

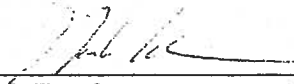
COMMISSIONER OF * BEFORE THE
FINANCIAL REGULATION * COMMISSIONER OF
V. * FINANCIAL REGULATION
NATIONAL RELIEF * CFR FILE NO.: CFR-FY2011-237
GROUP, INC., * OAH FILE NO.: DLR-CFR-76A-11-24373
BRIAN J. PACIOS, *
RESPONDENTS *
* * * * *

PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge (the "ALJ"), issued on December 28, 2011 in the above captioned case, having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 14 of November, 2012 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



Mark Kaufman
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
v.
NATIONAL RELIEF GROUP, INC., and
BRIAN J. PACIOS,
RESPONDENTS

* BEFORE T. AUSTIN MURPHY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No: DLR-CFR-76A-11-24373
* CFR FILE No: CFR-FY2011-237

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 6, 2011, the Maryland Commissioner of Financial Regulation (CFR or Commissioner), Department of Labor, Licensing and Regulation (DLLR), issued a Final Order to Cease and Desist (Order) to a corporation, National Relief Group, Inc. (NRG), and an individual Brian J. Pacios, Respondents. On June 14, 2011, the Commissioner referred the matter to the Office of Administrative Hearings (OAH) for a hearing and delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

I held a hearing on August 24, 2011 and September 29, 2011 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (2011). Jedd Bellman, Staff Attorney, Office of

the Attorney General, represented the Commissioner. Neither the Respondents, nor anyone authorized to represent any of them, appeared at the hearing.¹

Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2011), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, the Office of the Secretary Regulations for hearings delegated to the OAH, and COMAR 09.01.03.

ISSUES

1. Did the Respondents engage in credit service business activities that subject them to the provisions of the Maryland Credit Services Business Act (MCSBA);
2. If so, did the Respondents engage in credit services business activities without first obtaining a license from the CFR in violation of Md. Code Ann., Com. Law § 14-1903(b)² and Md. Code Ann., Fin. Inst. § 11-302(b);
3. If the Respondents engaged in credit services business activities with Maryland consumers without first obtaining a license, are the Respondents exempt from complying with the licensing requirements of CL § 14-1903(b) and FI § 11-302(b);
4. If the Respondents are neither licensed nor exempt from licensure, did they, while engaged in credit services business activities, receive money or other valuable consideration in violation of CL § 14-1902(1);
5. If the Respondents are neither licensed nor exempt from licensure, did they, while engaged in credit services business activities, collect up-front fees prior to fully and completely performing all services in violation of CL § 14-1902(6);

¹ Notice to the Respondents, and their failure to appear, are discussed below.

² The Commercial Law Article will be referred to as CL and the Financial Institution Article will be referred to as FI hereafter.

6. Did the Respondents fail to provide Maryland consumers with the required information statements in connection with the sale of services of a credit services business in violation of CL §§ 14-1904(a) and 14-1905;
7. Did the Respondents fail to include required contractual terms in their agreements with Maryland consumers in violation of CL § 14-1906; and,
8. If the Respondents violated any of the sections cited above, what is/are the appropriate sanction(s)?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 July 11, 2011 Notice of Hearing
- CFR #2 June 14, 2011 Letter of delegation to the Hon. Jana Corn Burch, Executive Administrative Law Judge, OAH, from Anne Balcer Norton, Deputy Commissioner, CFR
- CFR #3 Regular and certified mail copies of January 26, 2011 Notice of additional complaints and attached Summary Order to Cease and Desist, indicated delivered by the United States Postal Service on January 31, 2011 to Respondents.
- CFR #4 January 6, 2011 Final Order to Cease and Desist
- CFR #5 May 18, 2011 Investigator's Referral Memo
- CFR #6 Business Entity Information: NRG (California Secretary of State)
- CFR #7 Business Entity Information: SBP Financial Group, Inc. (SBP) (California Secretary of State)
- CFR #8 April 27, 2011 Complaint: [REDACTED] – with attachments
- CFR #9 April 11, 2011 Complaint: [REDACTED] – with attachments
- CFR #10 December 23, 2010 Complaint: [REDACTED] – with attachments
- CFR #11 December 8, 2010 Complaint: [REDACTED] – with attachments

CFR #12 December 6, 2010 Complaint: [REDACTED] – with attachments

CFR #13 January 20, 2011 Complaint of [REDACTED] – with attachments

No exhibits were offered on behalf of the Respondents, who were not present.

Testimony

Zenaida Velez-Dorsey, CFR Investigator, testified on behalf of the CFR. No testimony was presented on behalf of the Respondents.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Background

1. At all times relevant, the Respondent Brian J. Pacios was a principal in several entities (corporations and limited liability companies including Respondent NRG) engaged in the credit services activities in Maryland. Among those entities was SBP.
2. Both Respondents, as well as SBP, engaged in the business of mortgage lending and/or brokering in Maryland. The business entities operated under similar-sounding names and trade names. *See* CFR #6-13.
3. The last business address in the Commissioner's records for the Respondents is: 16400 Pacific Coast Highway, Suite 215, Huntington Beach, California 92649. Subsequent notices were also sent to other addresses associated with Respondents, such as addresses from which SBP sent correspondence to the Complainants: 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311; and 3240 El Camino Real, Suite 400, Irvine, CA 92602.

- [REDACTED]
4. On September 23, 2010, Complainant [REDACTED] paid \$2,500.00 to SBP to assist her in avoiding foreclosure by means of a loan modification on one property, namely:
[REDACTED]
 5. [REDACTED] attempted to contact SBP numerous times to no avail following payment.
 6. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.
 7. Eventually, [REDACTED] lost her property to foreclosure and had to file for Chapter 13 bankruptcy.

- [REDACTED]
8. On February 25, 2010, Complainant [REDACTED] communicated with NRG for a loan modification and was told by Darryl Washington of NRG the process would take 60 to 120 days if he paid a fee of \$3,000.00, which was payable in 3 payments. Mr. [REDACTED] paid NRG \$1,500.00 on March 16, 2010, \$750.00 on April 30, 2010, and \$750.00 on May 7, 2010, in order to retain NRG to assist him in avoiding foreclosure by means of a loan modification on one property, namely: [REDACTED]

- [REDACTED]
9. On March 23, 2010, [REDACTED] received a phone call from Danny Macovei of NRG requesting additional paperwork, paystubs and bank statements. [REDACTED] sent in the necessary paperwork that same day.
 10. After failing to hear any news from NRG for several months, [REDACTED] tried to contact Mr. Macovei only to find out he no longer worked there. [REDACTED] spoke to William Jackson of NRG who stated that the paperwork had been lost and that [REDACTED].

[REDACTED] needed to send in his paperwork again in addition to paystubs and bank statements.

11. [REDACTED] called Mr. Jackson again in October 2010 and was told that his credit card bills were too large and that a debt consolidation was necessary to proceed. [REDACTED] informed Mr. Jackson that his financial situation and credit card payments were the same when he originally applied for a modification in February 2010.

12. [REDACTED] was subsequently unable to reach Mr. Jackson or Mr. Washington who failed to return any phone calls.

13. Eventually, [REDACTED] was forced to file for Chapter 13 bankruptcy to prevent the above mentioned property from going into foreclosure.

14. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.

[REDACTED]

15. On March 20, 2010, Complainant [REDACTED] made the first payment of \$1,000.00 out of a total of \$3,500.00 in payments to NRG to assist her in avoiding foreclosure by means of a loan modification on one property, namely: [REDACTED]

[REDACTED]

16. After [REDACTED] sent in her last payment for \$300.00, NRG ceased contact with [REDACTED].

[REDACTED]

17. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.

[REDACTED]

18. On July 6, 2010, Complainant [REDACTED] paid \$1,250.00 to NRG to assist her in avoiding foreclosure by means of a loan modification on one property, namely [REDACTED]

[REDACTED]

19. Additional payments were made to NRG including: \$750.00 on July 30, 2010, \$500.00 on August 12, 2010, \$500.00 on August 27, 2010, for a total of \$3,000.00.

20. Eventually, [REDACTED] became 8 months behind on her mortgage.

21. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.

[REDACTED]

22. On June 25 2010, Complainant [REDACTED] paid \$3,000.00 to SBP to assist him in avoiding foreclosure by means of a loan modification on one property, namely: [REDACTED]

[REDACTED]

23. After payment, [REDACTED] called SBP to follow up on the status of his modification and was told he had to send a new application package.

24. Eventually, [REDACTED] became 9 months behind on his mortgage.

25. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.

[REDACTED]

26. On June 14 2010, Complainant [REDACTED] made first payment of a total of \$3,000.00 to NRG to assist her in avoiding foreclosure by means of a loan modification on one property, namely: [REDACTED]

27. NRG subsequently told [REDACTED] to stop making payments on her mortgage.

28. After [REDACTED] sent in her last payment, NRG ceased regular contact with her and subsequently refused a refund requested by [REDACTED].
29. Eventually, [REDACTED] lost her property to foreclosure.
30. The Respondents did nothing to assist [REDACTED] avoid foreclosure or to obtain a loan modification.

All Complaints

31. The Respondents obtained money from the Complainants although neither was licensed as a credit services business as required by law.
32. The Respondents did not provide any of the Complainants with a credit service agreement, as required by law.
33. On January 26, 2011, April 20, 2011 and June 14, 2011, Ms. Zenaida Velez-Dorsey, one of CFR's investigators, sent letters to the Respondents, which were not answered. CFR #3.
34. During the investigation, Ms. Velez-Dorsey was unable to contact the Respondent Pacios by phone.

DISCUSSION

A. The Respondents' Failure to Appear

The Respondents consist of an individual and several inter-related corporations and limited liability companies. As noted above, neither the Respondents nor anyone representing them appeared at the hearings. I conclude that both Respondents failed to appear for the hearings despite adequate notice, for the following reasons.

First, there is no dispute that the Respondents' business address of record since at least April 2011 has been 16400 Pacific Coast Highway, Suite 215, Huntington Beach, California 92649. This address is currently reflected on the records of DLLR. Subsequent notices were also

sent to other addresses associated with Respondents, *i.e.*, the following addresses from which SBP sent correspondence to Complainants: 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311; and 3240 El Camino Real, Suite 400, Irvine, CA 92602.

Second, the OAH issued a Notice of Hearing (Notice) on July 11, 2011, and mailed it, by certified and regular mail, to the corporate and individual Respondents at the Pacific Coast Highway address. Attached to each Notice was a copy of the January 2011 Summary Order. *See* COMAR 09.01.02.06A. Additional Notices for the September 29, 2011 hearing were also sent to the Respondents at the Chatworth and Irvine, California addresses as well. Neither the certified nor regular mail copies of the Notices were returned as “unable to deliver” by the United States Postal Service. No request to the OAH for a postponement of the hearing was made by or on behalf of any Respondents.

I conclude from these facts that both Respondents had notice of the hearing and that it was appropriate to proceed in their absence. COMAR 09.01.02.07 and 09.01.02.09.

B. Applicable Law

1. Burden of Proof

The Commissioner, as the moving party on the charges, has the burden to prove by a preponderance of the evidence that the Respondents violated the statutes and regulation at issue. *See* Md. Code Ann., State Gov’t § 10-217 (2009); *Comm’r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

2. The Commissioner’s Enforcement Powers—Generally

The CFR’s power to issue summary cease and desist orders is found in section 2-115(a) of the Financial Institutions Article, which provides in pertinent part as follows:

(a) When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner’s discretion issue,

without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.

Md. Code Ann., Fin. Inst. § 2-115(a).

Pursuant to § 14-1907 of the Commercial Law Article, “[a]ny breach by a credit services business of a contract under [subtitle 19]...shall constitute a violation...” The Respondents did nothing on any of the Complainants’ behalf in spite of the fact that the Complainants paid fees to the Respondents

C. Complainants

Complainant [REDACTED] paid the Respondents \$2,500.00 to help avoid a foreclosure, which is a consumer credit service under the jurisdiction of the CRF, which licenses and regulates such entities. When the Complainant talked to the Respondents about the progress of the Respondents’ efforts, she was told not to worry. It is no surprise that the Complainant lost her property to foreclosure since the Respondents did nothing to avoid that result. The inaction on the Respondents’ part constitutes a breach of the contract between the Respondents and the Complainants. The evidence of the breach is substantial.

Complainants [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] also all paid Respondents in advance to help avoid foreclosures and testified at the hearing that they received similar evasive treatment by the Respondents. The Complainants paid Respondents \$3,000.00, \$3,500.00, \$3,000.00, \$3,000.00 and \$3,000.00, respectively. It is no surprise that Complainant [REDACTED] had to file for bankruptcy protection to avoid foreclosure,

and Complainants [REDACTED] and [REDACTED] lost their properties to foreclosure. The Respondents did nothing to avoid losses suffered by any of the complainants. The inaction on the Respondents' parts constitutes another breach of the contract between the Respondents and Complainants. The evidence of these breaches is substantial.

With the above evidence, the CFR also established that the Respondents violated Md. Code Ann., Com. Law § 14-1902(1) (Supp. 2011) when it received the money without securing a license to do so from the CFR. Md. Code Ann., Com. Law § 14-1902(5) (Supp. 2011). The Respondents took money from the Complainants and did nothing to assist them in obtaining a loan modification, despite promises to do so; moreover, the Respondents were prohibited from receiving fees before services had been rendered Md. Code Ann., Com. Law § 14-1902(6) (Supp. 2011) The evidence also established that the Respondents failed to provide the Complainants with a written information statement in violation of Md. Code Ann., Com. Law § 14-1904(a) (2005). Finally, the Respondents violated Md. Code Ann., Com. Law § 14-1906 (2005) because the Respondents sent no written contract.

D. Sanctions

The CFR's power to impose sanctions, subject to notice and a right to a hearing, is contained in section 14-1912 of the Commercial Law Article, which allows an award to the Complainant of the amount of actual damage sustained by the consumer and a monetary award equal to three times the total amount collected from the consumer, as ordered by the CFR.

In this case the sanctions are calculated as follows:

- Complainant [REDACTED] \$2,500.00, which was the amount paid by the Complainant, plus three times that amount, or \$7,500.00, for a total of \$10,000.00 awarded to Complainant [REDACTED]

- Complainant [REDACTED] \$3,000.00, which was the amount paid by the Complainant, plus three times that amount, or \$9,000.00, for a total of \$12,000.00 awarded to Complainant Schlauch;
- Complainant [REDACTED]: \$3,500.00, which was the amount paid by the Complainant, plus three times that amount, or \$10,500.00, for a total of \$14,000.00 awarded to Complainant Spence;
- Complainant [REDACTED] \$3,000.00, which was the amount paid by the Complainant, plus three times that amount, or \$9,000.00, for a total of \$12,000.00 awarded to Complainant Bowers;
- Complainant [REDACTED]: \$3,000.00, which was the amount paid by the Complainant, plus three times that amount, or \$9,000.00, for a total of \$12,000.00 awarded to Complainant Tano;
- Complainant [REDACTED] \$3,000.00, which was the amount paid by the Complainant, plus three times that amount, or \$9,000.00, for a total of \$12,000.00 awarded to Complainant Stewart.

Additionally, pursuant to the Cease and Desist Order, the CFR seeks from the Respondents a \$1,000.00 fine to the CFR for the unlicensed activity in violation of the MCBSA for each consumer and \$1,000.00 for charging an up-front fee for each consumer. These fines are appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondents engaged in credit service business activities that subject them to the provisions of the MCSBA;

I further conclude that the Respondents engaged in credit services business activities with Maryland consumers without first obtaining a license required by CL § 14-1903(b) and FI § 11-302(b);

I further conclude that the Respondents, while engaged in credit services business activities, received money or other valuable consideration in violation of CL § 14-1902(1);

I further conclude that the Respondents collected up-front fees prior to fully and completely performing all services in violation of CL § 14-1902(6);

I further conclude that the Respondents failed to provide Maryland consumers with the required information statements in connection with the sale of services of a credit services business in violation of CL §§ 14-1904(a) and 14-1905;

I further conclude that the Respondents failed to provide a written agreement and failed to include required contractual terms in their agreements with a Maryland consumer in violation of CL § 14-1906; and,

I further conclude that the Respondents, having violated the sections cited above, are liable for actual damages and monetary awards payable to the Complainants and fines of \$12,000.00 payable to the CFR.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Commissioner of Financial Regulation:

ORDER that the Respondents, and all of them, whether individuals or bodies corporate, cease and desist from engaging in the credit services business in Maryland;

ORDER that the Respondents pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$12,000.00, calculated as follows:

- \$1,000.00 for the unlicensed activity concerning its credit services with a Maryland consumer for 6 consumers, for a total of \$6,000.00; and

- \$1,000.00 for charging a up-front fee to a Maryland consumer for 6 consumers, for a total of \$6,000.00;

ORDER that the Respondents pay to [REDACTED] the sum of \$10,000.00 for actual damages and a monetary award;

ORDER that the Respondents pay to [REDACTED] the sum of \$12,000.00 for actual damages and a monetary award;

ORDER that the Respondents pay to [REDACTED] the sum of \$14,000.00 for actual damages and a monetary award;


ORDER that the Respondents pay to [REDACTED] the sum of \$12,000.00 for actual damages and a monetary award;

ORDER that the Respondents pay to [REDACTED] the sum of \$12,000.00 for actual damages and a monetary award;

ORDER that the Respondents pay to [REDACTED] the sum of \$12,000.00 for actual damages and a monetary award; and that the Maryland Commissioner of Financial Regulation further

ORDER that the Maryland Commissioner of Financial Regulation's records and publications reflect this decision.

December 28, 2011
Date Decision Issued


T. Austin Murphy
Administrative Law Judge

TAM/fe
Doc# 128854

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
v.
NATIONAL RELIEF GROUP, INC., and
BRIAN J. PACIOS,
RESPONDENTS

* BEFORE T. AUSTIN MURPHY,
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* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the CFR:

- CFR #1 July 11, 2011 Notice of Hearing
- CFR #2 June 14, 2011 Letter of delegation to the Hon. Jana Corn Burch, Executive Administrative Law Judge, OAH, from Anne Balcer Norton, Deputy Commissioner, CFR
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CFR #13 January 20, 2011 Complaint of [REDACTED] – with attachments

No exhibits were offered on behalf of the Respondents, who were not present.