

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *
*
360 Painting, LLC, and *
Paul Flick, * Case No. 2022-0226
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 360 Painting, LLC and Paul Flick (collectively “Respondents”) 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 Respondents violated provisions of the Maryland Franchise Law, and an order of the Securities Commissioner, by omitting to disclose material facts in relation to the offer and sale of franchises under the Maryland Franchise Law and in franchise registration applications filed with the Securities Division; 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 Securities Commissioner and Respondents have reached an agreement to

enter into this Consent Order; and

WHEREAS, Respondents waive their respective rights 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

Background

2. 360 Painting, LLC (“360 Painting”) is a limited liability company formed in the State of Delaware with a principal place of business at 126 Garrett Street, Suite J, Charlottesville, VA.

3. Since 2006, 360 Painting’s chief executive officer is Paul Flick (“Flick”).

4. Since 2015, 360 Painting has been 100% owned by Premium Service Brands, LLC, a Delaware limited liability company.

5. 360 Painting originally registered with the Securities Division to offer franchises under the Maryland Franchise Law for one year starting August 1, 2007 and ending August 1, 2008.

6. 360 Painting did not file a franchise registration application with the Securities

Division between August 1, 2007 and June 2017.

7. In June 2017, 360 Painting filed an application to re-register its franchise offering in Maryland, and the franchisor has been registered to offer franchises under the Maryland Franchise Law for most periods between December 21, 2017 to the date of this Consent Order.

The 2016 Consent Order

8. On August 18, 2016, the Securities Commissioner entered into a Consent Order (“2016 Consent Order”) with Respondents 360 Painting and Flick to resolve alleged violations of the registration, disclosure, and anti-fraud provisions of the Maryland Franchise Law.

9. In the 2016 Consent Order, the Securities Division alleged, among other things, that Respondents offered and sold 360 Painting franchises to three (3) Maryland franchisees in 2012 and 2015, when 360 Painting was not registered to offer or sell franchises under the Maryland Franchise Law.

10. In the 2016 Consent Order, the Securities Division also alleged that Respondents gave two of the three Maryland franchisees to whom it sold 360 Painting franchises a Franchise Disclosure Document (“FDD”) that omitted disclosure of a civil action (the “Brown Litigation”) filed by plaintiff Leslie Owens Brown, a Maryland franchisee, alleging, among other things, violations of the Maryland Franchise Law by 360 Painting and Flick. The Brown Litigation was resolved in 2013 by settlement, after Brown obtained a consent judgment against 360 Painting and Flick in the amount of \$46,000. Rather than disclosing in Item 3 of the relevant FDD that Respondents were held liable in the Brown Litigation, as required under the Maryland Franchise Law and Item 3 under the Federal Trade Commission Franchise Rule (“FTC Franchise Rule”),¹ Respondents represented in that FDD that “No litigation is required to be disclosed in this

¹16 CFR §436.5(c).

disclosure document.”

11. Under the 2016 Consent Order, the Securities Commissioner concluded that 360 Painting and Flick violated sections 14-214, 14-216, 14-228 and 14-229 of the Maryland Franchise Law.

12. Under the 2016 Consent Order, 360 Painting and Flick agreed, among other things, to permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law, to diligently pursue registration of the 360 Painting franchise offering under the Maryland Franchise Law, and to make rescission offers to the two Maryland franchisees to whom 360 Painting sold unregistered franchises using an FDD that omitted to disclose the Brown Litigation.

13. 360 Painting represented in the 2016 Consent Order that it had obtained new counsel to assist it with complying with federal and state franchise regulatory requirements, including registration under the Maryland Franchise Law. 360 Painting also represented that it implemented new procedures to ensure that, in the future, 360 Painting complied with the registration, disclosure and anti-fraud provisions of the Maryland Franchise Law.

360 Painting’s Registration Filings After 2017

14. On June 1, 2017, 360 Painting submitted an initial application with the Securities Division to re-register its franchise offering under the Maryland Franchise Law.

15. Between June 2017 and the date of the current Consent Order, 360 Painting has made multiple filings of franchise registration applications and submitted multiple 360 Painting FDDs as part of those registration applications.

16. Since at least June 2017, Flick, as CEO of 360 Painting, has submitted certifications to the Securities Division with each franchise registration application filed with the

Securities Division attesting that all documents submitted with the applications, including the FDDs, were accurate and did not contain any material omissions of fact.

17. Between January 1, 2018 and the date of the current Consent Order, 360 Painting also entered into three franchise agreements with franchisees (collectively “Maryland Franchisees”) that were subject to registration under the Maryland Franchise Law.

The 2017 YP Litigation

18. On July 17, 2017, YP, LLC, dba yellowpages.com (“YP”), filed claims against 360 Painting in the Superior Court of Dekalb County, Georgia (the “YP Litigation”), alleging, among other things, breach of contract and unjust enrichment. On October 16, 2017, 360 Painting brought counterclaims against YP alleging, among other things, that YP failed to perform under the parties’ contract for advertising services.

19. YP and 360 Painting eventually settled the YP Litigation on August 27, 2018 with 360 Painting agreeing, among other things to pay YP the sum of \$21,000. As a result, the Securities Division contends that 360 Painting was “held liable” in the YP Litigation as defined under the disclosure requirements of Item 3 of the FTC Franchise Rule, and, therefore, 360 Painting was required under the Maryland Franchise Law to disclose that settlement in its FDD.

20. At the time YP filed the YP Litigation against 360 Painting, 360 Painting’s June 1, 2017 re-registration application was pending review by the Securities Division. That re-registration application included a copy of 360 Painting’s FDD dated April 20 2017 (“2017 FDD”). On December 21, 2017, the Securities Division re-registered 360 Painting’s franchise offering under the Maryland Franchise Law, granting 360 Painting an effective registration date of December 21, 2017, which registration was not due to expire until December 21, 2018.

21. On April 17, 2018, as part of an application to amend its then-current franchise

registration, 360 Painting filed with the Securities Division an amended FDD dated March 20, 2018 (“2018 Amended FDD”).

22. 360 Painting did not disclose the YP Litigation or the settlement of the YP Litigation in either its 2017 FDD or its 2018 Amended FDD, both of which were filed with the Securities Division.

23. On December 20, 2018, 360 Painting entered into a franchise agreement with DG, a Maryland resident. Prior to DG’s execution of his 360 Painting franchise agreement, 360 Painting gave DG 360 Painting’s 2018 Amended FDD, which omitted any disclosure of the YP Litigation or the settlement resolving the YP Litigation.

The 2019 Dispatch Litigation

24. On March 29, 2019, Dispatch Technologies, Inc. (“Dispatch”), a software vendor, filed a claim (“the Dispatch Litigation”) in the Superior Court of Suffolk County, Massachusetts against Premium Service Brands, LLC (“PSB”), the owner of 360 Painting, alleging, among other things, breach of contract and unfair and deceptive trade practices related to unpaid fees for services.

25. On July 7, 2019, Dispatch and PSB entered into a Settlement Agreement and Release resolving the Dispatch Litigation in which PSB agreed, among other things, to pay \$190,000 to Dispatch. As such, the Securities Division contends that PSB was “held liable” as defined under the disclosure requirements of Item 3 of the FTC Franchise Rule, and, therefore, 360 Painting was required under the Maryland Franchise Law to disclose that settlement in its FDD.

26. On April 25, 2019, 360 Painting filed with the Securities Division an application to renew its franchise registration in Maryland with an FDD dated April 17, 2019 (“2019 FDD”),

which the Securities Division made effective on April 17, 2019.

27. On October 28, 2019, 360 Painting filed with the Securities Division an application to amend its franchise registration in Maryland with its 2019 FDD, as amended October 19, 2019 (“2019 Amended FDD”), which the Securities Division made effective on November 8, 2019.

28. Neither 360 Painting’s 2018 Amended FDD, its 2019 FDD, nor its 2019 Amended FDD, which were filed with the Securities Division, disclosed the Dispatch Litigation or the settlement resolving the Dispatch Litigation.

29. On August 1, 2019, 360 Painting entered into a franchise agreement with AP, a Maryland resident. On December 2, 2019, 360 Painting entered into a franchise agreement with LK, another Maryland resident.

30. 360 Painting gave AP and LK 360 Painting’s 2019 FDD prior to their respective purchases of a 360 Painting franchise. That 2019 FDD omitted disclosure of the YP Litigation, the settlement resolving the YP Litigation, the Dispatch Litigation and the settlement resolving the Dispatch Litigation.

Representations by 360 Painting

31. 360 Painting represents that, other than the sale of franchises to the three Maryland Franchisees discussed in this Consent Order, after January 1, 2018, 360 Painting did not offer or sell a franchise in Maryland or to any Maryland residents.

32. 360 Painting represents that it hired a new in-house general counsel in February 2021 to ensure compliance with franchise regulatory requirements, including disclosure of all required litigation, and it has hired experienced outside counsel to further assist in franchise compliance matters. In May 2021, that outside legal counsel presented a virtual franchise law

compliance program to PSB executives, and franchise sales and operations teams.

33. 360 Painting represents and agrees that, in the future, it will comply with all provisions under the Maryland Franchise Law, including disclosing all litigation required to be disclosed under Item 3 of the FTC Franchise Rule and the NASAA Guidelines.

Other State Actions Against 360 Painting

34. On November 19, 2021, the California Commissioner of Financial Protection and Innovation (“the California DFPI”) entered into a Consent Order with defendants Flick, 360 Painting and several franchisors affiliated with 360 to resolve alleged misrepresentations and omissions in connection with the defendants’ 2017 FDDs filed with the California DFPI and given to prospective California franchisees. Although the defendants in that action neither admitted nor denied violating California law, the defendants agreed, among other things: (1) to immediately and permanently cease and desist from the offer and sale of franchises in violation of the California Franchise Investment Law; (2) to pay penalties of \$72,500 and costs of \$10,500 to the California DFPI; (3) to disgorge all initial franchise fees paid by California franchisees to 360 Painting and refrain from enforcing or collecting judgments against California franchisees; (4) to a stop order related to the effectiveness of defendant’s 2021 California franchise registration applications; and (5) to a bar order against defendant Flick from offering or selling franchises or filing franchise registrations in California for 36 months.

35. On October 3, 2022, the Washington Department of Financial Institutions (“Washington DFI”) Securities Division entered into a Consent Order with 360 Painting alleging that it failed in some instances between 2016 and 2021 in FDDs filed with that agency to disclose material information regarding private civil litigation and government enforcement actions. Under that Washington Consent Order, 360 Painting, without admitting or denying any

violation of Washington law, agreed, among other things, (1) to cease and desist from any violations of the Franchise Investment Protection Act of Washington; and (2) to pay investigative costs to the Washington DFI of \$2,000.

III. CONCLUSIONS OF LAW

36. By engaging in the above activities, the Securities Commissioner has concluded that Respondents violated §§14-216, 14-220, 14-229, and 14-230 of the Maryland Franchise Law and an order of the Securities Commissioner.

IV. ORDER AND CONSENT

37. THE SECURITIES COMMISSIONER HEREBY ORDERS AND RESPONDENTS HEREBY CONSENT AND REPRESENT AS FOLLOWS:

- A. Respondents will permanently cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law;
- B. 360 Painting will pay to the Office of the Attorney General in conjunction with this Consent Order the sum of \$50,000.00 as a civil monetary penalty;
- C. Respondents acknowledge that this Consent Order is a disclosable 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

38. 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

39. If any Respondents fail 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 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 that Respondent.

VII. MODIFICATION OF CONSENT ORDER

40. 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:

April 19, 2023

BY CONSENT:

360 Painting, LLC

By: Paul Flick, CEO

Paul Flick