

1
2
3
4
5
6

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No. S-11-0766-12-CO01
whether there has been a violation of the)
Franchise Investment Protection Act of) CONSENT ORDER
Washington by:)
)
Comfort Dental Group, Inc., Rick Kushner,)
Neil Norton and Graig Bears)
Respondents.)

7
8 Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and
9 Respondents, Comfort Dental Group, Inc., Rick Kushner, Neil Norton and Graig Bears do hereby enter into this
10 CONSENT ORDER in settlement of the matters alleged herein. Respondents neither admit nor deny the Tentative
11 Findings of Fact or Conclusions of Law as stated below.

12
13

FINDINGS OF FACT

14
15

I. Respondents

- 16
17
18
1. Comfort Dental Group, Inc. (Comfort) is a franchisor of dentistry practices with its principal place of business at 2540 Kipling St, Lakewood, CO 80215.
 2. Rick Kushner is the founder and Chairman of the Board of Comfort Dental Group, Inc.
 3. Neil Norton is the vice president of Comfort Dental Group, Inc.
 4. Graig Bears is the in-house counsel for Comfort Dental Group, Inc.

19
20

II. Nature of Conduct

21 From 2010 to 2011, Comfort, Kushner, Norton and Bears offered to prospective Washington franchisees a
22 franchise to operate “turn-key” dental practice opportunities. Respondents offered to new and practicing dentists
23 management and operations support for dental practices to be operated under the Comfort Dental name. Respondents
24 also offered a subfranchise to offer and sell Comfort Dental franchises in the state. Respondents offered the Comfort
25 Dental opportunities through various means such as personal meetings, a “vendor fair” in Seattle, “partner candidate
meetings” in which the prospects attended presentations at the Comfort home office and toured the Comfort dental
lab, through its website at www.comfortdental.com/comfort-dental-partnerships.html, by telephone and email.
Comfort provided franchise prospects with a variety of marketing materials, including magazines, DVDs, CDs, and

1 brochures. Comfort offers franchise prospects the opportunity to purchase: (1) a “development partnership” in which
2 they are opening a new location; (2) a “growth partnership” in which they purchase interest in an expanding practice;
3 (3) a “retirement/replacement” partnership in which one may purchase the interest of a dentist leaving his or her
4 practice. Comfort sold a subfranchise for the state of Washington to two dentists and in collaboration with the newly
5 formed subfranchisor sold franchises to four additional dentists. Comfort required its Washington franchisees to
6 make out an initial \$5,000 “commitment check.” Comfort charged an initial franchise fee ranging from \$37,500 to
7 \$75,000. Comfort licensed the Comfort names and marks to purchasing dentists. Comfort required franchisees to
8 enter into a 10 year consulting agreement of \$2,200 to \$5,500 per year and pay a royalty of 2% to 5% for the life of
9 the practice. Comfort requires each office to pay a \$4,000 marketing fee to its general marketing fund. Franchisees
10 were required to rent their office space from Comfort. Franchisees are required to use Budget Dental Lab that is
11 owned by the principals of Comfort. Comfort assisted franchise prospects with bank financing for the purchase of
12 equipment and supplies needed for the businesses. Respondents did not provide prospective franchisees with a
13 franchise disclosure document in connection with its offer of franchises.

14 III. Failure To Deliver Offering Circular

15 In connection with the offer and sale of the Comfort franchises, Respondents failed to provide the prospective
16 purchasers with a disclosure document or offering circular as required by RCW 19.100.080 that contained the
17 information about the franchise required by RCW 19.100.040.

18 IV. Registration Status

19 Respondent Comfort Dental Group, Inc. is not currently registered to sell its franchises in the state of Washington and
20 has not previously been so registered. There is no notification of exemption on file with the state of Washington.

21 V. Anti Fraud Violation

22 Respondents Comfort Dental Group, Inc. and Rick Kushner provided prospective franchisees with numerous
23 financial performance representations in the form of oral and written representations that included claims that
24 Comfort dentists averaged anywhere from 100 to 500 new patients a month, that offices produced and collected
25 \$150,000 to \$200,000 per month consistently, that overhead was 40%, and that a practice could earn \$50,000 to
\$60,000 within three to six months. Comfort and Kushner made these representations to prospective franchisees
without providing the material basis for the information, did not include the material assumptions underlying the
information and did not provide written substantiation for some of the financial performance representations made.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONCLUSIONS OF LAW

I.

The offer or sale of franchises as described above constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(16) and RCW 19.100.010(4).

II.

The offer or sale of said franchises was in violation of RCW 19.100.020 because no registration for such offer and/or sale is on file with the Securities Administrator, state of Washington.

III.

The offer and/or sale of said franchises was made in violation of RCW 19.100.080 because Respondents did not provide prospective franchisees with a disclosure document or offering circular required under RCW 19.100.040 prior to the sale of the franchise.

IV.

The offer and/or sale of said franchises were in violation of RCW 19.100.170 because Respondents Comfort and Rick Kushner failed to provide prospective franchisees with the material basis, the material assumptions and written substantiation for financial performance representations.

CONSENT ORDER

Based upon the foregoing and finding it in the public interest:

IT IS AGREED AND ORDERED THAT Respondents, Comfort Dental Group, Inc., Rick Kushner, Neil Norton and Graig Bears, their agents and employees shall each cease and desist from offering or selling franchises in violation of RCW 19.100.020, the registration section of the Franchise Investment Protection Act of Washington.

IT IS AGREED AND ORDERED THAT Respondents, Comfort Dental Group, Inc., Rick Kushner, Neil Norton and Graig Bears, their agents and employees shall each cease and desist from offering or selling franchises in violation of RCW 19.100.080, the disclosure document section of the Franchise Investment Protection Act of Washington.

IT IS FURTHER AGREED that Respondents, Comfort Dental Group, Inc. and Rick Kushner, their agents and employees shall each cease and desist from violating RCW 19.100.170, the anti-fraud section of the Franchise Investment Protection Act of Washington.

1 IT IS FURTHER AGREED that Respondents, Comfort Dental Group, Inc., Rick Kushner, Neil Norton and
2 Graig Bears, shall pay the Securities Division the costs and other expenses incurred in the investigation of this
3 matter in the amount of \$7,688 on or before the date of entry of this Consent Order.

4 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

5 IT IS FURTHER AGREED that Respondents, Comfort Dental Group, Inc., Rick Kushner, Neil Norton and
6 Graig Bears enter into this Consent Order freely and voluntarily and with full understanding of its terms and
7 significance.

8 IT IS FURTHER AGREED that in consideration of the foregoing, Comfort Dental Group, Inc., Rick
9 Kushner, Neil Norton and Graig Bears, waive their rights to a hearing and to judicial review of this matter.

10 Signed this 24th day of April, 2012.

11 COMFORT DENTAL GROUP, INC.

12 By /s/
13 RICK KUSHNER, CEO and PRESIDENT

/s/
RICK KUSHNER, individually

14 Signed this 23rd day of April, 2012 by:

Signed this 24th day of April, 2012 by:

/s/
NEIL NORTON, individually

/s/
GRAIG BEARS, individually

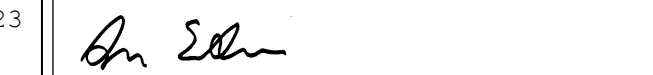
16 -----
17 SIGNED and ENTERED this 1st day of May, 2012.

18 

19 _____
20 WILLIAM M. BEATTY
21 Securities Administrator

22 Approved by:

Presented by:

23 



24 _____
25 SUZANNE SARASON
Chief of Enforcement

_____ MARTIN CORDELL
Financial Legal Examiner