

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 AMY J. WINN
Assistant Chief Counsel
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5 Senior Counsel
6 Department of Financial Protection and Innovation
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9 Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

12
13 In the Matter of:)
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 MI-BOX, MICHAEL C. BORN,)
19 Respondents.)
20)
21 _____)

22
23 This Consent Order (Consent Order) is entered between the Commissioner of Financial
24 Protection and Innovation (Commissioner) and MI-BOX also known as MI-BOX Moving and Mobile
25 Storage Inc., MI-BOX Mobile Storage & Moving, MI-BOX Moving & Mobile Storage, and MI-BOX
26 Holding Company and Michael C. Born (Respondents) and is made with respect to the following facts.

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I.

Recitals

A. The Commissioner is authorized to administer and enforce the provisions of the California Franchise Investment Law (Corp. Code § 31000 *et seq.*)¹ (FIL) and the rules and regulations promulgated thereunder which control the registration, offer and sale of franchises in California.

B. The Commissioner brings this action pursuant to the provisions of the FIL, and the rules and regulations promulgated thereunder, including sections 31402 and 31406.

C. MI-BOX also known as MI-BOX Moving and Mobile Storage Inc., MI-BOX Mobile Storage & Moving, MI-BOX Moving & Mobile Storage, and MI-BOX Holding Company (collectively MI-BOX) is an Illinois corporation located at 511 Oak Leaf Ct., Suite B, Joliet, Illinois 60436. MI-BOX also maintains a website located at GetMIBOXSYSTEM.com. MI-BOX offers and sells “dealerships”/franchises to individuals who want to manage and own a portable storage and moving business using the name, trademarks, and MI-BOX’s Levelift system and operational tools.

D. Michael C. Born (Born) is the owner and corporate secretary of MI-BOX. The Commissioner issued a franchise registration to MI-BOX Holding Company on May 24, 2007. The registration was not renewed and was terminated on April 21, 2008.

E. On September 9, 2021, the Commissioner served Respondents a Desist and Refrain Order for violations of Corporations Code section 31110 (2021 D&R Order) by certified mail return receipt. Respondents did not request a hearing and the 2021 D&R Order became final.

F. On or around June 22, 2022, a California resident visited Respondents’ website and the website offered unregistered franchises/dealerships in California in violation of section 31110. In violation of section 31201, Respondents’ website falsely claimed that “MI-BOX elected to obtain franchise status in 2022 with the filing of our Franchise Disclosure Document to ensure all laws were followed properly.”

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 G. On or around July 22, 2022, another California resident visited Respondents’ website
2 and the company continued to offer unregistered franchises/dealerships in California in violation of
3 section 31110.

4 H. On or around September 27, 2022, Respondents informed the Commissioner that
5 “MI-BOX is NOT offering franchise opportunities in California at this time. The foregoing statement
6 has been displayed on its [website] even prior to the Order Date.” Respondents knowingly made an
7 untrue statement to the Commissioner during the course of its investigation or examination in
8 violation of section 31204.

9 I. The Commissioner and Respondents intend to resolve this matter amicably without the
10 necessity of a hearing or other litigation.

11 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
12 contained herein, the Commissioner and Respondents (the Parties) agree as follows:

13 **II.**

14 **Terms and Conditions**

15 1. Purpose. This Consent Order resolves this matter in a manner that avoids the expense
16 of a hearing and other possible court proceedings, protects investors, is in the public interest, and is
17 consistent with the purposes, policies, and provisions of the FIL.

18 2. Final Desist and Refrain Order. Under section 31402, Respondents agree to desist and
19 refrain from violating sections 31110, 31201, and 31204. The 2023 Desist and Refrain Order is
20 deemed final from the Effective Date of this Consent Order, as defined in Paragraph 22.

21 3. Penalty. Respondents agree to pay the Commissioner an administrative penalty of
22 \$5,000 (Penalty), no later than 30 days after the Effective Date of this Consent Order, as defined in
23 Paragraph 22. The Penalty shall be made payable in the form of a cashier’s check or Automated
24 Clearing House deposit payable to the “Department of Financial Protection and Innovation” and
25 transmitted to the attention of “Accounting – Litigation” at the Department of Financial Protection
26 and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice payment shall be
27 forwarded to Vanessa T. Lu, Senior Counsel, Department of Financial Protection and Innovation,
28 Enforcement Division, via email at: Vanessa.Lu@dfpi.ca.gov.

1 4. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is ready,
2 willing, and able to proceed with the filing of an administrative enforcement action on the charges
3 contained in the recitals set forth above. Respondents hereby waive their right to any hearings, and to
4 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL; the
5 Administrative Procedure Act; the Code of Civil Procedure; or any other provision of law.
6 Respondents further expressly waive any requirements for the filing of an Accusation pursuant to
7 Government Code section 11415.60, subdivision (b). By waiving such rights, Respondents
8 effectively consent to this Consent Order and the 2023 Desist and Refrain Order becoming final.

9 5. Full and Final Settlement. The Parties hereby acknowledge and agree that this Consent
10 Order is intended to constitute a full, final, and complete resolution of the matters discussed herein.
11 No further proceedings or actions will be brought by the Commissioner in connection with these
12 matters under the FIL, or any other provision of law, excepting therefrom any proceeding to enforce
13 compliance with the terms of this Consent Order.

14 6. Information Willfully Withheld. The Consent Order may be revoked and the
15 Commissioner may pursue any and all remedies available under law against Respondents if the
16 Commissioner discovers that the Respondents knowingly or willfully withheld or misrepresented
17 information used for and relied upon in this Consent Order.

18 7. Future Actions by Commissioner. If Respondents fail to comply with any term of the
19 Consent Order, violate the 2021 and 2023 Desist and Refrain Orders, they agree that the facts in the
20 2021 and 2023 Desist and Refrain Orders are admitted for the purpose of proving a violation of this
21 Consent Order and the 2021 and 2023 Desist and Refrain Orders. The Respondents further agree that
22 the Commissioner may institute proceedings for any and all violations otherwise unresolved under
23 this Consent Order. The Commissioner reserves the right to bring any future actions against the
24 Respondents, or any of his partners, owners, officers, shareholders, directors, employees, or
25 successors, for any violations of the FIL, other than any violations related to those matters which are
26 the subject of the 2021 and 2023 Desist and Refrain Orders as identified herein.

27 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
28 ability to assist a government agency (whether city, county, state or federal) with any administrative,

1 civil or criminal action brought by that agency against Respondents or any other person based upon
2 any of the activities alleged in this matter or otherwise.

3 9. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
4 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to
5 the advisability of executing the Consent Order.

6 10. Headings. The headings to the paragraphs of this Consent Order are inserted for
7 convenience only and will not be deemed a part of hereof or affect the construction or interpretation
8 of the provisions hereof.

9 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
10 interest.

11 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
12 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.
13 Each of the Parties further represents, warrants, and agrees that in executing this Consent Order it has
14 placed no reliance on any statement, representation, or promise of any party, or any other person or
15 entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
16 make any statement, representation or disclosure of anything whatsoever. The Parties have included
17 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute
18 this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
19 supplement, or contradict the terms of this Consent Order.

20 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
21 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
22 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
23 provision. No waiver by either party of any breach of, or of compliance with, any condition or
24 provision of this Consent Order by the other party will be considered a waiver of any other condition
25 or provision or of the same condition or provision at another time.

26 14. Full Integration. This Consent Order is the final written expression and the complete
27 and exclusive statement of all agreements, conditions, promises, representations, and covenants
28 between the Parties with respect to the subject matter hereof, and supersedes all prior or

1 contemporaneous agreements, negotiations, representations, understandings, and discussions between
2 and among the parties, their respective representatives, and any other person or entity, with respect to
3 the subject matter covered hereby.

4 15. Governing Law. This Consent Order will be governed by and construed in accordance
5 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby
6 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
7 maintenance of such action or proceeding in such court.

8 16. Counterparts. This Consent Order may be executed in one or more separate
9 counterparts, each of which when so executed, shall be deemed as an original. Such counterparts
10 shall together constitute a single document.

11 17. Effect Upon Future Proceedings. If Respondents apply for any license, permit or
12 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
13 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
14 admitted for the purpose of such application(s) or enforcement proceeding(s).

15 18. Voluntary Agreement. Respondents enter into this Consent Order voluntarily and
16 without coercion and acknowledge that no promises, threats, or assurances have been made by the
17 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
18 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
19 without any duress or undue influence of any kind from any source.

20 19. Notice. Any notices required under the Consent Order shall be provided to each party
21 at the following addresses:

22 To Respondents: MI-BOX
23 Michael C. Born
24 Attention: William R. Graefe, Esq.
25 Counsel for Respondents
26 Fisher Zucker LLC
27 21 South 21st Street
28 Philadelphia, PA 19103
bgraefe@fisherzucker.com

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1 IN WITNESS WHEREOF, the Parties hereto have approved and executed the Consent Order
2 on the dates set forth opposite of their respective signatures.

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4 Dated: July 7, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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7 By _____
8 MARY ANN SMITH
9 Deputy Commissioner
10 Enforcement Division

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13 Dated: July 7, 2023

By _____
MICHAEL C. BORN, as an individual and owner
on behalf of MI-BOX

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16 APPROVED AS TO FORM:

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18 _____
19 William R. Graefe, Esq.
20 Fisher Zucker LLC
21 Counsel for Respondents MI-BOX and Michael C. Born
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