

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

Restore Franchising, LLC,

Respondent.

Case No. 2023-0206

* * * * *

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 Restore Franchising, LLC (“Restore”) 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 Restore violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of a franchise 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 Restore admitting or denying any violation of law, the Securities Commissioner and Restore have reached an agreement to enter into this Consent Order; and

WHEREAS, Restore 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

A. Respondent

2. Restore is a Texas limited liability company with a principal business address of 3601 South Congress Ave., Suite C-200, Austin, TX 78704.

3. Restore offers franchises for retail outlets that provide cryotherapy and other wellness services under the name “Restore Franchising,” as well as the name “Restore Hyper Wellness” and “Restore Hyper Wellness + Cryotherapy.”

4. Restore was registered to offer franchises under the Maryland Franchise Law for two non-consecutive one-year periods between December 9, 2019 and December 9, 2020 and then between December 2, 2021 and December 2, 2022.

B. Live Well’s 2021 Multi-Unit Development Agreement with a Maryland territory

5. On September 30, 2021, when Restore was not registered to offer and sell franchises under the Maryland Franchise Law, Restore entered into a Multi-Unit Development

Agreement (“MUDA”) with Live Well USA LLC, a Delaware limited liability company based in Virginia owned by three Virginia residents (“Live Well”). Under the Live Well MUDA, Restore granted Live Well the right to open Restore franchise outlets within a geographic area consisting of parts of Maryland, Georgia, and Virginia.

6. In the MUDA, Live Well was identified as a “developer” required to open a total of twenty (20) individual Restore franchises anywhere within its geographic area. The MUDA specified that Live Well was to open four (4) franchises each year for five (5) years so that Live Well would have those twenty (20) franchises opened by September 30, 2026. The arrangement is referred to as the “development schedule” under the MUDA.

7. For each franchise Live Well opened under its MUDA, Live Well would sign Restore’s then-current form of franchise agreement where Live Well would be identified as the “franchisee,” although Live Well would not have to pay an additional franchise fee under each franchise agreement it signed.

8. The development fee that Live Well paid Restore under Live Well’s MUDA was a total of \$400,000, which development fee equates to \$20,000 for each individual franchise Live Well was required to open under Live Well’s development schedule.

9. Restore represented to the Securities Division that, on September 30, 2021, the same day it signed the MUDA, Live Well also signed individual franchise agreements with Restore to open Restore franchise outlets in three different locations: Milton, Georgia; Brambleton, Virginia; and Charlottesville, Virginia.

10. Restore represents further that, while Live Well has never signed an individual franchise agreement with Restore to open a Restore studio franchise in Maryland, by May 19,

2023, Live Well had actually opened a Restore studio franchise located in Gaithersburg, Maryland (“Gaithersburg Franchise”).

C. Restore’s Maryland Franchise Filings Before and After the Live Well MUDA

11. On June 3, 2021, Restore filed an initial application to re-register its franchise offering in Maryland. On July 8, 2021, the Securities Division reviewed that application and, in response, issued a comment letter identifying deficiencies in the application that Restore had to address before the Securities Division would re-register Restore’s franchise offering.

12. On September 30, 2021, before Restore’s pending franchise re-registration with the Securities Division was made effective, Restore entered into the MUDA with Live Well.

13. On November 24, 2021, before Restore’s pending franchise re-registration with the Securities Division was made effective, Restore filed a separate application with the Securities Division for a transactional exemption (“Exemption Application”) under the Maryland Franchise Law requesting that the Securities Commissioner issue an order exempting from registration under the Maryland Franchise Law the offer and sale by Restore of a franchise to Live Well. That Exemption Application does not disclose that Restore had already entered into the Live Well MUDA before Restore had even filed the Exemption Application.

14. On November 30, 2021, before Restore’s pending franchise registration under the Maryland Franchise Law was made effective, and before the Securities Commissioner responded to Restore’s Exemption Application, Restore supplied to the Securities Division in response to a comment letter regarding Restore’s registration application a document entitled “Statement of Undertaking” dated November 29, 2021 in which Restore certified that it had not offered or sold franchises in Maryland during the times Restore was not registered under the Maryland

Franchise Law.

15. On December 3, 2021, the Securities Division notified Restore that its Maryland franchise registration application was made effective as of December 2, 2021. On December 3, 2021, in light of being granted that registration, Restore withdrew the pending Exemption Application relating to the Live Well MUDA transaction.

D. Restore's 2022 Registration Application

16. On May 26, 2022, Restore filed an application with the Securities Division to renew its then-current Maryland franchise registration.

17. On June 14, 2022, the Securities Division issued a comment letter identifying deficiencies in Restore's renewal application that Restore had to address before the Securities Division would renew Restore's Maryland franchise registration.

18. On December 2, 2022, Restore's Maryland franchise registration expired while its renewal application was still pending.

19. The Securities Division subsequently issued additional comments letters in response to Restore's renewal application and subsequent filings regarding that application on January 5, 2023, February 2, 2023, and June 15, 2023, respectively.

20. On May 2, 2023, Restore notified the Securities Division that it was changing its legal counsel from its previous law firm to a new law firm that would continue to pursue Restore's franchise registration in Maryland.

21. In its June 15, 2023 comment letter the Securities Division requested, among other things, that Restore submit another undertaking (the "Second Undertaking") that the franchisor had neither offered nor sold franchises in Maryland or to any Maryland residents

during the time Restore was not effectively registered under the Maryland Franchise Law.

22. In response to the Securities Division's June 15, 2023 request for a Second Undertaking, Restore's new law firm acknowledged that Restore had entered into the MUDA with Live Well, and that Live Well had opened a franchise outlet in Maryland on May 19, 2023, all when Restore was not registered to offer and sell franchises in Maryland.

23. Restore represents that it has employed a new in-house legal counsel to assist it to comply with the requirements of the Maryland Franchise Law, and that, in the future Restore will comply with all registration and disclosure requirements under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

24. By engaging in the above activities, the Securities Commissioner has concluded that Restore violated sections 14-214, 14-216, and 14-231 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

25. THE SECURITIES COMMISSIONER HEREBY ORDERS AND RESTORE HEREBY CONSENTS AND REPRESENTS AS FOLLOWS:

- A. Within ten (10) days of its receipt of a fully executed Consent Order of the Securities Commissioner, Restore shall send to Live Well the following: (i) a copy of this Consent Order; and (ii) letter, in a form approved by the Securities Division, notifying Live Well that Restore offered and sold Live Well a franchise and entered into the MUDA with Live Well when Restore was not registered to offer franchises under the Maryland Franchise Law, and Live Well may have a private right of action under the Maryland Franchise Law for the sale of that unregistered franchise.
- B. Restore shall pay to the Office of the Attorney General the sum of Five Thousand Dollars (\$5,000.00) as a civil monetary penalty.
- C. Restore acknowledges that this Consent Order is a disclosable order as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise

V. JURISDICTION RETAINED

26. 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

27. If Restore 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 either of 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 a Respondent 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

28. 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 Documents**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

October 2, 2023

BY CONSENT:

Restore Franchising, LLC

By: