

**BEFORE THE COMMISSIONER OF FINANCIAL REGULATION**

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

ROXANA SALGADO MOLINA  
RESPONDENT

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CFR FILE No: CFR-FY2011-209

OAH NO: DLR-CFR-76A-12-13823

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**OPINION AND FINAL ORDER**

This matter came before the Commissioner for hearing for the reasons set forth in the Order and Notice of Hearing dated November 14, 2012. Pursuant to that Order the Respondent Roxana Salgado Molina was given the opportunity to appear at a hearing held on December 19, 2012 to respond to allegations against her set forth in a complaint filed with the Commissioner by [REDACTED] and [REDACTED]. The Order and Notice of Hearing was mailed to the Respondent's last known address in accordance with COMAR 09.01.02.07.

The hearing was scheduled for 10:00 a.m. The Commissioner called the hearing to begin at 10:15 a.m., and the Respondent failed to appear. Jedd Bellman, Assistant Attorney General, appeared on behalf of the Deputy Commissioner. The proceedings were recorded by a court reporter.

**EVIDENCE**

The exhibits admitted at the hearing before the Administrative Law Judge at the hearing on June 13, 2012 were before the Commissioner. Additional evidence admitted for the purpose of this hearing was the Order and Notice of Hearing dated November 14,

2012 and the cover letter with certified receipt evidencing that it had been mailed to the Respondent's last known address.

### DISCUSSION

As noted in the Order and Notice of Hearing, there were several issues that needed to be addressed based on the proceedings before the Administrative Law Judge ("ALJ"). For this reason, a new hearing was set before the Commissioner to give the Respondent an additional opportunity to address the allegations set forth in the complaint filed by [REDACTED] and [REDACTED]. Based on the Respondent's failure to appear at this hearing, the Commissioner concludes that she has waived her right to respond to the allegations, and that the ALJ's Proposed Decision and Recommended Order should be adopted with certain changes.

First, the ALJ found that the Respondent violated the Protection of Homeowners in Foreclosure Act ("PHIFA"). In the letter that was set to the Respondent on January 12, 2012, she was notified that the complaint involved allegations that she had violated the Maryland Credit Services Businesses Act ("MCSBA"). (CFR Exhibit 3). That letter formed the basis of the hearing before the ALJ, pursuant to Section 14-1911(c) and (d) of the Commercial Law Article. Further, the Delegation Letter sent to the Office of Administrative Hearings referred only to violations of MCSBA. (CFR Exhibit 2). Accordingly, the Commissioner will not find that the Respondent was in violation of PHIFA.

Second, the ALJ found that the Respondent had failed to respond to a subpoena issued by the Deputy Commissioner. The Respondent was not charged with this violation.

Third, the ALJ stated that the Office of the Commissioner “sought penalties for failing to comply with a prior Summary Order.” The Commissioner had not made such a request.

### **FINAL ORDER**

The Commissioner of Financial Regulation hereby orders:

That the Findings of Fact in the Proposed Decision of the Administrative Law Judge are adopted; and further

That, with the exception of the three specified items set forth in the Discussion section of this Final Order, the Conclusions of Law of the Administrative Law Judge are adopted; and further

That the Respondent Roxana Salgado Molina violated Sections 14-1902(1), (5), and (6), 14-1903(b), 14-1904(a), 14-1905, 14-1906, and 14-1912 of the Commercial Law Article of the Annotated Code of Maryland; and further

That the Respondent Roxana Salgado Molina violated Sections 11-302(b) and 11-303 of the Financial Institutions Article of the Annotated Code of Maryland; and further

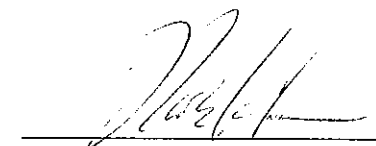
That the Respondent Roxana Salgado Molina pay to the Commissioner of Financial Regulation a civil penalty in the total amount of \$2,000.00, for unlicensed activity in violation of the MCSBA and for collecting up-front fees in violation of the MCSBA; and further

That the contract entered into by Respondent Roxana Salgado Molina and [REDACTED] and [REDACTED] is void and unenforceable as contrary to the public policy of the State; and further

That the Respondent Roxana Salgado Molina pay to [REDACTED] and [REDACTED] the sum of \$43,600.00, which represents three times the amount that she collected from them, in accordance with Section 14-1912(a) of the Commercial Law Article of the Annotated Code of Maryland, and based on her willful failure to comply with the provisions of the MCSBA; and further

That the records and publications of the Office of the Commissioner of Financial Regulation reflect this decision.

2/28/13  
Date

  
\_\_\_\_\_  
Mark A. Kaufman  
Commissioner

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

ROXANA SALGADO MOLINA,<sup>1</sup>  
RESPONDENT

\* BEFORE MICHAEL W. BURNS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No: DLR-CFR-76A-12-13823  
\* CFR FILE No: CFR-FY2011-209

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**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 April 12, 2012, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (DLLR), issued a Final Order to Cease and Desist (Final Order) to Roxana E. Salgado<sup>2</sup> (Respondent). The Final Order followed a Summary Order to Cease and Desist (Summary Order) that had been issued by the Deputy Commissioner of Financial Regulation (Deputy Commissioner) on July 6, 2011; that Summary Order stated that it would be entered as a Final Order if the Respondent did not request a hearing within 15 days of receipt of the Summary Order. No hearing was requested, and thus the Final Order was issued.

On March 30, 2012, the CFR 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

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<sup>1</sup> Roxana Salgado Molina also goes by the names: Roxana E. Salgado; Roxana E. Salgado Molina; and Roxana Elizabeth Salgado.

<sup>2</sup> See Footnote number one.

and conclusions of law, and a recommended order.

I held a hearing on June 13, 2012 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (2011).<sup>3</sup> Jedd Bellman, Assistant Attorney General, Office of the Attorney General, represented the CFR. Neither the Respondent, nor anyone authorized to represent the Respondent, appeared at the hearing.<sup>4</sup>

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), Md. Code Ann., Com. Law § 14-1911,<sup>5</sup> OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and the DLLR Hearing Regulations, COMAR 09.01.03.

### ISSUES

1. Did the Respondent engage in credit service business activities that subject her to the provisions of the Maryland Credit Services Businesses Act (MCSBA)?
2. If so, did the Respondent engage in credit services business activities with a Maryland consumer without first obtaining a license from the CFR in violation of CL §§ 14-1902 (1) and 1903(b) and FI §§ 11-302(b) and 11-303?
3. If the Respondent engaged in credit services business activities with Maryland consumers without first obtaining a license, is the Respondent exempt from complying with the licensing requirements of CL § 14-1903(b) and FI § 11-302(b)?
4. If the Respondent is neither licensed nor exempt from licensure, did she, while engaged in credit services business activities, receive money or other valuable consideration in violation of CL § 14-1902(1)?

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<sup>3</sup> The Financial Institutions Article will be referred to as FI hereafter.

<sup>4</sup> Notice to the Respondent, and her failure to appear, is discussed below.

<sup>5</sup> The Commercial Law Article will be referred to as CL hereafter.

5. If the Respondent is neither licensed nor exempt from licensure, did she, 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)?
6. Did the Respondent engage in activities that subject her to the provisions of the Protection of Homeowners in Foreclosure Act (PHIFA)?
7. If the Respondent is neither licensed nor exempt from licensure, did she, while engaged in credit services business activities, collect up-front fees prior to successfully obtaining a loan modification in violation of section 7-307(2) of the Real Property Article<sup>6</sup> of the Maryland Annotated Code?
8. Did the Respondent 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?
9. Did the Respondent fail to include required contractual terms in her agreements with Maryland consumers in violation of CL § 14-1906?
10. Did the Respondent violate the PHIFA by breaching the duty of reasonable care and diligence required under RP § 7-309(b) and Business Occupations & Professions Article § 17-532(c)(vi)?<sup>7</sup>
11. Did the Respondent willfully fail to comply with the MCBSA in violation of CL § 14-1912(a)?
12. Did the Respondent engage in acts, practices, or other activities which operated as a fraud or deception on persons in connection with the offer or sale of the services of a credit services business in violation of CL § 14-902(5)?

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<sup>6</sup> The Real Property Article will be referred to as RP hereafter.

<sup>7</sup> The Business Occupations & Professions Article will be referred to as BOP hereafter.

13. Did the Respondent solicit, offer, sell, and/or agree to provide residential mortgage loan modification services?
14. Did the Respondent fail to comply with the subpoena issued by the Deputy Commissioner of Financial Regulation (Deputy Commissioner) on April 8, 2011 in violation of FI § 2-114?
15. If the Respondent violated any of the sections cited above, what are the appropriate sanctions?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 May 1, 2012 Notice of Hearing
- CFR #2 March 28, 2012 Letter of delegation to the Hon. Jana Corn Burch, Executive Administrative Law Judge, from Anne Balcer Norton, Deputy Commissioner
- CFR #3 Letter to Respondent from Zenaida V. Dorsey, with attachments, dated January 18, 2012
- CRF #3A Maryland Judiciary Case Search Case Information printout; Ramirez v. Salgado, dated June 6, 2012
- CFR #4 Final Order to Cease and Desist, dated April 12, 2012
- CFR #5 Investigative Report, dated March 23, 2012
- CFR #6 Complaint of [REDACTED] and [REDACTED] (in Spanish), with attachments, dated December 2, 2011
- CFR #6A Complaint of [REDACTED] and [REDACTED] (in English), with attachments, dated December 2, 2011

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



## Testimony

[REDACTED], one of the Complainants, and Zenaida Velez-Dorsey, Investigator with the Office of Commercial Financial Regulation, testified on behalf of the CFR. [REDACTED] testified with the aid of a Spanish Interpreter. No testimony was presented on behalf of the Respondent, who failed to appear for the hearing.

## FINDINGS OF FACT

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

1. In June or July of 2010, [REDACTED] and [REDACTED] (the Complainants), Maryland residents, entered into an agreement with the Respondent for the Respondent to provide residential mortgage loan modification services to the Complainants and to obtain a loan modification for the Complainants. This agreement was not in writing.
2. Mortgage loan modification is the process through which a lender modifies the terms of an existing loan in order to make payments more affordable for the borrower. A modification can include: refinancing the loan, lowering or changing an interest rate, reducing the mortgage principal balance, increasing the length of the repayment period, forbearance, and forgiving payment defaults and fees.
3. Pursuant to their agreement, the Complainants paid \$1,300.00 to the Respondent to retain the Respondent to assist them in obtaining the loan modification.
4. The Respondent told the Complainants that the loan modification process was proceeding and told the Complainants that they needed to pay the Respondent \$1,200.00 per month for purposes of paying the Complainants' mortgage on their home while the loan modification was being processed.
5. The Complainants paid the Respondent a total of eight monthly payments of \$1,200.00 for a total of \$9,600.00.

6. The Complainants paid the Respondent a total sum of \$10,900.00.
7. The Respondent told the Complainants that she was paying the mortgage on their home.
8. [REDACTED] eventually went to his bank to make a mortgage payment personally and was informed that no payments had been received from the Respondent towards the Complainants' mortgage and that there was no record that the Respondent had ever contacted the bank regarding obtaining a loan modification for the Complainants.
9. The \$9,600.00 paid by the Complainants to the Respondent was not paid on behalf of the Complainants to the mortgage holder.
10. The Respondent never performed any services of any kind on behalf of the Complainants, including services regarding obtaining a loan modification.
11. The Complainant was unsuccessful in his efforts to contact the Respondent and to obtain a refund of the money he had paid to the Respondent.
12. Eventually, the Complainants were able to work out an agreement to keep their home and are currently paying their mortgage.
13. The Respondent is not, and has never been, licensed by the CFR for any purpose.
14. The Respondent never obtained an exemption from the CFR to engage in credit services business activities without a license.
15. In December 2011, the Complainants filed a complaint with the CFR regarding the Respondent.
16. The CFR conducted an investigation into the credit services business activities of Roxana E. Salgado Molina.
17. On July 6, 2011, the Deputy Commissioner issued a Summary Order to Cease and Desist against the Respondent. The Summary Order notified the Respondent that she was entitled to a hearing before the CFR to determine whether the Summary Order should be

vacated, modified, or entered as a final order of the Commissioner, and that the Summary Order would be entered as a final order if the Respondent did not request a hearing within 15 days of the receipt of the Summary Order.

18. The Summary Order was properly served on the Respondent via First Class U.S. Mail and Certified U.S. Mail.
19. The Respondent failed to request a hearing on the Summary Order.
20. The CFR issued a Final Cease and Desist Order against the Respondent on April 12, 2012. That Final Order determined that, among other things, the Respondent was: subject to the MCSBA; subject to the PHIFA; had violated various provisions of the Annotated Code of Maryland, including the MCBSA and the PHIFA; and found that the Respondent had engaged in a number of activities that were prohibited under the MCSBA, the PHIFA and other Maryland Annotated Code provisions and imposed both fines and restitution.
21. On January 18, 2012, Zenaida Velez-Dorsey, one of CFR's investigators, sent a letter to the Respondent regarding the Complainant's complaint, to which the Respondent did not respond. (CFR #3) The letter was addressed to the Respondent, at the address provided by the Complainants, Ms. Roxana E. Salgado Molina, and sent to the following mailing address:

Ms. Roxana E. Salgado-Molina  
16410 Newasa Lane  
Waldorf, MD 20601

The letter was sent by way of the United States Postal Service by both first-class and certified mail.

22. The letters sent to the Newasa Lane address were returned by the United States Postal Service as undeliverable.

## DISCUSSION

### A. The Respondent's Failure to Appear

This hearing was scheduled for June 13, 2012. On that date, Mr. Bellman appeared for the hearing on behalf of the CFR, but neither the Respondent nor anyone representing her appeared. Mr. Bellman noted that notice of the hearing was sent to the last known address of the Respondent and that such notice sufficed. COMAR 09.01.02.07. I conclude that the Respondent failed to appear for the hearing despite adequate notice. The OAH mailed copies of the Notice of Hearing to 16410 Newasa Lane, Waldorf, Maryland 20601 - the most current address available. The notice was returned to the OAH by the United States Postal Service as "Not deliverable as addressed." Additionally, no request to the OAH for a postponement of the hearing was made by or on behalf of the Respondent.

I conclude from these facts that the Respondent had proper notice of the hearing and that it was appropriate to proceed in the Respondent's absence. COMAR 09.01.02.07E and 09.01.02.09.

### B. Applicable Law

#### 1. Legal Framework

##### *Burdens of Production and Persuasion*

The CFR has the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondent violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996). The Respondent has the burden of production and persuasion to the extent that she claims an exemption from the licensing scheme or an exception from a definition. CL § 14-1907(d).

## 2. Applicable Statutory Provisions

The CFR, pursuant to its Summary Order, alleges that the Respondent violated a number of statutes included within both the MCSBA<sup>8</sup> and the PHIFA<sup>9</sup>.

CL § 14-1902 provides, in relevant part:

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 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;

...

(5) Engage, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with 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.

...

Md. Code Ann., Com. Law § 14-1902 (Supp. 2011).

CL § 14-1903 provides, in relevant part:

(b) *Licenses – Required.* – 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.

(c) *Same – Issuance.* – A license required by this subtitle shall be issued by the Commissioner.

Md. Code Ann., Com. Law § 14-1903(b), (c) (2005).

CL § 14-1904 provides in relevant part as follows:

(a) *Duty to provide.* – Before either the execution of a 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 this subtitle.

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<sup>8</sup> CL §§ 14-1901 through 14-1916 (2005 & Supp. 2011).

<sup>9</sup> RP §§ 7-301 through 7-325 (2010 & Supp. 2011).

Md. Code Ann., Com. Law § 14-1904(a) (2005).

CL § 14-1905 provides, in relevant part:

(a) In general. -- The information statement required under § 14-1904 of this subtitle shall include:

(1) An accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681g) and under § 14-1206 of this title;

(2) A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681j) and under § 14-1209 of this title;

(3) A statement that a nominal charge not to exceed \$ 5 may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all the information in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

(4) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item on the consumer contained in any file that is maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681i) and under § 14-1208 of this title;

(5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services; and

(6) A statement that accurately reported information may not be permanently removed from the file of a consumer reporting agency.

(b) Additional requirements of licenses. -- A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

(1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;

(2) The address of the Commissioner where such complaints should be filed; and

(3) A statement that a bond exists and the consumer's right to proceed against the

bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

Md. Code Ann., Com. Law § 14-1905 (2005).

With respect to any contract between a consumer and a credit business service provider, CL § 14-1906 provides as follows:

(a) *Requirements.* – Every 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:

(1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

“You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.”;

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer’s credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) *Notice of cancellation form.* - The contract shall be accompanied by a form completed in duplicate, captioned “NOTICE OF CANCELLATION”, which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

**“NOTICE OF CANCELLATION**

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract

will be returned within 10 days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

(Name of seller)

At

(Address of seller)

(Place of business)

Not later than midnight \_\_\_\_\_

(Date)

I hereby cancel this transaction.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)"

(c) *Copies of completed contract and other documentation to be given to consumer.* - A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

Md. Code Ann., Com. Law § 14-1906 (2005).

CL § 14-1912 provides, in relevant part:

(a) Willful noncompliance. -- Any credit services business which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure;

(2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner; . . .

Md. Code Ann., Com. Law § 14-1912 (Supp. 2011).

FI § 2-114 provides, in relevant part:

(b) Oaths and discovery. -- For the purpose of an investigation or proceeding, the Commissioner or an officer designated by the Commissioner may administer oaths and affirmations, subpoena witnesses, compel witness attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the Commissioner considers relevant or material to the inquiry.



Md. Code Ann., Fin. Inst. § 2-114(b) (2011).

FI § 11-302 provides, in relevant part:

(b) License required. -- Unless the person is licensed by the Commissioner, a person may not:

...

(3) Engage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article.

Md. Code Fin. Inst. § 11-302(b) (2011).

FI § 11-303 requires that “[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.” Md. Code Ann., Fin. Inst. § 11-303 (2011).

BOP § 17-532(c)(1)(vi) provides, in relevant part:

(c) (1) A licensee shall:

(vi) exercise reasonable care and diligence;

...

Md. Code Ann., Bus. Occ. & Prof. §17-532(c)(1)(vi) (2010).

RP § 7-307(2) provides, in relevant part:

A foreclosure consultant may not:

(2) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

Md. Code Ann., Real Prop. § 7-307(2) (2010).

RP § 7-309(b) provides, in relevant part:

(c) A foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article.

Md. Code Ann., Real Prop. § 7-309(b) (2010).

3. The Alleged Violations

Mr. Bellman asserted on behalf of the CFR that, consistent with the findings of the CFR as set out in the Final Order, the Respondent is subject to the MCSBA and is neither licensed to engage in credit services business activities nor exempt from the licensing requirement. Mr. Bellman argued that the Respondent nonetheless engaged in credit services business activities with regard to the Complainants, who are Maryland consumers. He also argued that the Respondent is subject to, and violated, the PHIFA. As evidence, Mr. Bellman first presented the testimony of [REDACTED], one of the Complainants, who testified that he contracted with the Respondent to provide loan modification services in June/July, 2010, and initially paid the Respondent \$1,300.00 to obtain a loan modification for him. The Respondent told [REDACTED] that the loan modification was progressing and that he should pay her \$1,200.00 per month, which he was told was to be used to pay for the mortgage on the home. The Complainants paid the Respondent a total of \$9,600.00 in monthly payments for their mortgage.

[REDACTED] further testified that when he went to his bank to pay the mortgage payment himself the bank “didn’t have anything” regarding any loan modifications involving his property and the \$9,600.00 had never been received for payment on the mortgage. He said that the Respondent did not get his wife and him the loan modification which he had contracted with the Respondent to obtain for them – rather he said that “she didn’t do anything” regarding the loan modification. He tried to ask for a refund of his payments and went to the Respondent’s house – the address already noted above in Waldorf, Maryland - but found she had moved. [REDACTED] also noted that there was no answer on the Respondent’s cellular telephone when he called her.

He pointed out that he had trusted the Respondent and she had harmed him by taking his money and performing no services and failing to pay the bank on the mortgage as agreed. He said that he had gone to the bank himself and is currently paying the mortgage. I found [REDACTED] to be an earnest and credible witness and I accept his testimony as truthful and accurate.

Zenaida Velez-Dorsey, an investigator with the Maryland Office of the Commissioner of Financial Regulation, also testified. Ms. Velez-Dorsey stated that she investigated the Respondent pursuant to an assignment regarding the allegations made against the Respondent by the Complainants, among others. She testified that the Respondent is not, and has never been, licensed to provide commercial or loan modification services in Maryland. In addition, she stated that the Respondent told the Complainants that she could obtain a loan modification for them, collected up-front fees and ongoing payments for the Complainant's mortgage, but performed no services for the Complainants. I found Ms. Velez-Dorsey to be a competent, credible witness.

Based on the Complainant's testimony and other evidence, Mr. Bellman argued that the Respondent was in violation of a number of provisions of Maryland Law and should be sanctioned. Based on the evidence, I find Mr. Bellman is absolutely correct.

First, I find that the Respondents are subject to the MCSBA and its licensing requirement, as determined in the Final Order issued by the CFR. The MCSBA defines "credit services business" at section 14-1901(e) of the Commercial Law Article, which provides in part:

- (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.

Providing loan modification services includes obtaining extensions of credit for consumers and improving a consumer's credit record, history, or rating. Accordingly, the Respondent has engaged in credit services business activities with regard to the Complainants. The Respondent is thus subject to the MCSBA and its licensing requirement under section 14-1902(1) of the Commercial Law Article. *See also* section 14-1903(b) of the CL Article and sections 11-302(b) and 11-303 of the FI Article.

Second, the Respondent engaged in credit services business activities with the Complainants - who are Maryland consumers - without first obtaining a license from the CFR in violation of CL §§ 14-1902 (1) and 14-1903(b) and FI §§ 11-302(b) and 11-303.

Third, there is no evidence that the Respondent is or was exempt from complying with the licensing requirements of CL § 14-1903(b) and FI § 11-302(b). The Respondent is neither licensed nor exempt from licensure.

Fourth, the Respondent, while engaged in credit services business activities, received money from the Complainants in violation of CL § 14-1902(1). While engaged in credit services business activities involving the Complainants the Respondent also collected up-front fees prior to fully and completely performing all services in violation of CL § 14-1902(6), and she collected up-front fees prior to successfully obtaining a loan modification in violation of RP § 7-307(2).

Fifth, the Respondent failed to provide these Complainants - who are 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. The Respondent also failed to provide any written agreement to the Complainants and, therefore, she failed to include required contractual terms in her agreement with Maryland consumers in violation of CL § 14-1906.

Sixth, the Respondent is subject to the PHIFA. RP § 7-301(c) defines a foreclosure

consultant as:

- (c) "Foreclosure consultant" means a person who:
  - (1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:
    - (i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;
    - (ii) Obtain forbearance from any servicer, beneficiary or mortgagee;
    - (iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;
    - (iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;
    - (v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;
    - (vi) Assist the homeowner to obtain a loan or advance of funds;
    - (vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;
    - (viii) Save the homeowner's residence from foreclosure;
    - (ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or
    - (x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or
  - (2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

Md. Code Ann., Real Prop. § 7-301(c). The Respondent solicited, offered, sold, and agreed to provide residential mortgage loan modification services to the Complainants and is, therefore, subject to the provisions of the PHIFA. RP § 7-301.

Seventh, the Respondent took the Complainants' money, performed no services, and failed to return the Complainants' funds. The Respondent, therefore, clearly violated the PHIFA by breaching the duty of reasonable care and diligence required under RP § 7-309(b) and BOP § 17-532(c)(vi). In point of fact, the evidence is overwhelming that the Respondent

willfully failed to comply with the requirements of Maryland law, including the MCBSA, the PHIFA and particularly, under CL § 14-1912(a).

Eighth, the evidence as outlined above makes it clear that the Respondent engaged in acts, practices, and/or other activities which operated as a fraud or deception on persons (the Complainants specifically) in connection with the offer or sale of the services of a credit services business (in this case loan modification services) in violation of CL § 14-902(5). The Respondent committed both fraud and deception here.

Ninth, the Respondent failed to comply with the subpoena issued by the Deputy Commissioner of Financial Regulation (Deputy Commissioner) on April 8, 2011 in violation of FI § 2-114.

In summary, the Respondent is not licensed to provide the services associated with loan modifications. [REDACTED] credibly testified that he paid the Respondent the sum of \$10,900.00 for a loan modification, but that the Respondent failed to provide any services for that money and failed to make payments on the mortgage as agreed by the parties. The Respondent took the Complainants' money and did nothing on their behalf. The Respondent's unlicensed activity violated the MCSBA. Charging up-front fees was a violation of both the MCSBA and the PHIFA. The Respondent willfully failed to comply with the requirements of the MCBSA and breached the duty of reasonable care and diligence she owed the Complainants in violation of PHIFA. The Respondent engaged in both fraud and deception involving the Complainants. Finally, the Respondent failed to comply with the subpoena issued by the Deputy Commissioner on April 8, 2011. FI § 2-114.

#### 4. The Appropriate Sanctions.

Some of the Commissioner's expansive powers are delineated in FI § 2-115:

(b) *Other authorized actions for violations.* – When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is

waived, 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, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

(c) *Financial penalty.* — In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Commissioner shall consider the following factors:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and the industry involved;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

Md. Code Ann., Fin. Inst. § 2-115 (2011).

Failure to comply with the MCSBA also subjects the Respondent to liability under CL § 14-1912, which allows an award to the Complainants 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 when a credit services business has willfully failed to comply with any requirements under that subtitle. The willfulness of the noncompliance here is demonstrated by the Respondent's indifference to the requirements of Maryland law, her repeated failures to respond to the Complainants' inquiries and to their eventual request for a refund, as well as the Respondent's taking the Complainants' money over a number of months and her failure to provide any services whatsoever regarding the loan modification and failure to pay the mortgage as agreed between the parties. In this case, the actual damages are \$10,900.00, which was the total amount paid by the Complainants to the Respondent, so for purposes of the award, three times that amount, or \$32,700.00, is added, for a total of \$43,600.00 awarded to the Complainants.

Pursuant to section 2-115 of the Financial Services Article, the CFR seeks penalties in the amount of \$1,000.00 each for: 1) unlicensed activity in violation of the MCSBA (CL §§ 14-1902(1) and 1903 (b); FI §§ 11-302 and 303); 2) charging up-front fees in violation of the MCSBA (CL § 14-1902(6)); 3) charging up-front fees in violation of the PHIFA (RP § 7-307(2)); 4) breaching the duty of reasonable care and diligence owed to the Complainants in violation of PHIFA (RP § 7-309(b) and Bus. Occ. § 17-532(c)(vi)); and 5) failing to comply with the Summary Order in violation of FI § 2-114. Each of these alleged violations has been conclusively proven by the CFR.

As noted above, there are six factors to be considered in determining the appropriate amount of a civil monetary penalty. The first factor is the seriousness of the violation. The Respondent committed numerous violations involving the Complainants, including: unlicensed activity in violation of the MCSBA; charging up-front fees illegally; failing to provide required contract terms (indeed, failing to provide a written contract at all); breaching a required duty of care and diligence; willfully failing to comply with a number of requirements of the MCSBA; and committing fraud and deception regarding the Complainants by taking the Complainants' money without performing any services on behalf of the Complainants; failing to pay the mortgage of the Complainants as agreed; and failing to refund the Complainants' funds when the Complainants so requested. Such actions were illegal, outrageous and intolerable. The seriousness of their impact on the Complainants, and on the Maryland commercial community at large, is clear and unacceptable.

The second factor for consideration is the good faith of the violator. The evidence made clear the Respondent acted in bad faith – she committed fraud and deception from start to finish in dealing with the Complainants.



The third factor for consideration is any history of previous violations. According to Ms. Velez-Dorsey's Investigation Report, this is the third complaint received by the Commissioner concerning the Respondent and a Cease and Desist Order has been previously issued against the Respondent.

The fourth factor for consideration is the deleterious effect of the violation on the public and the industry involved. The Respondent engaged in willful fraudulent and deceitful activity without any intent to meet her obligation to the Complainants. The Respondent broke numerous laws without performing any services on behalf of the Complainants. Her willful, illegal and despicable actions impacted an industry that was already in crisis, harms the faith of the public in the loan modification process, and negatively impacts the entire industry.

The fifth factor for consideration is the assets of the violators. There is no evidence regarding this factor in the record.

The sixth factor for consideration is a catch-all allowing for consideration of any other relevant factor. The Respondent behaved as a liar and a cheat. She took the money of the Complainants and not only did nothing to earn it, she took funds intended for the Complainants' mortgage and failed to make the payments. The Complainants could well have lost their home because of the Respondent. The Respondent is a law-breaker and scoundrel and should be sanctioned severely for this matter.

Based on the above reviewed factors, I find that a civil penalty is entirely appropriate in this matter and the CFR's proposed penalty amounts have been proven to be appropriate and reasonable. I find, therefore, that the penalties in the amount of \$1,000.00 for each of the violations outlined previously are appropriate, for a total of \$5,000.00.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent engaged in credit service business activities that subject her to the provisions of the Maryland Credit Services Businesses Act;

I further conclude that the Respondent engaged in credit services business activities with a Maryland consumer without first obtaining a license from the CFR in violation of CL §§ 14-1902 (1) and 14-1903(b) and FI §§ 11-302(b) and 11-303;

I further conclude that the Respondent is not exempt from complying with the licensing requirements of CL § 14-1903(b) and FI § 11-302(b);

I further conclude that the Respondent received money in violation of CL § 14-1902(1);

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

I further conclude that the Respondent engaged in activities that subject her to the provisions of the PHIFA;

I further conclude that the Respondent solicited, offered, sold, and agreed to provide residential mortgage loan modification services;

I further conclude that the Respondent collected up-front fees prior to successfully obtaining a loan modification/s in violation of section RP § 7-307(2);

I further conclude that the Respondent 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 Respondent failed to include required contractual terms in her agreements with Maryland consumers in violation of CL § 14-1906;

I further conclude that the Respondent violated the PHIFA by breaching the duty of reasonable care and diligence required under RP § 7-309(b) and BOP § 17-532(c)(vi);

I further conclude that the Respondent willfully failed to comply with the MCBSA in violation of CL § 14-1912(a);

I further conclude that the Respondent engaged in acts, practices, and other activities which operated as a fraud or deception on persons in connection with the offer or sale of the services of a credit services business in violation of CL § 14-902(5);

I further conclude that the Respondent failed to comply with the subpoena issued by the Deputy Commissioner on April 8, 2011 in violation of FI § 2-114;

I further conclude that the Respondent's violations justify the imposition of a civil penalty fine in the amount of \$5,000.00. FI § 2-115; and,

I further conclude that the Respondent's violations justify an order directing her to pay the Complainants damages in the amount of \$43,600.00. CL § 14-1912.

### **RECOMMENDED ORDER**

I **RECOMMEND** that the CFR:

**ORDER** that the Respondent violated sections 14-1902 (1), (5) and (6), 14-1903(b), 14-1904(a), 14-1905, 14-906, and 14-1912 of the Commercial Law Article of the Annotated Code of Maryland; and further,

**ORDER** that the Respondent violated sections 2-114, 11-302(b) and 11-303 of the Financial Institutions Article of the Annotated Code of Maryland; and further,

**ORDER** that the Respondent violated sections 7-307(2) and 7-309(b) of the Real Property Article of the Annotated Code of Maryland; and further,

**ORDER** that the Respondent violated section 17-532(c)(vi) of the Business Occupations & Professions Article of the Annotated Code of Maryland; and further,

**ORDER** that the Respondent cease and desist from engaging in the credit services business and/or in mortgage loan modification services; and further,

**ORDER** that the Respondent pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$5,000.00, calculated as follows: the amount of \$1,000.00 each for:

1) unlicensed activity in violation of the MCSBA, CL §§14-1902(1) and 1903 (b); FI §§ 11-302 and 303;

2) charging up-front fees in violation of the MCSBA, CL § 14-1902(6);

3) charging up-front fees in violation of the PHIFA (RP § 7-307(2));

4) breaching the duty of reasonable care and diligence owed to the Complainants in violation of PHIFA, RP § 7-309(b) and BOP § 17-532(c)(vi); and

5) failing to comply with the Summary Order in violation of FI § 2-114; and further,

**ORDER** that the Respondent pay to [REDACTED] and [REDACTED] the sum of \$43,600.00; and further,

**ORDER**, under section 2-115(b)(1) of the Financial Institutions Article of the Annotated Code of Maryland, that the Respondent shall immediately **CEASE AND DESIST** from engaging in any further credit services business activities and/or loan modification services with Maryland residents and shall immediately **CEASE AND DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland; and further,

**ORDER** that the CFR's records and publications reflect this decision.

August 29, 2012  
Date Decision Issued

Michael W. Burns  
Michael W. Burns  
Administrative Law Judge

MWB/  
Doc# 135834