceptance of the rescission offer if they return, at the franchisor's expense, the equipment they received as part of their franchise purchase;
- C. If any Maryland Franchisee does not opt to rescind its Tommy's franchise agreement in response to Tommy's's Notice of Rescission rights, Tommy's shall diligently pursue the registration of the Tommy's franchise offering. For purposes of this Consent Order, "diligently pursue" means that an applicant submits a substantive response to each Securities Division comment letter regarding a registration application no later than 30 days after the applicant's receipt of that comment letter;
- D. If any Maryland Franchisee does not opt to rescind that franchisee's Tommy's franchise in response to the Notice of Rescission Rights, and Tommy's fails to register its franchise offering with the Securities Division as required under this Agreement as of six (6) months from the date of this Agreement ("Due Date"), Tommy's shall be assessed an additional civil monetary penalty in the amount of One Thousand Dollars \$1,000.00) due and payable within fifteen (15) days after the Due Date, which civil penalty amount shall continue to increase by \$250.00 ("Additional Penalty") for every additional month after the Due Date so long as Tommy's has not obtained a registration of its franchise offering with the Securities Division. If Tommy's is not registered as required under this Agreement after seven months, an Additional Penalty shall be due and payable by the fifteenth (15) day of the eighth month after the date of this Agreement, and on the 15th day of each succeeding month so long as Tommy's is not registered as required under this Agreement. If Tommy's fails to make timely payments to the Office of the Attorney General as required under this Agreement, and payments are delinquent for more than sixty (60) days, the Office of the Attorney General may refer collection of the monies due

under this Consent Order to the Central Collections Unit (“CCU”) of the State of Maryland. If a referral is made, any fee assessed by CCU shall be in addition to, and not offset, the balance of the civil monetary penalty owed to the Securities Division;

- E. If Tommy’s is required to register its franchise offering under Paragraph 32 (C) of this Consent Order, within ten (10) days of notification by the Securities Division that Tommy’s’s franchise offering is effectively registered for use in Maryland, Tommy’s shall send to any Maryland Franchisee who has not previously opted to rescind its Tommy’s franchise agreement the following: (i) a copy of an effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 2 captioned “Offer to Rescind Franchise,” notifying that Maryland Franchisees that it is being given a second opportunity to rescind its Tommy’s franchise under the terms of this Consent Order;
- F. The Securities Commissioner has determined that Tommy’s’s offer of a franchise to the Maryland Franchisees in the form of the Notice of Rescission Rights described in Paragraph 32 (B) of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law; and
- G. Tommy’s 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

33. 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

34. If Tommy’s fails to comply with any term of this Consent Order, the Securities Division may bring administrative or judicial proceedings against them to enforce this Consent Order or to sanction them 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 Tommy’s violated this Consent Order, the Division also may seek other

sanctions for violations that initiated this matter. Solely for the purpose of determining those sanctions, 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

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

DATE OF THIS ORDER:

October 19, 2023

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

BY CONSENT:

Tommy's Express LLC

By: Ryan Essenburg, President

FORM
(On Company Letterhead)

BY FEDERAL EXPRESS

Re: **[Company] 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, [Insert Name of Company] ("we") have agreed under the attached Consent Order to offer rescission to any Maryland residents who entered into Franchise Agreement(s) with us in violation of the registration and disclosure provisions of the Maryland Franchise Law. We are making this offer in settlement of the administrative proceeding that the Securities Division may bring for the alleged sale of a franchise in violation of the Maryland Franchise Law, and this offer does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your Franchise Agreement, we agree to cancel your Franchise Agreement, including all post-term and non-competition obligations you may have to us under that 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.

In the event you rescind, we will return to you the initial franchise fees you paid us under your Franchise Agreement if any, and give you a full refund of the cost you paid us and our affiliates for the equipment and services you purchased from us or our affiliates at of the date of the rescission acceptance, you return the equipment to us, at our expense. We will refund the initial franchise fee you paid to us within 31 days after we receive your Acceptance of Offer to Rescind, and we will refund the price of the equipment package and support within 31 days of receiving the equipment.

If you do not rescind your franchise agreement now, you will be given a second opportunity to rescind your franchise agreement, after we have completed the franchise registration process. When that registration is complete, we will send you a copy of a Maryland registered Franchise Disclosure Document and a new letter offering to rescind your franchise agreement under the same terms outlined in this letter.

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 Tade Osikomaiya, Assistant Attorney General, at the Division (410-576-7039).

Sincerely,

[The Company]

cc: Consent Order

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of Rescission Rights for Franchise 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:

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. Please contact me to arrange for the return to you of the equipment from my Equipment Package.

_____ I do not accept your offer of rescission. I wish to remain a franchisee under my Franchise Agreement at this time. I understand that I will be given a second opportunity to rescind my franchise once the franchisor has registered the franchise offering with the securities Division under the Maryland Franchise Law.

Date

Franchisee

FORM
(On Company Letterhead)

BY FEDERAL EXPRESS

Re: **[Company] Offer to Rescind Franchise Agreement**

Dear _____:

As you recall, [Insert Name of Company] ("we") agreed to offer rescission to you of your franchise agreement with us. You previously received a "Notice of Rescission Rights" from us offering to rescind your franchise agreement immediately. Now that we have completed the registration of our franchise offering, we are giving you this second opportunity to rescind your franchise. 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 Agreement, we agree to cancel your Franchise Agreement, including all post-term and non-competition obligations you may have to us under that 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.

In the event you rescind, we will return to you the initial franchise fees you paid us under your Franchise Agreement if any, and give you a full refund of the cost you paid us or our affiliates for the equipment and services you purchased from us or our affiliates as of the date of rescission acceptance, you will return the equipment to us, at our expense. We will refund the initial franchise fee you paid to us within 31 days after we receive your Acceptance of Offer to Rescind, and we will refund the price of the equipment package and support within 31 days of receiving the equipment.

If you consider remaining a franchisee under your current franchise agreement, we are including a franchise disclosure document regarding that franchise offering that you should review before making that decision.

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 Tade Osikomaiya, Assistant Attorney General, at the Division (410-576-7039).

Sincerely,

[The Company]

cc: Franchise Disclosure Document

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Offer to Rescind Franchise 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:

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks, patents, and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you. Please contact me to arrange for the return to you of the equipment from my Equipment Package.

_____ I do **not accept** your offer of rescission. I wish to remain a franchisee under my franchise agreement.

Date: _____

Franchisee