

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

In the Matter of:	*	
360 PAINTING, LLC	*	
f.k.a. 360 PAINTING, INC., and	*	
PAUL FLICK,	*	Case Number 2015-0477
	*	
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. 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 registration, disclosure, and antifraud provisions of the Maryland Franchise Law, in relation to the offer to sell, and sale of 360 Painting franchises in Maryland;

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;

NOW, THEREFORE, 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. 360 Painting, LLC (“360 Painting”), formerly known as 360 Painting, Inc., is a Virginia corporation with a current principal business address of 630 Jefferson Parkway, Suite 200, Charlottesville, VA 22911.

3. Paul Flick (“Flick”) is the chief executive officer of 360 Painting.

4. 360 Painting offers and sells franchises for retail painting businesses under the name 360 Painting.

5. Flick has solicited individuals, including Maryland residents, to invest in a 360 Painting franchise.

6. 360 Painting was registered with the Securities Division to offer and sell franchises under the Maryland Franchise Law from August 1, 2007 through August 1, 2008.

7. 360 Painting has not been registered to offer or sell franchises under the Maryland Franchise Law at any time after August 1, 2008.

8. As of April 2016, 360 Painting represents in its Franchise Disclosure Document that it has 59 franchises in the US and 5 franchises in Canada.

B. 360 Painting Website

9. 360 Painting maintains an Internet website at [www.360 Painting.com](http://www.360Painting.com), which has a link to a page entitled “Start Your Own 360 Painting Franchise.”

10. The 360 Painting website includes a link to request additional information about the

360 Painting franchise opportunity.

11. The 360 Painting website also states as follows:

The 360° PAINTING franchise marketing system allows you to enter the market place and take control of it quickly. Get off on the Right Foot - With a low initial investment, you can get your business started fast without going deep into debt. Control - This is your business. You control how quickly and efficiently your business grows with the support of the franchisor. Generate Wealth and Equity - When you're ready to retire there is more waiting for you than a cake and a pat on the back. As a business owner you can sell your business and be rewarded for what you have built!

C. Offers and Sales of 360 Painting Franchises in Maryland

12. In the Fall of December 2012, LOB, a resident of Clinton, Maryland, had discussions with Flick about investing in a 360 franchise. Flick advised LOB that he had sold several successful 360 Painting franchises in Maryland.

13. In December 12, 2012, LOB and an entity that she formed entered into a Franchise Agreement with 360 Painting granting her the right to operate a 360 Painting franchise in Maryland.

14. LOB paid 360 Painting a franchise fee of \$32,000.00.

15. At the time Respondents offered and sold a 360 Painting franchise to LOB in 2012, 360 Painting was not registered to offer or sell franchises in Maryland.

16. In 2013, LOB brought an action against Respondents alleging, among other things, that Respondents violated the Maryland Franchise Law in the offer and sale of a franchise to LOB.

17. On October 10, 2013, LOB obtained a consent judgment against Respondents, jointly and severally, in the amount of \$46,000.00. That matter now has been resolved through a mutual settlement between the parties.

18. 360 Painting currently has two Maryland franchise locations, one located in Bel Air Maryland ("Bel Air Franchisee"), and a second franchise located in Columbia, Maryland ("Columbia Franchisee").

19. The Bel Air Franchisee entered into a 360 Painting franchise agreement in or around May 2015.

20. The Columbia Franchisee entered into a 360 Painting franchise agreement in or around November 2015.

21. 360 Painting gave the Columbia Franchisee a “Franchise Disclosure Document” prior to its execution of a 360 Painting franchise agreement.

22. 360 Painting gave the Bel Air Franchisees a “Franchise Disclosure Document” prior to its execution of a 360 Painting franchise agreement.

23. At the time Respondents offered and sold a 360 Painting franchise to the Bel Air Franchisee and the Columbia Franchisee in 2015, 360 Painting was not registered to offer or sell franchises in Maryland.

24. The Franchise Disclosure Document that Respondents gave to the Bel Air Franchisee and the Columbia Franchisee did not contain all information the Securities Division requires to be included in a Maryland-registered Franchise Disclosure Document under the Maryland Franchise Law and Maryland’s Franchise Regulations.

25. The Franchise Disclosure Document that Respondents gave to the Bel Air Franchisee and the Columbia Franchisee does not disclose the lawsuit LOB filed against Respondents alleging a violation of the Maryland Franchise Law or the settlement terms resolving that lawsuit. Instead, the Franchise Disclosure Document represents that “No litigation is required to be disclosed... .”

26. 360 Painting states that it has obtained new counsel to assist in with complying with federal and state franchise regulatory requirements, including registration under the Maryland Franchise law.

27. 360 Painting also represents that it has currently implemented new procedures to

ensure that, in the future, 360 Painting complies with the registration, disclosure and antifraud provisions of the Maryland Franchise Law.

28. 360 Painting further represents that, other than franchise offers and sales it made to the Columbia Franchisee and the Bel Air Franchisee (collectively Maryland Franchisees”), whom 360 Painting has identified in documents submitted to the Securities Division, 360 Painting did not offer or sell any franchises in Maryland or to any Maryland residents when 360 Painting was not registered to offer franchises under the Maryland Franchise Law.

III. CONCLUSIONS OF LAW

29. By engaging in the above activities, the Commissioner has concluded that 360 Painting violated §§14-214, 14-216, 14-228, and 14-229 of the Maryland Franchise Law.

IV. ORDER AND CONSENT

30. THE 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. 360 Painting shall promptly file with the Securities Division and diligently pursue the completion of an initial application to register its franchise offering in Maryland. For purposes of this Agreement “diligently pursue” means that an applicant submits a substantive response to a Securities Division comment letter regarding a registration application no later than 30 days after the applicant’s receipt of the comment letter;
- C. Within five (5) days of its receipt of the fully executed Consent Order of the Commissioner, 360 Painting shall send the Maryland Franchisees a copy of this signed Consent Order, along with a Notice of Rescission Rights, in the form attached as Exhibit 1, informing the Maryland Franchisees that they are being offered an opportunity to immediately rescind their respective 360 Painting franchise agreements under the terms of this Consent Order;
- D. Upon notification by the Securities Division that 360 Painting’s re-filed initial franchise application has been effectively registered for use in Maryland, if any Maryland Franchisee has not already rescinded her or its 360 Painting franchise in

response to the Notice of Rescission Rights, 360 Painting shall send to that Maryland Franchisees the following: (i) a copy of the applicable, effectively registered Maryland FDD; and (ii) a letter, in substantially the form attached to this letter as Exhibit 2, notifying that Maryland Franchisee that, now that 360 Painting is effectively registered to sell franchises in Maryland, the Maryland Franchisee has a second opportunity to rescind the 360 Painting franchise agreement under the terms stated in that letter;

- E. 360 Painting agrees that if any of the Maryland Franchisees accepts 360 Painting's offer to rescind a 360 Painting franchise agreement in response to the Notice of Rescission Rights or a subsequent Offer to Rescind Franchise Agreement required under this Consent Order, 360 Painting will complete any payments 360 Painting is required to make to that Maryland Franchisee under this Consent Order within thirty (30) days of 360 Painting's receipt of either written Acceptance;
- F. 360 Painting's offer of a franchise for the limited purposes described in Paragraph 30C of this Consent Order is exempt from the registration provisions of the Maryland Franchise Law; and
- G. Respondents acknowledge 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

31. 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

32. If any Respondent 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 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 Commissioner or a court finds that any Respondent

has 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 it.

VI. CONSEQUENCES OF VIOLATING THIS CONSENT ORDER

33. The terms of this Consent Order may be modified only by a subsequent order issued by the Commissioner.

SO ORDERED:

Commissioner's Signature on File
w/Original Documents

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

DATE OF THIS ORDER:

August 18, 2016

BY CONSENT:

360 Painting, LLC

By: Paul Flick, President

Paul Flick

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: Notice of Rescission Rights

Dear _____:

In accordance with discussions our attorneys have had with the Securities Division of the Maryland Attorney General's Office (the "Securities Division"), [Insert name of Company] ("we") have agreed to offer rescission to any Maryland residents to whom we sold franchises in violation of the provisions of the Maryland Franchise Law. This offer of rescission is made in settlement of the administrative proceeding that the Securities Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your franchise, we agree to return to you all initial fees you paid us.

In the event you elect to rescind, you will give up your franchise agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments within thirty (30) days after we receive your Acceptance of Offer to Rescind.

This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period. If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

If you do not rescind your franchise now, you will be given a second opportunity to rescind your franchise, after we have completed the registration process. When that registration is complete, we will send you a copy of a registered FDD and a new letter offering to rescind your franchise purchase under the same terms outlined in this letter.

Sincerely,
THE COMPANY

Exhibit 1

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document or my right to accept a subsequent rescission offer at a later time.

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you.

_____ I **do not wish to accept your offer of rescission at this time**. I understand that I will be given a second opportunity to rescind my franchise purchase once the franchisor has effectively registered its franchise offering with the Securities Division under the Maryland Franchise Law.

Date: _____

Franchisee

FORM
(On Company Letterhead)

Certified Mail
Return Receipt Requested

Re: **[Company] Offer to Rescind Franchise Agreement**

Dear _____:

As you recall, [Insert name of Company] ("we") have agreed to offer rescission to any Maryland residents who entered into franchise agreements (collectively "franchises") with us in violation of the provisions of the Maryland Franchise Law. You previously received a "Notice of Rescission Rights" from us offering to rescind your franchise immediately. Now that we have completed the registration of our franchise, we are giving you this second opportunity to rescind your franchise, along with a copy of a Maryland Franchise Disclosure Document. We are making this offer in settlement of the administrative proceeding that the Division may bring for the sale of a franchise in violation of the Maryland Franchise Law and does not affect any civil liability for which we may be responsible.

If you elect to rescind and terminate your franchise, we agree to return to you all initial fees you paid us.

In the event you elect to rescind, you will give up your franchise agreement. You also will give up any rights to use our trademarks and system and be obligated to refrain from using and disclosing any of our trade secrets and any of our confidential and proprietary information. We will make payments within thirty (30) days after we receive your Acceptance of Offer to Rescind your Franchise Agreement.

This offer will remain open for thirty (30) days from the date you receive this letter. Please check the appropriate place below and return a signed copy of this letter to me within the time period. If you have any questions, please contact Dale E. Cantone, Assistant Attorney General, at the Division (410-576-6368).

Sincerely,

THE COMPANY

Exhibit 2

ACCEPTANCE OR REFUSAL OF OFFER TO RESCIND FRANCHISE

1. I, the undersigned, acknowledge that I have read the preceding Notice of Offer to Rescind Franchise Agreement and understand its contents.
2. I understand that I have not waived my rights under the Maryland Franchise and Disclosure Law by signing this document.
3. I hereby make the following choice to accept or refuse your offer to rescind my franchise agreement:

CHECK ONE

_____ I hereby **accept** your offer of rescission and agree to not use your trademarks and system and to not use or disclose to anyone the trade secrets, and confidential and proprietary information that we obtained from you.

_____ I do **not accept** your offer of rescission. I wish to remain a franchisee under my franchise agreement.

Date: _____