

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *

Cash Flow Capital, LLC *

and *

Case No. 2012-0311

Brendan Gallagher, *

and *

Elliott Clark, *

Respondents, *

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Securities Division”), initiated an investigation into the activities of Cash Flow Capital, LLC, Brendan Gallagher, and Elliott Clark (collectively “Respondents”) under the authority granted under the Maryland Business Opportunities Sales Act, MD. CODE ANN. BUS. REG. § 14-101 et seq. (2010 Repl. Vol.) (the “Maryland Business Opportunity Act”); and

WHEREAS, based on information presented by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds exist to allege that Respondents violated the registration, disclosure and anti-fraud provisions of the Maryland Business Opportunity Act, in relation to offers and sales of home-based business opportunities to Maryland buyers; 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 Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Order;

IT IS HEREBY AGREED AND THE COMMISSIONER ORDERS:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to § 14-110(a) of the Maryland Business Opportunity Act.

2. Respondents permanently waive the right to a hearing and appeal under the Business Opportunity Act and the rules and regulations promulgated thereunder with respect to this Consent Order.

3. If judicial intervention in this matter is sought by any party, Respondents consent to the jurisdiction of the Circuit Court for Baltimore City over any such proceeding and as to themselves.

II. PARTIES

4. Melanie Senter Lubin is the Securities Commissioner of Maryland.

5. Cash Flow Capital, LLC (“Cash Flow Capital”) is or was an Arizona limited liability company with a principal business address of 1928 E Highland Ave., Suite F104-411, Phoenix, Arizona 85016.

6. From 2010 through February 1, 2012, Cash Flow Capital employed telemarketers to market a number of home-based business opportunities throughout the U.S., including Maryland.

One of the home-based business opportunities that Cash Flow Capital marketed in Maryland was Franklin Financial Solutions (“Franklin Financial”).

7. Brendan Gallagher (“Gallagher”), with a business address of 911 East Camelback Road, # 2007, Phoenix, Arizona 85014, was a member and co-owner of Cash Flow Capital.

8. Elliot Clark (“Clark”), with a business address of 911 East Camelback Road, # 2007, Phoenix, Arizona 85014, was a member and co-owner of Cash Flow Capital.

III. FINDINGS OF FACT

The Commissioner finds the following facts:

Respondents’ Sale of the Business Opportunity

9. Respondents had a financial arrangement with Franklin Financial to market Franklin Financial business opportunities throughout the U.S., including Maryland.

10. Starting in approximately August 2011, Respondents employed telemarketers to “cold call” prospective customers (“buyers”) to offer them the opportunity to earn money with Franklin Financial’s home-based business opportunity.

11. In initial sales calls to customers, Respondents’ employees followed a sales script asking the prospective buyer if he or she was willing to “work 2-3 hours a week from home with a goal of generating \$1000 - \$2000 a month.”

12. After playing prospective buyers an audiotape further discussing the Franklin Financial business opportunity, Respondents employees stated that a buyer’s only responsibility would be to put Franklin Financial in contact with businesses that either accept Debit and Credit Cards or would like to accept those cards.

13. Respondents employees also stated to prospective buyers that they would have the

opportunity to receive “residual income” based on the number of accounts converted by the buyer or on the buyer’s behalf.

14. If a prospective buyer expressed interest in the business opportunity, Respondents would attempt to sell the prospective buyer a business package, also known as a start-up kit, for fees ranging between \$185 -\$495 (the “Front-End Sale”). For that fee, prospective buyers received, by mail, a document outlining the Franklin Financial business opportunity program and a URL template, which was a website that served as a business card.

15. The business package sent to prospective buyers represented that the Franklin Financial business opportunity allowed buyers to earn income by operating an Internet website. The business package further represented that buyers would earn commissions from fees that merchants would pay from processing credit cards and debit cards at merchant locations, and that the buyer’s only job was to send Franklin Financial “leads.” The business package described leads are merchant businesses that already take credit cards or that need to take credit cards.

16. Franklin Financial’s business package also represented that buyers would be assigned a business “coach” to help them get started, and that Franklin Financial closed over 75% of all qualified leads that buyers referred to them. The business package also stated that Franklin Financial stands behind the business opportunity program with a money-back guarantee.

17. After concluding the Front-End Sale of the Franklin Financial business package, Respondents referred the names and contact information of those individual buyers to representatives of Franklin Financial, who then solicited those same individuals to purchase marketing leads on merchant businesses interested in accepting credit cards or debit cards (the “Back-End Sale”).

18. If successful in making the Back-End Sale, Franklin Financial representatives charged

those buyers additional fees, up to tens of thousands of dollars, for those marketing leads.

19. In addition to receiving a fee on the Front-End Sale of the Franklin Financial business package, Respondents also received a commission from Franklin Financial on the Back-End Sale. That commission was based on a percentage of the fees that Franklin Financial received on the sale of marketing leads from the buyers that Respondents referred to Franklin Financial.

The Sale to Maryland resident "TW"

20. On or around January 18, 2012, "TW," aged 93 and a resident of Ocean Pines, Maryland, received an unsolicited telephone call at his Maryland residence from an individual who said he had an opportunity for TW to earn income from home. The caller, a telemarketer employed by Cash Flow Capital, told TW that he was calling from or on behalf of Franklin Financial.

21. The telemarketer from Cash Flow Capital explained to TW that he would make money by signing up small business leads for financial services through a website. The telemarketer told TW that he would have to pay \$300 up front for the website, but he would soon be earning money in commissions from the Franklin Financial business opportunity.

22. The telemarketer from Cash Flow Capital also told TW that Franklin Financial would assign him a mentor who would help him set up and operate this website business opportunity.

23. TW gave the telemarketer from Cash Flow Capital his credit card number authorizing a \$300 investment. When TW received his credit card statement, he discovered that, on January 19, 2012, his Discover credit card was charged \$300, which was paid to "Cash Flow Capital, LLC" of Phoenix, Arizona. TW also learned that on January 20, 2012, an additional \$24.99 was charged from his credit card and paid to "Franklin Host" of Surprise, Arizona.

24. Sometime after TW agreed to purchase his Franklin Financial business package from

Cash Flow Capital, TW received a telephone call from someone who identified himself as Chris Johnson, the mentor assigned to TW by Franklin Financial to help TW set up his business opportunity. Johnson told TW that he needed to purchase advertising for his website business opportunity in order to earn income.

25. On or around January 24, 2012, TW received a package of information in the mail welcoming him to Franklin Financial Solutions and describing the Franklin Financial business opportunity. The documents, which Respondents sent to TW stated, among other things:

You have just purchased a home based business that allows you to generate upfront income as well as residual income from the comfort of your home.

You will be given a website that allows us to pitch and close all of the products we offer to business owners and individuals, with merchant processing being our main focus. Customer service will be walking you through your website so that you can access all the materials in your back office.

You will be assigned a coach that will help you get started and put you on the fast track to working your business. You won't need a computer or have to go from business to business. Your coach will be calling you within 3-5 business days to get you started. We have ways to promote the business that fits every budget. You may also choose to send us qualified leads yourself.

* * *

Our program is based on processing credit cards for businesses known as merchant processing. Every business needs to take credit cards. You can earn commissions every time your client processes a credit card! Imagine having 5, 50, or 100 businesses all processing credit cards daily. All those companies under your business, while you [sic] earning the commissions each and every month. It's life changing for many of our representatives.

* * *

Franklin Financial Solutions stands behind our program with a money-back guarantee, giving the client the confidence that they are investing in a cost-conscious and effective marketing program without risk.

* * *

The Franklin Financial Solutions program is designed so you can work independently and earn a substantial income. Follow our simple program, your first year's earnings could be as much as \$100,000. The second year, over \$200,000, and your third year, without any additional accounts, could generate a residual income of \$200,000 plus! It's more than a possibility, it's math...the more accounts we close for you, the more you make!

* * *

Affiliates earn income by successfully referring individuals or businesses to Franklin Financial Solutions business website and services. We offer solutions for many business and individual needs. When you refer a client who enrolls into any program, you earn an initial referral commission of [sic] minimum of \$50.00 and as high as \$10,000, depending on the service your client enrolled in... .

26. On or around January 24, 2012, the same day TW received his business start-up package, TW received a telephone call from an individual who identified himself as Peter Goldman ("Goldman") from Franklin Financial.

27. Goldman asked TW how many credit cards he had. Eventually, TW gave Goldman account numbers from his Discover Card, his Master Card and a third credit card that was not used. TW later learned that, on or after January 24, 2012, Franklin Financial charged TW's credit cards a total of \$20,000, consisting of \$12,000 on TW's Discover Card and \$8,000 on TW's Master Card.

28. When TW later complained to Franklin Financial about the charges made on his credit card, a Franklin Financial representative pointed out a signed invoice authorizing the charges in the package he had received. The Invoice indicated that TW agreed to purchase 5 separate packages of "business leads" from Franklin Financial for a total of \$20,000, payable on two separate credit cards.

29. TW denies that the signature on the Franklin Financial Invoice is his signature, and he denies knowingly signing any documentation authorizing these charges.

30. As of the date of this Consent Order, TW has outstanding credit card charges in connection with his Franklin Financial Solutions business opportunity totaling \$20,324.99. These charges consist of \$300 paid to “Cash Flow Capital”; \$24.99 paid to “Franklin Host”; and \$20,000 paid to “Franklin Financial Solutions.”

IV. CONCLUSIONS OF LAW

The Commissioner therefore concludes as a matter of law the following, which Respondents neither admit nor deny:

31. Respondents violated section 14-113 of the Maryland Business Opportunity Act by offering and selling a business opportunity in Maryland without the business opportunity being registered with the Commissioner.

32. Respondents violated section 14-114 of the Maryland Business Opportunity Act by offering and selling a business opportunity in Maryland without first giving a prospective buyer a copy of a disclosure document at least 10 full business days before the buyer executes an agreement or pays any consideration towards the purchase of the business opportunity.

33. Respondents violated section 14-122 of the Maryland Business Opportunity Act by representing, in connection with the offer or sale of a business opportunity, that the business opportunity provides income or earning potential of any kind unless: (1) the seller has documentation to substantiate the representation; and (2) the person discloses the documentation to the prospective buyer when the representation is made.

34. Respondents violated section 14-121 of the Maryland Business Opportunity Act by obtaining hundreds of dollars for a business opportunity that Respondents represented would

generate income, but the business opportunity did not, and could not, generate the income that Respondents represented.

V. REPRESENTATIONS BY RESPONDENTS

35. Respondents have ceased offering business opportunities for Franklin Financial and any other seller of a business opportunity, as defined under the Maryland Business Opportunity Act.

36. Respondents represent that Cash Flow Capital received from 12 Maryland residents a total of \$4,070, representing the collective amount of fees that Maryland residents (“Maryland Buyers”) paid directly to Cash Flow Capital for business packages on the Front-End Sale of Franklin Financial business opportunities.

37. Respondents further represent that Cash Flow Capital received commissions from Franklin Financial in the amount of \$8,550, representing a percentage of the purchases of marketing leads that Franklin Financial made to 2 Maryland Buyers on the Back-End Sale of Franklin Financial business opportunities.

38. Respondents represent that, other than \$13,610 in fees and commissions described in this Section V, they received no funds, directly or indirectly, related to the purchase by any Maryland Buyers on the Front-End Sale or the Back-End Sale of a business opportunity offered by Franklin Financial.

VI. SANCTIONS

Respondents consent, and it is hereby ORDERED that:

39. Respondents shall permanently cease and desist from offering or selling, in Maryland, any business opportunity as defined under the Maryland Business Opportunity Act.

40. Respondents are permanently barred from offering and selling business opportunities in Maryland or to Maryland residents.

41. Respondents, jointly and severally, are assessed a civil monetary penalty in the amount of \$13,610.00; however, this penalty shall be reduced by the amount of restitution Respondents shall make to Maryland buyers. Payment of restitution shall be made in two (2) installments, as follows: \$6,805.00 contemporaneously with the issuance of this Consent Order, and \$6,805.00 due within sixty (60) days of the date of this Consent Order. The restitution shall be distributed pro rata to the Maryland Buyers by the Office of the Attorney General in a manner within its discretion. The civil monetary penalty imposed herein shall be waived completely when the Maryland Buyers are repaid in full in accordance with the terms of this paragraph.

42. This Consent Order is a discloseable order as described under §14-114 (c)(10) of the Maryland Business Opportunity Act.

VII. CONSEQUENCES OF VIOLATION OF CONSENT ORDER

43. If any Respondent fails to comply with any term of this Consent Order, the Commissioner may proceed against that Respondent with full administrative and/or judicial proceedings to enforce this Consent Order, or to impose sanctions for violating an order of the Commissioner, and may take any other action authorized under the Maryland Business Opportunity Act or any other applicable law. For the purposes of determining any sanctions, the Statement of Facts and the violations of the Maryland Business Opportunity Act set forth above shall be deemed admitted by the Respondent and may be introduced into evidence against that Respondent.

VIII. MODIFICATION OF TERMS OF THIS CONSENT ORDER

44. No term of this Consent Order may be modified or vacated except by a subsequent order issued by the Commissioner.

IX. JURISDICTION RETAINED

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

IT IS SO ORDERED

September 10, _____, 2012

**Commissioner's signature is on file
with original documents**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

BY CONSENT:

CASH FLOW CAPITAL, LLC

By: _____
Managing Member

_____, 2012

Brendan Gallagher

_____, 2012

Elliott Clark

_____, 2012