



BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2013 NOV 18 PM 1 43

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

KENT MAERKI and NORMA JEAN COFFIN aka NORMA JEAN MAERKI, aka NORMA JEAN MAULE, husband and wife, DENTAL SUPPORT PLUS FRANCHISE, LLC, an Arizona limited liability company Respondents.) DOCKET NO. S-20897A-13-0391)) NOTICE OF OPPORTUNITY FOR HEARING) REGARDING PROPOSED ORDER TO) CEASE AND DESIST, ORDER FOR) RESTITUTION, ORDER FOR) ADMINISTRATIVE PENALTIES, AND) ORDER FOR OTHER AFFIRMATIVE) ACTION
---	--

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents KENT MAERKI and DENTAL SUPPORT PLUS FRANCHISE, LLC have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division alleges KENT MAERKI controlled DENTAL SUPPORT PLUS FRANCHISE, LLC within the meaning of A.R.S. § 44-1999 so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as DENTAL SUPPORT PLUS FRANCHISE, LLC for violations of the Securities Act.

I.
JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

Arizona Corporation Commission
DOCKETED
NOV 18 2013

DOCKETED BY
[Signature]

1 charge a fee (\$20,000 to \$30,000) for the program and then continue to receive fees based upon
2 what the investors received from utilizing DENTAL SUPPORT.

3 9. MAERKI claimed that dentists did not have sufficient able to pay patients and were
4 in need of a marketing system to assist dentists in recruiting patients. DENTAL SUPPORT would
5 provide that assistance to the dentists. Also, the DENTAL SUPPORT program provided guidance
6 on inducing dentists to participate in the program.

7 10. Dentists were recruited to participate in the DENTAL SUPPORT program with the
8 promise of a steady stream of able to pay patients. Dentists would pay a percentage of the dental
9 fees received from able to pay patients to the investors. If an investor purchased the management
10 services, the fees would be distributed through the management company to the investor. The fees
11 would be automatically withdrawn from the funds paid to the investors.

12 11. MAERKI designed the offering materials to encourage investors to purchase the
13 DENTAL SUPPORT program in combination with the management services. Although, MAERKI
14 asserts investors could purchase the DENTAL SUPPORT program without the purchase of the
15 marketing services, in reality, in all but one case (i.e., MAERKI), the investors purchased the
16 combination program.

17 12. At this time, the only individual to benefit from the sale of the DENTAL SUPPORT
18 program is MAERKI.

19 **IV.**

20 **FACTS**

21 13. The offering documents and the website state that DENTAL SUPPORT “is involved
22 in the business of dental patient marketing and referrals. [DENTAL SUPPORT] provide[s] dental
23 patients to dentists who are part of the Dental Support Plus family of dentists.”

24 14. DENTAL SUPPORT “offer[ed] [to investors] an absentee-owned fully-managed
25 dental franchise with a 5-year track record producing annual profits up to 40% to 60% or more.”
26

1 15. The DENTAL SUPPORT program was marketed and sold to investors as a system.
2 Investors were encouraged to purchase not only the DENTAL SUPPORT program, but also the
3 management services that were available.

4 16. The offering materials that were provided to offerees and investors contained
5 projections and potential returns which were based upon investors purchasing the combination of
6 the DENTAL SUPPORT program and the management services. In fact, as of July 2012,
7 DENTAL SUPPORT sold over 400 programs to investors. All investors but one chose to utilize
8 the services of the DENTAL SUPPORT approved vendors to handle the management of their
9 DENTAL SUPPORT programs. MAERKI was the only investor that chose to not use the
10 management services of the approved vendors.

11 17. DENTAL SUPPORT offered the investors who purchased the program an
12 opportunity to have the day-to-day management functions handled by approved vendors. The
13 approved vendors were responsible for locating both the Partner Dentists to participate in the
14 program as well as the patients for the Partner Dentists. The investors had only limited
15 responsibilities with respect to the management of the DENTAL SUPPORT program if the
16 approved management vendors were retained by the investor. Investors were not informed of either
17 the identity or location of the Partner Dentists.

18 18. If interested in purchasing the DENTAL SUPPORT program, the investor would be
19 required to complete a series of documents, including a franchise agreement and disclosure
20 document. MAERKI was responsible for the preparation and production of the information
21 contained in the franchise agreement and the disclosure documents. MAERKI was also responsible
22 for providing the information and all offering documents which were to be completed by the
23 investors.

24 19. Investors could retain the only DENTAL SUPPORT approved management
25 company (hereinafter "Management I") to handle the day-to-day management of the "franchise"
26 (i.e., DENTAL SUPPORT program). The "[m]anagement company is responsible for 100% of the

1 day-to-day, hands-on management of the Franchise.” The investor was only responsible for
2 “reconciling monthly reports with accounts, oversight and taxes.” DENTAL SUPPORT provided
3 investors the names of other approved vendor companies that may be retained to do the
4 reconciliation, oversight and taxes.

5 20. If retained, Management I was to locate prospective patients on behalf of the
6 investors. Management I was to “deliver a minimum of 5 new patients per franchise per month to
7 Network [Partner] Dentist[s].”

8 21. DENTAL SUPPORT had one approved vendor company (hereinafter “Vendor I”) to
9 recruit, qualify and contract with Partner Dentists into the DENTAL SUPPORT network of Partner
10 Dentists. Management I and Vendor I had the same officers and directors. Both entities completed
11 agreements that were executed by MAERKI on behalf of DENTAL SUPPORT.

12 22. Through at least July 2012, there was only one approved management company and
13 one approved company to locate patients and Partner Dentists. As of at least July 2012, all but one
14 investor utilized the services of Management I and Vender I. MAERKI was the only investor that
15 did not utilize Management I and Vender I.

16 23. Initially, the investors paid a fee of \$20,000. In approximately October 2011, the fee
17 was increased to \$25,000. On or about November 4, 2012, potential investors were notified that the
18 fee per unit would increase to \$30,000. DENTAL SUPPORT then sent a portion of the fee to
19 Management I and Vendor I.

20 24. Once the patients assigned to the investors paid the Partner Dentists for services
21 rendered, a MAERKI owned management company (“MAERKI Management”) collected payments
22 from the Partner Dentists totaling 35 percent of the patient fees paid by referred patients. Once
23 MAERKI Management received the payments from the Partner Dentists, it retained 1.8 percent.
24 Then MAERKI Management sent the remaining funds to Vendor I. Vendor I then sent the funds to
25 the investor. Vendor I then withdrew the funds to pay the following amounts: DENTAL SUPPORT
26 received four percent of the remaining funds; Vendor I received 19 percent of the remaining funds;

1 and Management I received 29 percent of the remaining funds. The investor retained the remaining
2 funds.

3 25. As part of the Vendor agreement between DENTAL SUPPORT and Vendor I, the
4 investors were required to sign authorization agreements with Vendor I for automatic deposits of
5 the revenue from the Partner Dentists and withdrawals of the fees to be paid to DENTAL
6 SUPPORT, Management I and Vendor I.

7 26. The investors receive a percentage of the dental fees charged by the Partner Dentists.
8 According to MAERKI, the investor, DENTAL SUPPORT, Management I and Vendor I share in
9 the proceeds from the Partner Dentists. Only if Vender I and Management I are supplying the
10 patients to the Partner Dentists and the patients are making payments to the Partner Dentists, do the
11 investors, DENTAL SUPPORT, Management I and Vender I receive compensation. In other
12 words, DENTAL SUPPORT, MAERKI Management, Management I and Vendor I and the investor
13 get paid based solely upon the financial success of the program the investors purchased.

14 27. On January 13, 2012, an Arizona resident submitted a request for information
15 related to DENTAL SUPPORT through the DENTAL SUPPORT website. In response, the
16 Arizona resident received a series of emails from "info@dspf.co" that provided information related
17 to an opportunity in the dental industry.

18 28. Shortly after the Arizona resident requested information, he received an email from
19 "deborah@DentalSupportPlus.com" stating that he would receive a series of five emails. The first
20 email in the series of emails from DENTAL SUPPORT emphasized that the opportunity involved
21 "an absentee-owned, fully-managed dental franchise with a 5-year track record producing annual
22 profits up to 40% to 60% or more." The email further explained that the "management company is
23 responsible for 100% of day-to-day, hands-on management of the Franchise." The email then
24 explained that investors could receive "40% to 60%" annual profits. According to the email, a
25 franchise would be "fully operational (under management) within 180 days."
26

1 29. The next email in the series from DENTAL SUPPORT the Arizona resident
2 received included information on Management I. Management I “is here to help you manage your
3 franchise.” The email contained links that provided further information and an application for
4 Management I.

5 30. One of the emails sent to offerees stated:

- 6 • Dental Support Plus has been built on a proven platform
with more than 5-years of research, development and performance.
- 7 • The performance has consistently produced results 5-times
greater than necessary to produce annual profits up to 40% - 60% or more.

8 31. In addition, the email stated:

- 9 • Dental Support Plus
 - 5-year track record
 - 10 ▪ 5 times annual production required to meet projections
 - 2 times annual dental collections to meet projections

11 32. Another email sent to offerees stated:

12 **Validation – Management Accomplishments**
13 **Two Patients per Day per Dentist**

14 The design of the Dental Support Plus Platform to deliver a minimum of
15 2-patients per day to a Partner Dentist with each patient generating a
16 minimum of \$1,000 of dental services within the first year.

17 33. Between January 2012 and November 2012, DENTAL SUPPORT sent emails to
18 prospective investors. Those emails included various offering documents as attachments. The
19 emails and attachments represented to the investors that the franchises would be “fully operational
20 after 180-days.” A number of investors’ franchises were not operational in 180 days. Other than
21 “appreciation” payments, a number of investors have not received any proceeds from their
22 franchise. No investor has received the 40 to 60 percent annual profit as represented in the offering
23 documents.

24 34. MAERKI and DENTAL SUPPORT provided documents to offerees and investors,
25 through emails and on the website, that detailed information related to the DENTAL SUPPORT
26 program utilizing the management services. All of the projections and expected returns associated
with the DENTAL SUPPORT program were inclusive of the management services. Very few, if
any, of the documents that were provided to offerees and investors included projections or expected
returns for those who chose to not utilize the management services.

1 35. On May 17, 2012, a franchise sales team leader stated to an Arizona offeree “[v]ery
2 little effort by you (franchisee), by using the professional management services of [Management I
3 (patients) and Vendor I (qualified Partner Dentists)].”

4 36. As of July 2012, only 20 Partner Dentists had agreed to participate in the DENTAL
5 SUPPORT program, yet over 400 franchise units had been sold to investors. In a November 2012
6 email to an Arizona offeree, a sales representative disclosed that DENTAL SUPPORT had sold
7 over 500 franchises units to investors.

8 37. DENTAL SUPPORT caused a “notice of default letter” (“Vender Default Notice”)
9 to be sent to Vendor I on April 26, 2012. The Vender Default Notice stated that according to
10 DENTAL SUPPORT, Vendor I “failed to satisfy its obligations under the [Vendor I] Vendor
11 Agreement.”

12 38. On April 30, 2012, DENTAL SUPPORT caused a letter to be sent to Management I
13 stating that Management I had “failed to satisfy its obligations under the [Management I]
14 Agreement” (“Management Default Notice”). DENTAL SUPPORT alleged that “[Management I]
15 has failed to supply the Partner Dentists with enough patients per the agreed terms. Further, [the
16 Management Default Notice stated] that franchisees that have contracted with [Management I] are
17 not receiving the services agreed upon.”

18 39. At no time after April 30, 2012, did MAERKI and DENTAL SUPPORT inform
19 offerees of any problems with obtaining the necessary Partner Dentists and patients by DENTAL
20 SUPPORT approved entities, Management I and Vendor I.

21 40. DENTAL SUPPORT failed to inform investors that it sent a Vender Default Notice
22 and a Management Default Notice alleging that Management I and Vendor I failed to perform in a
23 sufficient manner to allow the investors to receive the promised returns.

24 41. To date, investors have seen little or no return on their respective investments.
25 Where Management I have sent “appreciation” payments to investors, the source of these payments
26 are not from patient payments to Partner Dentists.

1 42. Starting in August of 2012, MAERKI began operating Dental Support Group, LLC
2 (“Dental Support Group”), a Nevada limited liability company, managed by COFFIN. Dental
3 Support Group became an approved vendor of DENTAL SUPPORT.

4 43. Upon information and belief, DENTAL SUPPORT’s website was changed in about
5 October of 2012. The information on the website now lists that the “franchise model has been built
6 on results-proven platform over an 8-year time period which included 7-years of research and
7 development.” Nowhere on the website is it disclosed that the 8-year time period is for the
8 management of Management I and Vendor I not MAERKI and DENTAL SUPPORT. The website
9 fails to disclose that MAERKI and DENTAL SUPPORT sent the Vender Default Notice and
10 Management Default Notice to Management I and Vendor I alleging that they defaulted on its
11 agreements and were removed as approved vendors.

12 44. Further, the new website states that “[o]ur unique, carefree, business model is a
13 highly qualified, patient delivery system designed to provide a dentist with an average of 10-new
14 patients weekly, earning the franchisee a net annual profit of \$6,448 (a return on equity of
15 21.49%).”

16 45. The DENTAL SUPPORT website represents that the patients that were referred to
17 the Partner Dentists are “pre-qualified¹.” However, a number of Partner Dentists indicate that the
18 patients are not pre-screened, were unable to pay for services, and failed to appear for their
19 appointments. As the result of the lack of pre-qualified patients, a number of Partner Dentists have
20 since cancelled their agreements.

21 46. The October 2012 update to the website continued to use the projections and
22 expected returns for the DENTAL SUPPORT program which included the management services.
23 No similar information was provided to offerees and investors for the DENTAL SUPPORT
24 program purchased without the management services.

25
26

¹ Pre-qualified is defined in the website as “(ready, willing and able to buy) patients who want dental treatment now.”

1 e. MAERKI and DENTAL SUPPORT failed to disclose to offerees and investors that
2 many of the patients that were sent to the Partner Dentists were not pre-qualified by
3 Management I and Vendor I as represented in the offering materials and website.

4 f. MAERKI failed to disclose to offerees and investors the SEC's permanent injunction
5 and FINRA's bar against him while listing his business experience since 1971.

6 44. MAERKI directly or indirectly controlled persons or entities within the meaning of
7 A.R.S. § 44-1999, including but not limited to DENTAL SUPPORT. Therefore, MAERKI is
8 jointly and severally liable under A.R.S. § 44-1999 to the same extent as DENTAL SUPPORT for
9 any violations of A.R.S. § 44-1991.

10 45. This conduct violates A.R.S. § 44-1991.

11 **VIII.**

12 **REQUESTED RELIEF**

13 The Division requests that the Commission grant the following relief:

14 1. Order Respondents to permanently cease and desist from violating the Securities
15 Act, pursuant to A.R.S. § 44-2032;

16 2. Order Respondents to take affirmative action to correct the conditions resulting from
17 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
18 A.R.S. § 44-2032;

19 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
20 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

21 4. Order that the marital communities of MAERKI and COFFIN are subject to any
22 order of restitution, rescission, administrative penalties, or other appropriate affirmative action
23 pursuant to A.R.S. § 25-215; and

24 5. Order any other relief that the Commission deems appropriate.
25
26

IX.**HEARING OPPORTUNITY**

Each respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

X.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
3 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

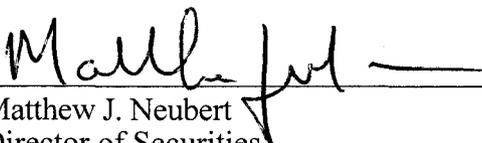
4 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
5 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
6 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
7 addressed to Wendy Coy.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the
9 original signature of the answering respondent or respondent's attorney. A statement of a lack of
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
11 denied shall be considered admitted.

12 When the answering respondent intends in good faith to deny only a part or a qualification
13 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
14 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an
16 Answer for good cause shown.

17 Dated this 18 day of November, 2013.

18
19 
20 Matthew J. Neubert
21 Director of Securities
22
23
24
25
26