

IN THE MATTER OF:

EVERGREEN LENDING, LLC d/b/a
THE CREDIT ADVISORY

and

VAUGHAN HUNTER

Respondents.

BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION

Case No.: DFR-EU2009-113

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Commissioner of Financial Regulation (the “**Commissioner**”) undertook an investigation into the credit services business activities of Evergreen Lending, LLC d/b/a The Credit Advisory and Vaughan Hunter, (collectively, the “**Respondents**”); and

WHEREAS, as a result of that investigation, the Commissioner finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, including Commercial Law Article (“**CL**”), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter “**MCSBA**”) and Financial Institutions Article (“**FI**”), Title 11, Subtitles 2 and 3, and the Commissioner finds that action under FI §§ 2-114 and 2-115 is appropriate.

WHEREAS, the Commissioner issued a Summary Order to Cease and Desist (the “**Summary Order**”) against Respondents on April 8, 2013, after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents cease and desist from engaging in credit services business activities with Maryland residents and/or consumers (hereinafter “**Maryland consumers**”), including directly or indirectly offering, contracting to provide, or otherwise engaging in, credit repair or similar services (hereinafter “**credit repair services**”); and

WHEREAS, the Summary Order notified Respondents of, among other things, the following: that Respondents were entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondents failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue penalty orders against Respondents, issue orders requiring Respondents to pay restitution and other money to consumers, as well as take other actions related to Respondents' business activities; and

WHEREAS, the Summary Order was properly served on Respondents via First Class U.S. Mail and Certified U.S. Mail; and

WHEREAS, Respondents failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI § 2-115(a)(2) and CL § 14-1911, and have not filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

WHEREAS, the Commissioner has based his decision in this Final Order on the following determinations:

1. The MCSBA defines "*credit services business*" at CL § 14-1901(e); this provision provides, in part, as follows:

(1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;

- (ii) Obtaining an extension of credit for a consumer; or
- (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

2. CL §14-1902 further provides, in pertinent part, as follows: A credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not:

(1) Receive any money or valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article;

* * *

(4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;

* * *

(6) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer.;

3. CL §14-1903(a) addresses the scope of credit services contracts covered under the MCSBA, providing as follows:

(a) *In general.* – Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:

- (1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;
- (2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or
- (3) The credit services business makes any verbal or written solicitation or communication that originates either inside or outside of this State but is received in the State of a resident of this State.

4. Pursuant to CL §14-1903.1,

A person who advertises a service described in §14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:

- (1) The license issued under §14-1903 of this subtitle; or
- (2) If not required to be licensed, the exemption provided by the Commissioner.

5. CL §14-1904 (a) provides that, “[b]efore either the execution of the contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under §14-1905 of [the MCSBA].” CL §14-905(b) further requires a credit services business “to maintain on file for a period of 2 years from the date of the consumer’s acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement.”

6. Further CL §14-1905 provides the specific terms that must be included in the information statement; and CL §14-1906 discusses the requirements for contracts between credit services businesses and consumers. These requirements include, but are not limited to: (a) “[e]very contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include...” notice of the right to cancel the contract, terms and conditions of payment, and complete and detailed description of the services to be performed.

7. Unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1903(d), persons engaged in the business of offering or providing credit repair services, which include offering or providing extensions of credit to consumers, fall under the statutory definition of “credit services

businesses,” and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

8. The following relevant and credible evidence, obtained pursuant to the Commissioner’s investigation, was considered in the issuance of the Summary Order: Respondents’ standard documents for providing credit repair services for Maryland consumers; communications between Respondents and the Commissioner; communications between Respondents and Maryland consumers; statements by Maryland consumers who had entered into written and unwritten credit repair agreements with Respondents but for whom Respondents failed to perform the credit repair services; and the Commissioner’s licensing records. More particularly, at all times prior to the issuance of the Summary Order, the evidence adduced supports the following findings:

a. The Credit Advisory is an active Maryland business entity operating out of Bethesda, Maryland.

b. Vaughan Hunter engages in credit services business activities with Maryland consumers. Vaughan Hunter is the owner, director, officer manger, employee and/or agent of The Credit Advisory.

c. Respondents advertised and marketed to Maryland consumers that Respondents could perform credit repair services for Maryland consumers. Further, Respondents entered into both written and unwritten agreements with Maryland consumers to provide credit repair services as defined by the MCSBA.

d. Sometime in 2008, [REDACTED] (“Consumer A”) engaged Respondents to provide him with credit repair services. Consumer A paid up-front fees to Respondents in exchange for which Respondents represented that they would be able to assist Consumer A in repairing his credit. Respondents did not provide Consumer A with a written contract for these

services as required by MSCBA, nor did Respondents give Consumer A the required information statement and notice of his right to cancel the contract.

e. Sometime in 2008, [REDACTED] (“Consumer B”) engaged Respondents to provide him with credit repair services. Consumer B paid up-front fees to Respondents in exchange for which Respondents represented that they would be able to assist Consumer B in repairing his credit. Respondents did not provide Consumer B with a written contract for these services as required by the MCSBA, nor did Respondents give Consumer B the required information statement and notice of his right to cancel the contract.

f. In July 2008, [REDACTED] (“Consumer C”) engaged Respondents to provide her with credit repair services. Consumer C paid an initial up-front fee of \$250 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer C in repairing her credit. Consumer C also paid Respondents a recurring monthly fee of \$79 for the duration of Respondents’ services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved; it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained a notice informing the consumer of the right to cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

g. In June 2008, [REDACTED] (“Consumer D”) engaged Respondents to provide her with credit repair services. Consumer D paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer D in repairing her credit. Consumer D also paid Respondents a recurring monthly fee of \$79 for the duration of Respondents’ services. The written contract provided by Respondents

did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained a notice informing the consumer of the right to cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

h. In February 2009, [REDACTED] (“Consumer E”) engaged Respondents to provide her with credit repair services. Consumer E paid an initial up-front fee of \$250 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer E in repairing her credit. Consumer E also paid Respondents a recurring monthly fee of \$80 for the duration of Respondents’ services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and the information statement provided to Consumer E did not contain all the required disclosures and indicated the consumer had a “right to file a complaint and proceed against an existing bond under Article 14-1910”, even though no such bond existed.

i. In May 2008, [REDACTED] (“Consumer F”) engaged Respondents to provide him with credit repair services. Consumer F paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer F in repairing his credit. Consumer F also paid Respondents a recurring monthly fee of \$79 for the duration of Respondents’ services. The written contract provided by Respondents did not comply with the requirements of the MSCBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although

the contract contained a notice informing the consumer of the right to cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

j. In July 2008, [REDACTED] (“Consumer G”) engaged Respondents to provide him with credit repair services. Consumer G paid up-front fees to Respondents in exchange for which Respondents represented that they would be able to assist Consumer G in repairing his credit. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement.

k. In July 2008, [REDACTED] (“Consumer H”) engaged Respondents to provide him with credit repair services. Consumer H paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer H in repairing his credit. Consumer H also paid Respondents a recurring monthly fee of \$79 for the duration of Respondents’ services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

l. In July 2008, [REDACTED] (“Consumer I”) engaged Respondents to provide him with credit repair services. Consumer I paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist

Consumer I in repairing his credit. Consumer I also paid Respondents a recurring monthly fee of \$79 for the duration of Respondents' services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

m. In May 2008, [REDACTED] ("Consumer J") engaged Respondents to provide him with credit repair services. Consumer J paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer J in repairing his credit. Consumer J also paid Respondents an additional fee of \$79 for two months of Respondents' services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

n. In July 2008, [REDACTED] ("Consumer K") engaged Respondents to provide her with credit repair services. Consumer K paid an up-front fee to Respondents in exchange for which Respondents represented that they would be able to assist Consumer K in repairing her credit. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did

not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

o. In June 2008, [REDACTED] (“Consumer L”) engaged Respondents to provide him with credit repair services. The contract provided that Consumer L would pay a “set-up fee of \$249 (\$200) for couples or the set-up fee plus \$750 per bureau for The Credit Advisory Advance Track” to Respondents, in exchange for which Respondents represented that they would be able to assist Consumer L in repairing his credit. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

p. In 2008, [REDACTED] (“Consumer M”) engaged Respondents to provide him with credit repair services. Consumer M paid up-front fees to Respondents in exchange for which Respondents represented that they would be able to assist Consumer M in repairing his credit. Respondents did not provide Consumer M with a written contract for these services as required by the MCSBA, nor did Respondents give Consumer M the required information statement and notice of his right to cancel the contract.

q. In June 2008, [REDACTED] (“Consumer N”) engaged Respondents to provide him with credit repair services. Consumer N paid an initial up-front fee of \$249 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer N in repairing his credit. Consumer N also paid Respondents and additional fee of \$79

for two months of Respondents' services. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement. Additionally, although the contract contained notice informing the consumer of the right of cancel the contract, it also provided that \$45 of the up-front fee would be retained by Respondents upon cancellation by the consumer.

r. In October 2008, [REDACTED] ("Consumer O") engaged Respondents to provide her with credit repair services. Consumer O paid up-front fees to Respondents in exchange for which Respondents represented that they would be able to assist Consumer O in repairing her credit. The written contract provided by Respondents did not comply with the requirements of the MCSBA. For example, it did not contain a complete and detailed description of the services to be performed and the results to be achieved, it charged up-front fees, and it did not contain the required information statement and notice of the right of cancel.

9. In the present matter, Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA. *See* CL § 14-1902(1) ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [r]eceive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article. . . ."); CL §14-1903(b) ("[a] credit services business is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article"); FI § 11-302(b) ("[u]nless the person is licensed by the Commissioner, a person may not: . . . (3)

[e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article”); and FI § 11-303 (“[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions”).

10. According to the Commissioner’s records, at no time relevant to the facts set forth in the Summary Order of April 8, 2013 have the Respondents been licensed by the Commissioner under the MCSBA.

11. Respondents have engaged in credit services business activities without having the requisite license by advertising and representing that they could provide credit repair services as described above, and by entering into contractual agreements with Consumers A through O to provide such services. Respondents’ unlicensed consumer business activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, thereby subjecting Respondents to the penalty provisions of the MCSBA.

12. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA (“[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (6) [c]harge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer”).

13. Further, although Respondents made or used false or misleading representations in their sale of services to Maryland consumers thereby violating CL § 14-1902(4) (“[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (4) [m]ake or use any false or misleading representations in the offer or sale of the services of a credit services business”), for example

when Respondents represented to Maryland consumers that they had obtained a bond pursuant to “Article 14-1910”, when no such bond existed.

14. Respondents further violated the MCSBA through the following: they failed to clearly and conspicuously state their license number under the MCSBA or their exemption, in violation of CL § 14-1903.1; they failed to obtain the requisite surety bonds, in violation of CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and Respondents failed to include all of the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

15. As the contracts between Respondents and Consumers A through O failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all credit repair contracts between Respondents and Consumers A through O are void and unenforceable as against the public policy of the State of Maryland pursuant to CL § 14-1907(b) (“[a]ny contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State”).

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§ 14-1902, 14-1907, 14-1912, and FI § 2-115(b) it is by the Maryland Commissioner of Financial Regulation, hereby:

ORDERED that the Summary Order issued by the Deputy Commissioner against Respondents on April 8, 2013, is entered as a final order of the Commissioner as modified herein, and that Respondents shall permanently **CEASE** and **DESIST** from engaging in any

further credit services business activities including contracting to provide, or otherwise engaging in credit repair, or similar services with Maryland consumers; and it is further

ORDERED that, pursuant to FI §2-115(b) and upon careful consideration of (i) the seriousness of the Respondents’ violations; (ii) the lack of good faith of Respondents, (iii) the history and nature of Respondents’ violations; and (iv) the deleterious effect of Respondents’ violations on the public and on the credit services business, Respondents shall pay to the Commissioner a total civil penalty in the amount of **\$60,000**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	15 Md. Consumers	\$15,000
<i>Charging Up-Front Fees in Violation of MCSBA</i>	\$1,000	15 Md. Consumers	\$15,000
<i>Failure to Obtain a Surety Bond in Violation of MCSBA</i>	\$1,000	15 Md. Consumer	\$15,000
<i>Failure to Comply with Contract Requirements in Violation of MCSBA</i>	\$1,000	15 Md. Consumers	\$15,000
		Total	\$60,000

ORDERED that Respondents shall pay to the Commissioner, by cashier’s or certified check made payable to the “Commissioner of Financial Regulation,” the amount of **\$60,000** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all contracts and agreements which Respondents entered into with Maryland consumers described herein, are void and unenforceable as contrary to the public policy of the State of Maryland; and it is further

ORDERED that, as Respondents' activities constituted willful noncompliance with the MCSBA, pursuant to CL § 14-1912(a) Respondents shall pay a monetary award in an amount equal to three times the amount collected from these consumers; and thus Respondents shall pay monetary awards to Maryland consumers as follows:

a. Consumers A, B, G, K, L, M, and O are entitled to and Respondents shall refund Consumers A, B, G, K, L, M, and O the full amount of all payments made by Consumers A, B, G, K, L, M, and O to Respondents in connection with the credit repair services Respondents agreed to provide Consumers A, B, G, K, L, M, and O, multiplied by three; and

b. Respondents shall pay to Consumer C \$987 (the upfront fee of \$250 multiplied by three, plus \$79 service fee multiplied by three); and

c. Respondents shall pay to Consumer D \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and

d. Respondents shall pay to Consumer E \$990 (the upfront fee of \$250 multiplied by three, plus \$80 service fee multiplied by three); and

e. Respondents shall pay to Consumer F \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and

f. Respondents shall pay to Consumer H \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and

g. Respondents shall pay to Consumer I \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and

h. Respondents shall pay to Consumer J \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and


i. Respondents shall pay to Consumer N \$984 (the upfront fee of \$249 multiplied by three, plus \$79 service fee multiplied by three); and

ORDERED that Respondents shall pay the required monetary award to those consumers described herein within 30 days of the date of this Final Order. Respondents shall make payment by mailing to each consumer a check in the amount specified above via U.S. First Class Mail at the most recent address of that consumer known to the Respondents. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payments, the Respondents shall furnish evidence of having made the payments to the Commissioner within sixty (60) days of this Final Order being signed, which evidence shall consist of a copy of the front and back of the cancelled check for each payment; and it is further

ORDERED that Respondents shall send all correspondence, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator.

10/8/13

Date



Mark A. Kaufman
Commissioner of Financial Regulation