

**ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER**

IN THE MATTER OF: *

EFOX.NET, INC., *

and *

JOSEPH R. PRESTON, *

DOCKET NO. 1999-0344

individually, and in his capacities
with eFox.net, Inc., *

and *

CARL N. DUNCAN, *

Respondents. *

* * * * *

**FINAL ORDER TO CEASE AND DESIST
AND ORDER OF BAR
(WITH RESPECT TO RESPONDENTS EFOX.NET, INC.
AND JOSEPH R. PRESTON)**

WHEREAS, the Division of Securities of the Office of the Maryland Attorney General (the "Division"), pursuant to the authority granted by the Maryland Securities Act, Corporations and Associations Article, section 11-701, Annotated Code of Maryland (1999 Repl. Vol. & 2003 Cum. Supp.) (the "Act"), instituted an investigation of apparent violations of the Act by eFox.net, Inc. ("Efox"), and Joseph R. Preston ("Preston") (together, the "Respondents"); and

WHEREAS, on the basis of that investigation, the Maryland Securities Commissioner (the "Commissioner") has concluded that the Respondents have violated the securities and selling person registration requirements of the Act, and has concluded that the Respondents violated the provisions of the Consent Order entered into by Efox and issued by the Commissioner on March 19, 1999 (the "Consent Order"), and further determined that action against the Respondents is in the public interest; and

WHEREAS, pursuant to section 11-701.1(a) of the Act, the Commissioner issued on July 29, 2004, an Order To Show Cause (the "Order to SC"), incorporated herein by reference, requiring Respondents to show cause why: each Respondent should not be barred permanently from engaging in the securities and investment advisory business in Maryland; why a monetary penalty should not

be entered against each Respondent; and why a final order should not be entered ordering each of the Respondents to cease and desist from further violations of the Act; and

WHEREAS, the Order to SC gave Respondents notice of the opportunity for a hearing in this matter, provided that Respondents submitted an answer within 15 days of service of the Order to SC, including any request for a hearing, and gave notice to Respondents that failure to do so would be deemed a waiver of the right to a hearing and result in the entry of a final order; and

WHEREAS, a copy of the Order to SC was served upon Respondents and upon the Commissioner in accordance with section 11-802 of the Act; and

WHEREAS, as to each Respondent, all process was returned marked "notice left in box" and "unclaimed" in connection with that Respondent's last known addresses, and neither Respondent has submitted an answer to the Order, nor a written request for a hearing.

NOW, THEREFORE, THE COMMISSIONER FINDS AND ORDERS:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-701.1 of the Act.

II. RESPONDENTS

2. Efox is a Delaware corporation with a last known address of: c/o Joseph R. Preston, 5015 Battery Lane, Apt. 1105, Bethesda, Maryland 20814.

3. Preston is a principal of Efox, with a last known address of: 5015 Battery Lane, Apt. 1105, Bethesda, Maryland 20814.

III. STATEMENT OF FACTS

On information and belief, the Commissioner alleges the following as the basis for this Final Order To Cease And Desist and Order of Bar ("Final Order").

4. At all times relevant to these facts, Efox was controlled by Preston, who was Efox's president, chairman, and CEO.

5. The Division's records indicate that Preston has never been registered as a broker-dealer in Maryland or with the National Association of Securities Dealers, Inc. ("NASD"). See Exhibit A, Affidavit of Ellen Cherry ¶3.

6. The Division's records indicate that Preston has never been registered with the Division as an issuer agent. See Exhibit B, Affidavit of Nina Smeltzer ¶3.

7. On or about January 1, 1999, Efox began offering and selling its securities in Maryland through Preston and through solicitations contained on its web site (the "Limited Offering"). In the period between January 1, 1999, and March 9, 1999, Efox offered and sold its securities to at least 16 investors in consideration of services rendered and in consideration of cash in an aggregate amount of \$58,500.00. Neither Efox nor Preston filed an application to register the Limited Offering, or a notice of exemption with the Division.

8. In February 1999, Efox commenced a second offering of its securities (the "Regulation A Offering") with the filing of a Form 1-A application for qualification with the U.S. Securities and Exchange Commission, and conducted the Regulation A Offering in Maryland through Preston and through information on the Efox web site. Neither Efox nor Preston filed an application to register the Regulation A Offering with the Division until March 3, 1999.

9. On March 9, 1999, under the authority granted in sections 11-511(a)(1) and 11-512(a) of the Act, the Commissioner issued against Respondents a Stop Order, which is incorporated herein by reference, in connection with the Regulation A Offering. The Stop Order recites that Respondents engaged in the unlawful practice known as "gun-jumping" prior to submitting its registration application to the Division, and made misleading statements and omitted material information and required legends in its offering material for the Regulation A Offering.

10. On March 19, 1999, Efox and the Commissioner entered into the Consent Order, incorporated by reference herein, vacating the Stop Order. Under the Consent Order, Efox agreed to cease and desist from the offer or sale of its securities for a "cooling-off" period of 120 days and to cease and desist from further violations of the Act. During this period, Respondents represented to the Division that they would perfect a claim of exemption with respect to the Limited Offering, and provide the Division with detailed information regarding the conduct of the Limited Offering.

11. On March 25, 1999, Efox submitted a late notice of exemption under COMAR 02.02.04.15, in connection with the Limited Offering. See Exhibit C, Notice on Form D.

12. In the course of reviewing the exemption notice and detailed information regarding the conduct of the Limited Offering submitted subsequently by Respondents, the Division determined that Respondents did not cease and desist from the offer and sale of its securities during the 120 day "cooling-off" period, but rather offered and sold Efox securities between March 19 and May 31, 1999, on advice of counsel, and purportedly as part of the Limited Offering, to at least an additional 33 investors in an aggregate amount of \$139,620.

13. The issuance of the Consent Order on March 19, 1999, triggered one or more of the disqualification provisions of the securities exemption under COMAR 02.02.04.15. In addition, the use of general solicitation in the Limited Offering was inconsistent with the prohibition against general solicitation under COMAR 02.02.04.15.

14. Between March 19, 1999, and the date of this Order, the Division attempted to negotiate a resolution of Respondents' violations of the Act. On various occasions, including May 29, June 15 and 27, 2001, June 20, 2002, August 1, 2003, and April 12, 2004, the Division proposed Consent Orders to Respondents, and to Carl N. Duncan ("Duncan"), securities counsel to Efox and Preston during the time of the Limited Offering and the Regulation A Offering.

15. On November 19, 2001, Duncan entered into a Consent Order with the Commissioner, in connection with Duncan's role as securities counsel for Respondents during the period of the alleged violations of the Act. Duncan consented to a suspension from practice before the Division and paid a civil monetary penalty of \$500.00.

16. Respondents Efox and Preston have not diligently responded to the settlement proposals of the Division, and more recently have not responded to the Division's correspondence and telephone calls.

IV. CONCLUSIONS OF LAW

The Commissioner concludes that:

17. The common stock of Efox offered and sold by Respondents constitutes a "security" pursuant to section 11-101(r) of the Act.

18. Preston and Efox, in violation of sections 11-401 and 11-402 of the Act, respectively, offered and sold securities in Maryland without Preston being lawfully registered as a broker-dealer or agent.

19. Respondents conducted the Limited Offering in violation of section 11-501 of the Act and in violation of the Consent Order.

V. SANCTIONS

NOW, THEREFORE, the Commissioner finds it to be in the public interest to issue this Final Order, and IT IS HEREBY ORDERED THAT:

20. Respondents each permanently cease and desist from engaging in the offer and sale of unregistered, non-exempt securities in violation of section 11-501 of the Act.

21. Respondents each permanently cease and desist from acting as an unregistered agent or broker-dealer in Maryland in violation of section 11-401 of the Act.

22. Respondents each permanently cease and desist from employing unregistered agents for the offer and sale of securities in violation of section 11-402 of the Act.

23. Respondents are permanently barred from engaging in the securities and investment advisory businesses in Maryland for or on behalf of others, or from acting as a principal or consultant in any entity so engaged, or from acting as broker-dealers, broker-dealer agents, issuer-agents, or investment advisors.

24. Efox is assessed a civil monetary penalty, pursuant to section 11-702 of the Act, in the amount of \$165,000 (\$5,000 for each of thirty-three sales in violation of the Act), payable by certified check to the order of the Office of the Attorney General.

25. Preston is assessed a civil monetary penalty, pursuant to section 11-702 of the Act, in the amount of \$165,000 (\$5,000 for each of thirty-three sales in violation of the Act), payable by certified check to the order of the Office of the Attorney General.

VI. JURISDICTION RETAINED

26. Jurisdiction is retained by the Commissioner for the purposes of enabling any party to this Final Order to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Final Order.

SO ORDERED:

September , 2004

MELANIE SENTER LUBIN
Securities Commissioner

Maryland Division of Securities
200 St. Paul Place, 25th Floor
Baltimore, Maryland 21202-2020
(410) 576-6360

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Final Order To Cease and Desist and Order of Bar by causing a copy to be delivered by United States mail, certified/return-receipt-requested postage prepaid, to:

Efox Corporation, c/o Joseph R. Preston, 5105 Battery Lane, Apt. 1105, Bethesda, Maryland 20814; and

Joseph R. Preston, 5105 Battery Lane, Apt. 1105, Bethesda, Maryland 20814;

and by serving a copy by hand delivery to Melanie Senter Lubin, Securities Commissioner, 200 St. Paul Place, Baltimore, MD 21202.

September 1, 2004

Timothy F. Cox
Assistant Attorney General

Maryland Division of Securities
200 St. Paul Place, 25th Floor
Baltimore, Maryland 21202-2020
(410) 576-7045

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* * * * *

AFFIDAVIT OF COMPLIANCE WITH SECTION 11-802(A)

I HEREBY CERTIFY that on September , 2004, I caused a copy of the foregoing Final Order To Cease And Desist and Order of Bar to be served on the Securities Commissioner in connection with the captioned case, and a copy to be deposited in the United States Postal Service, certified mail, return receipt requested, in accordance with section 11-802(a)(3)(i) of the Maryland Securities Act, addressed to the following Respondents at the last known address indicated for each Respondent:

Joseph R. Preston: 5015 Battery Lane, Apt. 1105, Bethesda, Maryland 20814; and

eFox.net, Inc.: c/o Joseph R. Preston, 5015 Battery Lane, Apt. 1105, Bethesda, MD 20814.

Timothy F. Cox
Assistant Attorney General
Maryland Division of Securities
200 St. Paul Place
Baltimore, Maryland 21202-2020
(410) 576-7045

I HEREBY CERTIFY that on this ___ day of _____, 2004, before me, the subscriber, a notary public of the State of Maryland, in and for the City of Baltimore, personally appeared Timothy F. Cox and made oath in due form of law that the matters and facts set forth in the above certification are true.

Notary Public

My Commission Expires: _____