

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

FETCH! Pet Care, Inc.,

and

Paul Mann,

Respondents,

*

*

*

Case No. 2009-0477

*

*

*

* * * * *

AMENDED CONSENT ORDER

WHEREAS, in 2009, the Maryland Securities Division (the “Securities Division”) initiated an investigation into the franchise-related activities of FETCH! Pet Care, Inc. (“Fetch”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-201 et seq. (2004 Repl. Vol. and Supp. 2009) (the “Maryland Franchise Law”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds existed to allege that Respondents Fetch and Paul Mann violated the registration, disclosure and antifraud provisions of the Maryland Franchise Law, in relation to the offer and sale of FETCH! Pet Care franchises in Maryland and to prospective Maryland franchisees; and

WHEREAS, on January 4, 2010, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and without Respondents admitting or denying any violation of law, the Commissioner and Respondents reached an agreement to enter into a Consent Order (the “January Consent Order”) to resolve the Securities Division’s allegations; and

WHEREAS, in the January Consent Order, Respondents represented that, other than the sales made to four (4) Maryland Franchisees specifically identified in the January Consent Order, and other than offers or sales made when FETCH was registered to offer franchises in Maryland, “Respondents did not offer or sale to any Fetch franchise, or accept any deposits or fees from, any Maryland residents or any other residents for a FETCH! Pet Care franchise to be located in whole or in part in Maryland”; and

WHEREAS, in March 2010, the Securities Division received information that, contrary to the representation Respondents made in the January Consent Order, Respondents entered into two (2) additional franchise agreements in Maryland during a period of time when FETCH was not registered to offer and sell franchises in Maryland, but Respondents did not disclose the existence of those two (2) additional franchise agreements to the Securities Division at the time the parties entered into the January Consent Order; and

WHEREAS, on March 18, 2010, Respondents confirmed that it had failed to advise the Securities Division of the two additional unregistered franchise agreements in Maryland; and

WHEREAS, Respondents represented to the Securities Division that their failure to advise the Securities Division of two (2) additional unregistered franchise sales was inadvertent; and

WHEREAS, the Securities Division required, as a condition of entering into an Amended Consent Order, that FETCH retain a Certified Public Accountant (“CPA”) to review its records and confirm that the six (6) unregistered franchise sales in Maryland that FETCH reported to the Securities Division were accurate and that there were no other unregistered franchise sales made in Maryland; and

WHEREAS, FETCH retained a CPA firm that reviewed its franchise sales records, but that

CPA reported in April 2010 that, contrary to the representations FETCH made to the Securities Division in January 2010 and March 2010, respectively, FETCH, in fact, had entered into a total of eight (8) FETCH! Pet Care franchises in Maryland or with Maryland residents, although FETCH represented that one of those franchise sales was exempt from registration; and

WHEREAS, Respondents have represented to the Securities Division that they have complied with all other requirements under the January Consent Order, including making the initial required “rescission offers” to the four (4) Maryland Franchisees identified in the January Consent Order; 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 Respondents admitting or denying any violation of law, the Commissioner and Respondents have reached an agreement to enter into this Amended Consent Order;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

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

II. STATEMENT OF FACTS

2. Fetch is a California corporation with a principal business address of 2101 Los Angeles Avenue, Berkeley, CA 94707.

3. Fetch grants franchises for persons to own and operate professional pet care businesses.

4. Paul Mann (“Mann”) is the founder and president of Fetch. At all times relevant to this Amended Consent Order, Mann was engaged in the offer and sale of FETCH! Pet Care franchises in

Maryland.

5. For a one year period, from March 22, 2006 through March 22, 2007, Fetch was registered with the Securities Division to offer franchises in Maryland.

A. Facts Alleged in January Consent Order.

6. On February 28, 2007, Fetch filed an application to renew its franchise registration in Maryland. The Securities Division reviewed Fetch's renewal application and on March 8, 2007 sent Fetch a comment letter outlining numerous deficiencies Fetch had to correct in its application before the Securities Division would renew Fetch's franchise registration in Maryland.

7. Fetch never responded to the Securities Division's March 8, 2007 comment letter. On December 6, 2007, the Securities Division notified Fetch that its franchise renewal application was deemed abandoned.

8. On October 23, 2009, Fetch re-filed an initial application with the Securities Division to register Fetch's franchise offering in Maryland. The Securities Division reviewed Fetch's application and on November 18, 2009 responded with a comment letter identifying 36 deficiencies that Fetch had to correct before the Securities Division would register Fetch's franchise offering in Maryland.

9. The 2009 Franchise Disclosure Document that Fetch filed with the Securities Division reflected that in 2005, before Fetch was first registered to offer and sell franchises in Maryland, Fetch had offered and sold a FETCH! Pet Care franchise to Darlene Woodhurst, d.b.a. FPC of Chesapeake Bay, Centerville Maryland.

10. In the initial franchise registration application Fetch filed with the Securities Division in December 2005, which was made effective March 22, 2006, Fetch did not disclose to the Securities Division that in 2005 Respondents already offered and sold a franchise to a Maryland resident. In

addition, the Franchise Disclosure Documents that Fetch submitted to the Securities Division in 2005 and 2006 as part of Fetch's franchise registration application did not reflect that Fetch had already entered into a Fetch franchise agreement in Maryland.

11. On November 25, 2009, Fetch responded to the Securities Division's inquiry regarding potential unregistered offers and sales of FETCH! Pet Care franchises in Maryland. Fetch acknowledged that Fetch sold three franchises in Maryland or to Maryland residents after March 22, 2006, at times Fetch was no longer registered to offer franchises in Maryland. Specifically, Fetch acknowledged that it offered and sold franchises to the following Maryland franchisees (collectively, together with franchisee Darlene Woodhurst, "Maryland Franchisees") on the following dates:

Franchisee	Franchise location	Date of Franchise Agreement	Date of Deposit or Franchise Fee
Jaime Deason	Silver Spring, MD	April 24, 2007	April 27, 2007
James DeLozier	Montgomery Village, MD	June 16, 2009	June 20, 2009
Allen Alvarez	Rockville, MD	August 27, 2009	August 26, 2009

12. Mann countersigned the franchise agreements signed by the Maryland Franchisees.

13. On January 4, 2010, the Commissioner entered into the January Consent Order with Respondents to resolve Respondents' alleged violations of the Maryland Franchise Law.

14. In the January Consent Order, Respondents acknowledged that at the time they offered and sold the FETCH! Pet Care franchises to the four (4) Maryland Franchisees identified above, Fetch was not registered to offer and sell franchises in Maryland under the Maryland Franchise Law.

15. In the January Consent Order, Respondents represented that, other than the sale to the four (4) Maryland Franchisees identified above, and other than offers and sales made between March

22, 2006 and March 22, 2007, Respondents did not offer or sell any Fetch franchise to, or accept any deposits or fees from, any Maryland residents or any other residents for a FETCH! Pet Care franchise to be located in whole or in part in Maryland.

B. Additional Unregistered Franchise Sales.

16. In March 2010, the Securities Division received information that, contrary to the representations that Respondents made in the January Consent Order, Respondents offered and sold FETCH! Pet Care franchises to two (2) additional Maryland residents who were not identified in the January Consent Order but who also purchased their FETCH! Pet Care franchise after March 22, 2007, when Respondents were no longer registered to offer and sell franchises in Maryland.

17. Specifically, in March 2010, Respondents acknowledged that on August 17, 2007, they entered into a FETCH! Pet Care franchise agreement with Alesha P. Schmale (“Schmale”) of Carroll County, Maryland, related to the operation of a FETCH! Pet Care franchise to be operated in Northern Baltimore/Carroll County, Maryland. Respondents also acknowledge that on September 18, 2007, they entered into a FETCH! Pet Care franchise agreement with Frederick (Scott) Turner (“Turner”) of Arizona, related to the operation of a FETCH! Pet Care franchise to be operated in Cecil County, Maryland.

18. On March 18, 2010, the Securities Division advised Respondents that, as a condition of entering into an Amended Consent Order, the Securities Division would require Respondents to retain a CPA to review Fetch’s records related to its franchise sales and confirm to the Securities Division that Fetch has accurately reported to the Securities Division all unregistered Maryland franchise sales.

19. In March or April 2010, Respondents retained the services of CPA to review its records

related to its franchise sales in Maryland. That CPA reported that Fetch had not previously identified and reported to the Securities Division all unregistered Maryland franchise sales.

20. Specifically, as reported by the CPA, Respondents acknowledge that on August 27, 2007, Respondents entered into a FETCH! Pet Care franchise agreement with Victoria Reese (“Reese”) of Carroll County, Maryland, related to a FETCH! Pet Care franchise to be operated in Carroll County, Maryland. Respondents also acknowledge that on March 29, 2007, they entered into a FETCH! Pet Care franchise agreement with Dan Brown (“Brown”), a California franchisee who purchased a FETCH! Pet Care franchise to be operated in Bethesda, Maryland.¹

IV. CONCLUSIONS OF LAW

21. By engaging in the above activities, the Commissioner has concluded that Respondents violated §§14-214, 14-216, 14-223 and 14-231 of the Maryland Franchise Law and the January Consent Order of the Commissioner.

V. ORDER AND CONSENT

22. THE COMMISSIONER HEREBY ORDERS, AND RESPONDENTS REPRESENT AND CONSENT THAT:

- A. Respondents shall immediately and permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;

¹Respondents represent and have confirmed to the Securities Division that Brown purchased his FETCH! Pet Care franchise to be operated in Maryland three years after he purchased his first FETCH! Pet Care franchise located in California. As such, Respondents represent that Brown’s 2007 franchise purchase was exempt from the registration requirements under Section 14-214 (b)(2).

- B. If, after the date of this Amended Consent Order, Respondents file any subsequent registration applications with the Securities Division to offer additional franchises in Maryland or to any Maryland residents, Respondents shall include with any such future application, a report to the Securities Division from an independent CPA, based on that CPA's on-site review of all of Fetch's books and records regarding Fetch's offers and sales of franchises, confirming that Respondents have accurately reported to the Securities Division, including in Fetch's FDD and all quarterly sales reports required to be filed with the Securities Division, all Maryland franchisees and any non-Maryland franchisees with any territory in Maryland who purchased franchises from or paid deposits to Fetch under the Maryland Franchise Law;
- C. Fetch shall diligently pursue the application it has filed to re-register its franchise offering in Maryland;
- D. Within five days of Respondents' receipt of this fully executed Amended Consent Order of the Commissioner, Fetch shall send a copy of the Amended Consent Order, including Exhibit 1, to Schmale, Turner, and Reese ("collectively "Additional Maryland Franchisees"), with a separate cover letter ("Notice of Rescission Rights"), in a form approved by the Securities Division, informing the Additional Maryland Franchisees are being offered an opportunity to rescind their respective Fetch franchise agreements under the terms of the Amended Consent Order. The Notice of Rescission Rights shall offer to rescind the Fetch franchise agreement if the recipient returns to Fetch within thirty (30) days of his or her receipt of the Notice of Rescission Rights an executed Acceptance of Offer to Rescind Franchise Agreement indicating a desire to accept the offer to rescind the Fetch franchise agreement. If the Additional Maryland Franchisees timely return an Acceptance of Offer to Rescind Franchise Agreement, Fetch agrees to complete payments within 30 (thirty) days of Fetch's receipt of that written Acceptance. The Notice of Rescission Rights also shall allow the Additional Maryland Franchisees the option, in lieu of accepting the Offer to Rescind Franchise Agreement as described above, to defer the decision whether or not to rescind the Fetch franchise agreement until after Fetch has effectively registered its franchise offering with the Securities Division and delivers to that franchisee an effectively registered Maryland Franchise Disclosure Document;
- E. If, after receiving the Notice of Rescission Rights, any Additional Maryland Franchisee fails to return a signed Acceptance of Offer to Rescind Franchise Agreement within thirty (30) days as outlined above, rejects the offer to rescind his or her Franchise Agreement, or indicates a desire to defer the decision whether or not to rescind, Fetch shall diligently pursue completion of its pending franchise registration application with the Securities Division and, upon notification by the Securities Division that Fetch's franchise offering has been effectively registered for use in Maryland, send to that Additional Maryland Franchisee: (i) a copy of the applicable, effectively registered Maryland Franchise Disclosure Document; and (ii) a letter, in substantially the form

attached to this letter as Exhibit 1, notifying that person that he or she has the right to rescind his or her Fetch franchise agreement under the terms stated in that letter;

- F. Fetch's offer of a franchise for the limited purposes described in Section 22 (D) of this Amended Consent Order is exempt from the registration provisions of the Maryland Franchise Law;
- G. Fetch acknowledge that this Amended Consent Order, as well as the January Consent Order are discloseable orders as described under the Maryland Franchise Law, and Item 3 of the NASAA Franchise Registration and Disclosure Guidelines and Amended FTC Franchise Rule.

VI. JURISDICTION RETAINED

23. 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 this Amended Consent Order.

VII. CONSEQUENCES OF VIOLATING THIS AMENDED CONSENT ORDER

24. If any Respondent fails to comply with any term of this Amended Consent Order, the Securities Division may bring administrative or judicial proceedings against it to enforce this Amended Consent Order or to sanction it for violating an order of the 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 Commissioner or a court finds that any Respondent has violated this Consent Order, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the Amended Consent Order shall be deemed admitted and may be introduced into evidence against that Respondent.

VIII. MODIFICATION OF AMENDED CONSENT ORDER

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

BY CONSENT:

FETCH! Pet Care, Inc.

_____/S/
BY: Paul Mann, President

_____/S/
Paul Mann

SO ORDERED:

**Commissioner's Signature is
on File with Original Document**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

May 20, 2010

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

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

Dear _____:

This letter is a follow-up to our prior notice offering to rescind your franchise agreement. As we stated in our original notice, following discussions our attorneys had with the Division of Securities of the Maryland Attorney General's Office (the "Division"), [Insert name of Company] ("we") agreed to offer rescission to all Maryland residents who entered into unregistered franchises with us and all other residents who entered into franchise agreements to be operated in Maryland. We acknowledge that we entered into a franchise agreement in violation of the provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the 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 return to you the franchise fee you paid us, less the cost for any unreturned items and equipment included in the purchase price you paid for the franchise. If you purchased any optional items as part of your franchise agreement, we will reimburse you for the cost you paid us for any of the items that you return.

In the event you elect to rescind, you will give up your franchise agreement and. 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 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 Division (410-576-6368).

Sincerely,

THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE AGREEMENT

1. I, the undersigned, acknowledge that I have read the preceding Notice of 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 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 under my franchise agreement

Date: _____

Franchisee