

STATE OF NORTH DAKOTA
SECURITIES DEPARTMENT

In the Matter of Elements Franchising, LLC, a Florida limited liability company, and Christopher J. Palumbo, Respondents.))))))	DESIST AND REFRAIN ORDER, ORDER FOR CIVIL PENALTY, AND NOTICE OF RIGHT TO REQUEST A HEARING
--	----------------------------	--

.....

THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA

**TO: ELEMENTS FRANCHISING, LLC, AND CHRISTOPHER J. PALUMBO,
RESPONDENTS.**

The North Dakota Securities Commissioner has a reasonable basis to believe that the Respondents have engaged in, are engaging in, or are about to engage in, acts, practices or transactions, as more fully described below, which are prohibited under Chapter 51-19 of the North Dakota Century Code (N.D.C.C.), the Franchise Investment Law. It is necessary and appropriate in the public interest and for the protection of franchise investors to restrain these acts, practices, or transactions of the Respondents.

1. Respondent, Elements Franchising, LLC, is a Florida limited liability company, operated and controlled by Respondent, Christopher J. Palumbo, its President and Registered Agent, with its principal place of business at 777 Brickell Avenue, 5th Floor, Miami, Florida 33130.
2. On or about February 3, 2009, Respondent, Elements Franchising, LLC, through its officer and agent, Respondent, Christopher J. Palumbo, offered for sale and sold a franchise in an Elements Fitness Facility and BalanceD Diet Facility to two

residents of Fargo, North Dakota, for a franchise fee of \$39,900. The Franchise Agreement also provided for a Business Setup fee and ongoing royalties to be paid to the Franchisor based on a percentage of gross revenues generated by the Franchisees.

3. Between February 10 and August, 1, 2011, Respondent, Elements Franchising, LLC, through its officer and agent, Respondent, Christopher J. Palumbo, negotiated the sale and sold three area franchise territories to two residents of Bismarck, North Dakota, for the operation of BalanceD Diet facilities in Bismarck, Minot and Grand Forks, North Dakota, for a franchise fee of \$27,300 per territory or a total of \$81,900. The Franchise Agreement also provided for ongoing royalties to be paid to the Franchisor based on a percentage of gross revenues generated by the Franchisees.
4. The subject agreements were "franchises" under N.D.C.C. § 51-19-02(5), were not registered with the Securities Department under N.D.C.C. Chapter 51-19, nor were they exempt from registration under N.D.C.C. § 51-19-04. The offers and sales of the subject franchises were made in violation of N.D.C.C. § 51-19-03 and Respondents engaged in four violations of N.D.C.C. § 51-19-03.
5. Pursuant to N.D.C.C. § 51-19-12, the Respondents are jointly and severally liable to the North Dakota Franchisees, who may bring an action for damages, for rescission, or for such other relief as the court may deem appropriate.
6. Pursuant to N.D.C.C. § 51-19-13(2)(f), the Securities Commissioner has the authority to Order that a person Desist and Refrain from violations of the Franchise Investment Law, and to assess civil penalties in an amount not to exceed \$10,000

for each violation of the Franchise Investment Law or a total of \$40,000 based on the violations described above. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against the Respondents pursuant to N.D.C.C. § 51-19-13(2)(f).

7. This Order is issued in the public interest, and for the protection of franchise investors.

NOW, THEREFORE, IT IS ORDERED, pursuant to N.D.C.C. § 51-19-13(2)(f), that the Respondents shall immediately **DESIST AND REFRAIN**:

1. From offering for sale or selling in North Dakota any franchise, unless and until the offer has been duly registered under Chapter 51-19 of the North Dakota Century Code, the Franchise Investment Law.

YOU ARE NOTIFIED that any willful violation of this order is a **Class B Felony** pursuant to N.D.C.C. § 51-19-14(1). Pursuant to N.D.C.C. § 12.1-32-01(3), a **Class B Felony** is punishable by a \$20,000 fine and 10 years' imprisonment, with respect to a natural person. Pursuant to N.D.C.C. § 12.1-32-01.1(2), a **Class B Felony** is punishable by a \$70,000 fine with respect to an organization.

YOU ARE FURTHER NOTIFIED that, pursuant to N.D.C.C. § 12.1-09-03, a person is guilty of a criminal offense if that person intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

ORDER FOR AND NOTICE OF CIVIL PENALTY

YOU ARE NOTIFIED that the above-cited violations are sufficient grounds for the imposition of civil penalties pursuant to N.D.C.C. § 51-19-13(2)(f), in an amount not to exceed \$10,000 for each violation. Respondents are hereby assessed and shall pay a civil penalty totaling \$40,000 to the North Dakota Securities Department based on the violations discussed above.

The civil penalty assessed herein is due and payable immediately upon the entry of this Order, except to the extent that a hearing has been timely requested by the Respondents. If a hearing is requested, the Securities Commissioner expressly reserves the authority to modify this provision and to assess additional civil penalties, not to exceed \$10,000 per violation, regarding the violations outlined above or any other violations subsequently discovered.

NOTICE OF RIGHT TO REQUEST A HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-19-13(2)(f) you may request a hearing before the Securities Commissioner if such a request is made in writing WITHIN FIFTEEN (15) DAYS AFTER THE RECEIPT OF THIS ORDER. The Respondent has the right to be represented by legal counsel at the hearing.

IN TESTIMONY WHEREOF, witness my hand and seal this 15th day of December, 2017.





Karen J. Tyler, Securities Commissioner
North Dakota Securities Department
600 East Boulevard Ave.
State Capitol – Fifth Floor
Bismarck, ND 58505-0510
(701) 328-2910

STATE OF NORTH DAKOTA
SECURITIES DEPARTMENT

In the Matter of Elements Franchising,)
LLC, a Florida limited liability company,)
and Christopher J. Palumbo,)
Respondents.)

AFFIDAVIT OF SERVICE
BY MAIL

.....

I, Jacqui Ferderer, being first duly sworn, state that I am a citizen of the United States over the age of twenty-one years and not a party to or interested in the above-entitled proceeding.

On this 15th day of December, 2017, I deposited in the Central Mailing Bureau of the United States Post Office Department in the State Capitol in Bismarck, North Dakota, a true and correct copy of each of the following documents:

**DESIST AND REFRAIN ORDER, ORDER FOR AND NOTICE OF CIVIL PENALTY,
AND NOTICE OF RIGHT TO REQUEST A HEARING**

Copies of the above documents were securely enclosed in an envelope with postage duly prepaid, sent via certified mail, return receipt requested, addressed to each of the following:

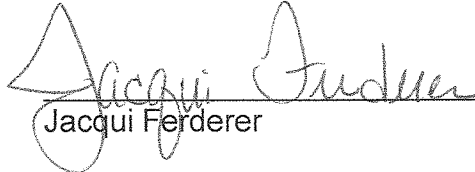
Christopher J. Palumbo
1330 West Avenue, Suite 2612
Miami Beach, FL 33139

(Individually and as Registered Agent for Respondent, Elements Franchising, LLC)


Elements Franchising, LLC
Attn: Leisure Growth Holdings, MGRM
777 Brickell Avenue
5th Floor
Miami, FL 33130

Christopher J. Palumbo
404 Washington Avenue
Penthouse Level
Miami Beach, FL 33139

To the best of my knowledge, information, and belief, the address given above is
the actual mailing address for the party intended to be served.


Jacquie Ferderer

Subscribed and sworn to before me this 15 day of December, 2017.


Diane Lillis, Notary Public
Burleigh County, North Dakota
My commission expires 4/26/2020

