

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *

MONITORCLOSELY.COM, LLC, *

THOMAS WEIN, and * Case Number 2009-0168

RACHEL MYERS, *

Respondents, *

* * * * *

ORDER TO SHOW CAUSE

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Division”) initiated an investigation into the franchise-related activities of MonitorClosely.com, LLC (“Monitor Closely”), Thomas Wein and Rachel Myers (collectively “Respondents”) 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, as a result of that investigation, the Maryland Securities Commissioner (the “Commissioner”) finds grounds to allege that Respondents violated the registration, disclosure, and/or antifraud provisions of the Maryland Franchise Law, in relation to the offer and sale of Monitor Closely franchises in Maryland;

NOW, THEREFORE, the Commissioner orders Respondents to show cause why a final order should not be entered ordering Respondents to cease and desist from violating the registration, disclosure, and antifraud provisions of the Maryland Franchise Law;

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. STATEMENT OF FACTS

On information and belief, the Commissioner alleges the following as the basis for this Order:

A. Respondents

2. Monitor Closely is or was an Ohio limited liability company with a principal place of business at 4555 Lake Forest Drive, Suite 650, Cincinnati, Ohio 65242.

3. Monitor Closely offered and sold franchises for businesses that sell, install and service web-based monitoring of digital surveillance systems.

4. Thomas Wein ("Wein") was the founder of Monitor Closely. From February 2006 until at least March 17, 2009, Wein also was Monitor Closely's president and chief executive officer. Wein was involved in the offer and sale of Monitor Closely franchises to prospective franchisees.

5. Rachel Myers ("Myers") was the director of operations for Monitor Closely from February 2007 until at least March 17, 2009. Myers also was involved in the offer and sale of Monitor Closely franchises to prospective franchisees.

6. On or about March 17, 2009, Monitor Closely entered into an Asset Purchase Agreement in which it sold all of the assets, including existing franchise agreements, of the Monitor Closely franchisor to a separate entity, Monitor Closely, Inc., a Virginia corporation.

B. Monitor Closely's Franchise Registration

7. Monitor Closely was registered with the Division to offer and sell franchises in

Maryland from December 6, 2006 through May 1, 2008.

8. As a condition of granting Monitor Closely's franchise registration in Maryland, the Division required Monitor Closely to defer the receipt of franchise fees and other initial payments owed by franchisees until Monitor Closely had completed its initial obligations under its franchise agreement.

9. Monitor Closely's Franchise Offering Circular registered with the Division for use in Maryland acknowledged that Monitor Closely would not accept any fees from franchisees until it had performed all of its pre-opening obligations to franchisees under its franchise agreements.

10. Monitor Closely's Franchise Offering Circular identified a number of the franchisor's pre-opening obligations, including providing an initial training program; approving a franchise territory; supplying lists of suppliers, marketing materials, and forms; and providing an operations manual.

C. The Sale to Anthony Lewis

11. In May 2008, Anthony Lewis ("Lewis"), a resident of Prince George's County, Maryland, was researching franchise opportunities on the Internet and discovered information about the Monitor Closely franchise offering. Lewis contacted Monitor Closely and requested additional information about its franchise opportunity.

12. In June 2008, after Monitor Closely's franchise registration had expired in Maryland, a Monitor Closely sales representative invited Lewis to attend a "discovery day" sales presentation at Monitor Closely's corporate headquarters in Cincinnati, Ohio.

13. Monitor Closely's Franchise Sales Director, Mark Duncan, told Lewis that the franchisor was offering a \$7,500 incentive package for individuals who attended a discovery day in

June. Duncan also told Lewis that he had to act fast as discovery days were beginning to fill up because Monitor Closely was very popular and one of the top fastest growing franchises.

14. On June 26, 2008, Lewis traveled to Ohio to attend the Monitor Closely discovery day presentation.

15. At the June 26, 2008 discovery day, Lewis met with several representatives of Monitor Closely, who discussed the benefits of owning a Monitor Closely franchise and gave a tour of the franchisor's training facility.

16. At the June 26, 2008 discovery day, Wein told Lewis about a Rebate Incentive Program.¹ Wein stated that Lewis would receive rebate coupons worth \$7,500 if he purchased a standard size Monitor Closely franchise for \$29,900 within 14 days of his discovery day visit.

17. On July 7, 2008, Monitor Closely entered into an agreement with Lewis, in the form of a "Rider" to Franchise Agreement. In that Rider, Monitor Closely agreed to sell a franchise to Lewis if Lewis paid a deposit of \$9,900 to Monitor Closely by July 8, 2008 and made a further payment of \$20,000 by August 7, 2008. The Rider also stated that, as an incentive, Lewis would receive 15 installation rebate certificates under the company's Rebate Certificate Incentive Program, and that those rebate certificates would be worth up to \$7,500.

18. Lewis paid Monitor Closely \$9,900 on or about July 8, 2008. Wein sent Lewis instructions for completing the wire transfer of his franchise fee deposit.

19. On August 6, 2008, Wein sent Lewis instructions to wire the \$20,000 balance of his

¹Under Monitor Closely's Rebate Incentive Program, a franchisee would receive fifteen individual \$500 rebate certificates at the Monitor Closely training program. The certificates would be good for one year. They could be redeemable by either the franchisee or the franchisee's customers, when the customer purchased a Monitor.com surveillance system and used a qualified third party contractor for installation of that system.

franchise fee, and Lewis wired those funds to Monitor Closely on or about August 7, 2008.

20. Lewis attended a Monitor Closely training program from September 22 - 25, 2008.

21. Lewis, doing business as Business Enterprises of Maryland, LLC, entered into a Franchise Agreement with Monitor Closely on September 25, 2008.

22. Myers, on behalf of Monitor Closely, countersigned Lewis' Franchise Agreement on September 26, 2008.

D. The Sale to Ed Hill

23. In the Fall and Winter of 2007, Ed Hill ("Hill"), a resident of Howard County, Maryland, was researching franchise opportunities on the Internet. Hill found information about the Monitor Closely franchisor and contacted the company for more information.

24. A Monitor Closely representative invited Hill to attend a Monitor Closely discovery day at the company headquarters in Cincinnati, Ohio.

25. In or about January 2008, Wein advised Hill that if he would purchase a standard franchise territory for \$24,900 within 12 days of his discovery day visit, he would receive 15 installation rebate certificates under the company's Rebate Certificate Incentive Program, and that those rebate certificates would be worth up to \$7,500.

26. On February 9, 2008, Hill traveled to Cincinnati to attend a Monitor Closely discovery day.

27. On February 20, 2008, Wein sent to Hill a "Rider to Franchise Agreement," which provided that Hill would pay a \$4,920 deposit to secure a standard franchise territory to operate a Monitor Closely franchise. Wein included bank wire transfer instructions for Hill to complete to pay this deposit.

28. On February 22, 2008, Mark Duncan, the Monitor Closely sales representative, advised Hill that if he paid \$4,920 that day as a deposit towards his purchase of a Monitor Closely franchise, Hill would receive \$7,500 in rebates under the Rebate Incentive Program.

29. On or about February 22, 2008, Hill paid Monitor Closely \$4,920 towards his purchase of a Monitor Closely franchise. Monitor Closely cashed Hill's check on February 25, 2008.

30. On March 12, 2008, Monitor Closely sent out a second version of a Rider to Franchise Agreement, signed by Wein, allowing Hill to reserve a specific franchise territory from Monitor Closely if he paid the balance of his franchise fee to Monitor Closely no later than March 14, 2008.

31. On March 13, 2008, Hill paid Monitor Closely the sum of \$15,000, representing the balance of his franchise fee. Monitor Closely cashed Hill's \$15,000 check on March 14, 2008.

32. From April 28 - May 1, 2008, Hill attended a Monitor Closely training program in Ohio.

33. On May 12, 2008, Hill signed a franchise agreement to become a Monitor Closely franchisee. Myers had signed Hill's franchise agreement on April 30, 2008.

34. On May 14, 2008, Hill signed another Rider to Franchise Agreement granting him the right to purchase two additional standard franchise territories for \$12,000 if Hill paid that amount no later than September 30, 2008, and allowing him the right to sell certain surveillance systems outside of his territory, under specific conditions.

35. Monitor Closely failed to deliver to Hill a Monitor Closely Franchise Offering Circular before Hill purchased his Monitor Closely franchise.

E. Sales to Other Monitor Closely Franchisees

36. Monitor Closely and Wein also obtained deposits from additional prospective Maryland franchisees before completing Monitor Closely's pre-opening obligations to those franchisees.

37. In several cases, Monitor Closely did not give a registered Franchise Offering Circular to prospective Maryland franchisees at the time required under the Maryland Franchise Law. Specifically, Monitor Closely accepted fees from Maryland residents, or had Maryland residents sign binding agreements related to the Monitor Closely franchise, without first delivering the Franchise Offering Circular at the earlier of the first personal meeting with those individuals, or at least 10 business days before those individuals signed an agreement related to the sale of the Monitor Closely franchise.

COUNT ONE AGAINST ALL RESPONDENTS (Violation of Registration Provisions)

WHEREAS, section 14-228 of the Maryland Franchise Law makes it unlawful for any person to offer or sell a franchise in Maryland or to a Maryland resident unless the offering has been registered with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in Maryland; and

WHEREAS, Respondents offered and sold franchises in Maryland and to Maryland residents without registering the offering with the Commissioner;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the registration provisions of section 14-228 of the Maryland Franchise Law.

COUNT TWO
AGAINST ALL RESPONDENTS
(Violation of Disclosure Provisions)

WHEREAS, section 14-223 of the Maryland Franchise Law makes it unlawful for any person to offer or sell a franchise in Maryland or to a Maryland resident without first giving a prospective franchisee a copy of the offering prospectus and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of: (1) the first personal meeting of the franchisor and the prospective franchisee to discuss the possible sale of the franchise; or (2) 10 business days before the execution of a contract or payment of any consideration that relates to the franchise relationship; and

WHEREAS, under section 14-216 (a) and COMAR 02.02.08.04, the “offering prospectus” that a franchisor must give to a prospective franchisee is the Franchise Offering Circular that is registered by the Division; and

WHEREAS, Respondents offered and sold franchises in Maryland without giving several prospective Maryland franchisees, at the first personal meeting or 10 business days before payment of consideration, a copy of the offering prospectus required under the Maryland Franchise Law;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the disclosure provisions of section 14-223 of the Maryland Franchise Law.

COUNT THREE
AGAINST RESPONDENTS MONITOR CLOSELY AND WEIN
(Misrepresentation in connection with the offer or sale of franchises)

WHEREAS, section 14-229 of the Maryland Franchise Law prohibits any person, in

connection with the offer or sale of a franchise, directly or indirectly, to employ a device, scheme or artifice to defraud; make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, Respondents Monitor Closely and Wein made material misrepresentations of fact and/or omissions of material fact about the Monitor Closely franchise offering by offering a rebate incentive program requiring prospective Maryland franchisees to pay franchise fees up front, when Monitor Closely's Franchise Offering Circular registered with the Division represented that Monitor Closely would defer the receipt of all fees from Maryland franchisees until after Monitor Closely had completed its pre-opening obligations to those franchisees; and

WHEREAS, Respondents Monitor Closely and Wein made material misrepresentations of fact and/or omissions of material fact about the Monitor Closely franchise offering by failing to disclose any information about the Monitor Closely Rebate Incentive Program in Monitor Closely's Franchise Offering Circular registered with the Division and distributed to prospective Maryland franchisees;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents Monitor Closely and Wein show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the antifraud provisions of section 14-229 of the Maryland Franchise Law.

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that Respondents shall file with the Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether a respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any respondent to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. Failure of any respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing Respondents to permanently cease and desist from violation of the Maryland Franchise Law.

SO ORDERED:

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

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

Dated: January 8, 2010