ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

In the Matter of:	*	
REDRHINO, INC., a.k.a. REDRHINO: The Epoxy Flooring Company	*	
	*	
MICHAEL KENEALY, and		Case Number 2015-0382
	*	
CHRISTOPHER CONNER,		
	*	
Respondents.		
	*	

*   *   *   *   *   *   *   *   *   *   *   *   *   *

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 REDRHINO, Inc., a.k.a. REDRHINO: The Epoxy Flooring Company, Michael Kenealy, and Christopher Conner (collectively "Respondents") under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §§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 "Commissioner") concluded that grounds exist to allege that Respondents violated the anti-fraud, registration, and disclosure provisions of the Maryland Franchise Law, in relation to the offer and sale of REDRHINO franchises in Maryland; and

WHEREAS, Respondents, without admitting or denying any of the Commissioner's findings of fact or conclusions of law, except that Respondents expressly consent to the Commissioner's jurisdiction in this proceeding and over them, have reached an agreement with the Commissioner to enter into this Consent Order; and

WHEREAS, Respondents may deny any finding of fact or conclusion of law contained in this Consent Order in any other proceeding, litigation, or arbitration against Respondents in which the Commissioner is not a party; and

WHEREAS, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and upon consent of the parties hereto;

IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

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

II. FINDINGS OF FACT

A. Respondents

2. REDRHINO, Inc., a.k.a. REDRHINO: The Epoxy Flooring Company, Inc. ("REDRHINO"), is or was a California corporation with a principal business address of 929 E. Second Street, Unit 106, Los Angeles, California 90012. REDRHINO maintains an Internet website at www.redrhinoflooring.com.

3. REDRHINO offers and sells franchises in the form of Management Agreements for individuals or businesses (hereafter "franchisees") to sell and install epoxy flooring for commercial and residential applications using the names "REDRHINO" and "REDRHINO: The Epoxy Flooring Company."

4. On REDRHINO's website, in a link captioned "franchise-opportunities," REDRHINO states that it provides services through regional partners, referred to as "franchisees." REDRHINO invites interested persons to contact it for information about opening a REDRHINO

franchise.

5. Michael Kenealy ("Kenealy") is the founder, president, and owner of REDRHINO.

6. Christopher J. Conner ("Conner") is the president of Franchise Marketing Systems, a franchise consulting firm or franchise broker that, for a commission, offers and sells franchises. Conner also identified himself as "Franchise Director" of REDRHINO.

7. Conner solicited individuals, including at least one Maryland resident, to enter into REDRHINO Management Agreements.

B. The REDRHINO Franchise Offer to a Laurel Franchisee

8. In the Fall of 2013, AW, a resident of Laurel, Maryland saw an advertisement online for franchise opportunities for less than $25,000. AW responded to the advertisement and requested information.

9. Shortly after sending his request for information, AW received an e-mail from Conner, identifying himself as Franchise Director of REDRHINO.

10. On October 11, 2013, Conner sent AW information about the REDRHINO franchise offering, including a brochure in the form of a letter signed by Kenealy captioned "Become a REDRHINO Franchise Owner in 2012."

11. In the brochure, Kenealy states that in 2009, four years after starting REDRHINO, his business grossed just over $750,000. He states that REDRHINO's "continued and ongoing success has led to its further expansion through the benefits and force of franchising."

12. On October 11, 2013, Conner also sent AW a document entitled "Franchise Assumptions."

13. Kenealy was copied on the e-mail that Conner sent AW that included the Franchise Assumptions.

14. The Franchise Assumptions worksheet assumed franchisee gross sales from $265,000 in the first year, to $876,000 in the fifth year. The worksheet included assumptions of a $15,000 franchise fee, a 7% royalty on gross sales, local advertising of 1%, and corporate advertising of 5%.

15. The Franchisee Assumptions included a representation of the amount of initial investment a prospective REDRHINO franchisee could expect to make, from a "low" of $25,300 to a "high" of $43,800.

16. The Franchise Assumptions document also included a pro forma representing amounts of revenue, variable expenses, operating expenses, and total expenses that a prospective REDRHINO franchisee could expect to achieve. The document included a representation that franchisees could expect a return on their investment of between 137% in the first year, to 983% in the fifth year.

17. Before he signed his REDRHINO Management Agreement, AW spoke to both Conner and Kenealy about the REDRHINO franchise opportunity.

18. On November 23, 2013, AW signed a REDRHINO Management Agreement ("2013 Management Agreement"). Under that 2013 Management Agreement, AW agreed to pay REDRHINO an initial fee of $25,000 for the right to operate a REDRHINO business in an exclusive territory that included parts of Maryland, Washington, DC and its surrounding areas, including part of Northern Virginia, West Virginia, and Pittsburgh, PA for an initial term of five years.

19. Under the 2013 Management Agreement, AW also agreed to pay REDRHINO a royalty of 7% on all gross collections produced through the REDRHINO sales and business development model.

20. Under the 2013 Management Agreement, REDRHINO agreed to provide sales and marketing support, a minimum of two weeks of training at REDRHINO headquarters in Los

Angeles, California, onsite support and resources, systems, processes and methods for operating a REDRHINO business, and ongoing support and guidance, including marketing and sales support. REDRHINO also agreed to provide, manage, and oversee lead generation efforts to produce web based customer leads.

21. Although not specified in the 2013 Management Agreement, REDRHINO required AW to pay additional fees for marketing.

22. In December 2013, AW received 4 days of training at REDRHINO headquarters rather than the two weeks specified in the 2013 Management Agreement.

23. AW also received from REDRHINO information on downloading REDRHINO's logo for use in the operation of his business, including on uniforms and marketing materials.

24. On March 7, 2014, AW signed a new Management Agreement ("2014 Management Agreement") with REDRHINO, in which AW agreed to pay an additional $10,000 initial fee in exchange for an expanded exclusive territory that included most of the State of Pennsylvania.

25. In February 2015, REDRHINO offered AW a third Management Agreement ("2015 Management Agreement") that would expand his territory to include the entire State of Virginia. That 2015 Management Agreement stated that the franchisee would "agree to transition to a Franchise Disclosure document when REDRHINO is granted approval to Virginia franchise registration [sic.]."

26. AW did not sign the 2015 Management Agreement but maintained his existing territories under the 2014 Management Agreement.

27. REDRHINO began directing to a REDRHINO franchisee located in Virginia leads located within AW's exclusive territory in Northern Virginia that should have been referred to AW.

C. The REDRHINO Franchise Offer to a Silver Spring Franchisee

28. In January 2012, REDRHINO offered and sold a REDRHINO franchise to JB, a resident of Montgomery County, Maryland.

29. JB discussed his purchase of a REDRHINO franchise with both Kenealy and Conner.

30. REDRHINO represents that it has not retained copies of the original franchise agreement that JB signed, although REDRHINO does have a copy of a document dated January 6, 2012 entitled "Addendum to REDRHINO Franchise Agreement," in which REDRHINO granted JB the exclusive rights to the Baltimore, Maryland market, contingent on JB's compliance with the terms of the REDRHINO franchise agreeemnt.

31. The REDRHINO Addendum to Franchise Agreement states that JB agreed to pay REDRHINO a royalty of 8% and an initial franchise fee of $5,000.

32. Under the REDRHINO Addendum to Franchise Agreement, REDRHINO agreed that JB could pay the franchise fee from an additional 8% royalty fee until the $5,000 franchise fee was received, at which point REDRHINO would no longer charge JB the additional 8% royalty fee.

33. REDRHINO represents that it never received any franchise fee or royalty fee from JB in connection with the offer and sale of a REDRHINO franchise.

34. In or around March 2012, REDRHINO sent JB a Notice of Default/Violation of Non-Compete for, among other things, failing to submit royalty payments and violating the parties' non-compete agreement for operating a competing business using a closely related name.

C. Alleged Violations of the Maryland Franchise Law

35. REDRHINO has never registered to offer and sell franchises under the Maryland Franchise Law.

36. REDRHINO never gave a Franchise Disclosure Document ("FDD") to AW before

AW signed the 2013 or 2014 Management Agreements.

37. REDRHINO never gave JB an FDD before JB signed a REDRHINO franchise agreement in 2012.

38. Although AW exceeded the assumed gross sales listed on the pro forma that Conner sent to him as part of the Franchise Assumptions, AW never achieved anything close to the return on his investment represented in that document.

39. Respondents never disclosed to AW that the REDRHINO management agreement constituted a "franchise" as defined under the Maryland Franchise Law.

40. Respondents never disclosed to AW or JB that REDRHINO was not registered to offer and sell franchises as required under the Maryland Franchise Law

D. Respondents' Representations

41. Respondents represent that, other than the sale of a REDRHINO management agreement to AW in 2013 and a REDRHINO franchise agreement to JB in 2012, Respondents did not offer to sell or sell any franchises, including management agreements, to be located in Maryland or to any Maryland residents.

42. Respondents REDRHINO and Kenealy represent that they have obtained new legal counsel with experience with franchise disclosure and registration laws to advise them of the requirements for offering and selling franchises under applicable federal and state franchise laws, and they have engaged that counsel to help them draft a Franchise Disclosure Document regarding the REDRHINO franchise offering.

III. <u>CONCLUSIONS OF LAW</u>

43. By engaging in the above activities, the Securities Commissioner has concluded that Respondents violated §§14-214, 14-216, 14-223 and 14-228 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

44. THE SECURITIES 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;

B. Prior to the date of this Consent Order, Respondents REDRHINO and Kenealy made a rescission offer to Maryland resident AW, AW opted to rescind his REDRHINO Management Agreement, and the parties have reached a mutually agreeable settlement of all disputes related to the offer and sale of a REDRHINO business in Maryland;

C. REDRHINO and Kenealy represent that they will take no action against JB for allegedly defaulting on a REDRHINO franchise agreement, and further that they will take no action against JB to enforce any non-compete provisions or other provisions that may survive under any REDRHINO franchise agreement or any similar agreements with REDRHINO;

D. Respondent Conner shall attend a remedial education program acceptable to the Commissioner consisting of at least 8 hours of instruction regarding the legal requirements for offering and selling franchises and, upon completion of that program, shall provide written confirmation to the Commissioner of his attendance;

E. Respondents, jointly and severally, shall pay the "Office of the Attorney General of Maryland" a civil monetary penalty of Seven Thousand Five Hundred Dollars ($7,500.00); and

F. Respondents acknowledges that this Consent Order is a discloseable 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

45. 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

46. If any Respondents fails to comply with any term of this Consent Order, the Securities

Division may bring administrative or judicial proceedings against it to enforce this Consent Order or to sanction it 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 has violated this Consent Order, the Findings of Fact 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

47. 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 Document

____
MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

April 5, 2016

BY CONSENT:

RedRhino, Inc., d.b.a. REDRHINO: The Epoxy Flooring Company

By: ____________________________
Michael Kenealy, President

____
Michael Kenealy

____
Christopher Conner