IN THE MATTER OF:	BEFORE THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION
TRUMAN FORECLOSURE ASSISTANCE, LLC., **TRUMAN FORECLOSURE DEFENSE, LLC,** **TRUMAN MITIGATION SERVICES, LLC.,** **TRUMAN MODIFICATION SERVICES INC,** **FRANKLIN FINANCIAL GROUP US LLC,** **FRANKLIN FINANCIAL GROUP USA, LLC,** **FRANKLIN DEBT SETTLEMENT, LLC,** **ELI HERTZ,** **BENZION JACK ITZKOWITZ** a/k/a **JACK ITZKOWITZ,** **RICHARD ZAFRANI** a/k/a **RICK ZAFRANI,** and **MICHAEL M. COOPER,** Respondents.	Case No.: CFR-FY2010-326

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Commissioner of Financial Regulation (the "Commissioner") conducted an investigation into the credit services business activities of Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, Franklin Debt Settlement, LLC, Eli Hertz, Benzion Jack Itzkowitz a/k/a

Jack Itzkowitz, Richard Zafrani a/k/a Rick Zafrani ("Zafrani"), and Michael M. Cooper, (collectively the "Respondents"); and

WHEREAS, as a result of that investigation, the Deputy Commissioner of Financial Regulation (the "Deputy Commissioner") found evidence to support that Respondents have engaged, and continue to engage, in acts or practices constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, namely that Respondents have violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"), and Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist (the "Summary Order") against Respondents on July 29, 2010,[1] 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, homeowners and/or consumers (hereinafter "Maryland consumers"), including directly or indirectly offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, or similar services related to residential real property (hereinafter "loan modification 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

[1] The Commissioner entered into a Settlement Agreement and Consent Order (the "Agreement") with certain respondents named in the Summary Order (the "Settling Parties"). As a result of this Agreement, the Summary Order was rescinded on November 10, 2010, as to Settling Parties and the caption for this case has been amended accordingly.

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 Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, Franklin Debt Settlement, LLC, Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, and Michael M. Cooper, failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI § 2-115(a)(2) 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, Respondent Zafrani requested a hearing on August 16, 2010, and a hearing was subsequently scheduled for October 28, 2010. Prior to the October 28th hearing Zafrani submitted a proposal of settlement in which he agreed to the entering of this Final Order, thus, eliminating the need for the hearing.

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.

Additionally, CL § 14-1903(f) defines "*extension of credit*" as "the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes."

2. The activities of persons engaged in the business of offering or providing loan modification services customarily include obtaining extensions of credit for consumers, namely obtaining forbearance or other deferrals of payment on consumers' mortgage loans. This includes any offered services intended as part of the loan modification process, or which are represented to consumers to be necessary for participating in a loan modification program. Under certain circumstances, loan modification services may involve improving a consumer's credit record, history, or rating or establishing a new credit file or record. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e), 14-1903(a), and 14-1903(f), persons engaged in the business of offering or providing residential loan modification 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.

3. The following relevant and credible evidence, obtained pursuant to the Commissioner's investigation, was considered in the issuance of the Summary Order: communications between Respondents and Maryland consumers; statements by a Maryland consumer who had entered into a loan modification agreement with Respondents but for whom Respondents failed to obtain or even attempt to obtain a loan modification for the consumers; and the Commissioner's licensing records. More particularly, this evidence supports the following findings:

a. Respondent Truman Foreclosure Assistance, LLC., is an inactive Florida corporation with principal offices in Miami, Florida. Truman Foreclosure Assistance, LLC., engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

b. Respondent Truman Foreclosure Defense LLC, is an active Florida corporation with principal offices in Miami, Florida. Truman Foreclosure Defense LLC, engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

c. Respondent Truman Mitigation Services, LLC., is an inactive Florida corporation with principal offices in Miami, Florida. Truman Mitigation Services, LLC., engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

d. Respondent Truman Modification Services Inc, is an active Florida corporation with principal offices in Miami, Florida. Truman Modification Services Inc, engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

e. Respondent Franklin Financial Group US LLC, is an active Florida corporation with principal offices in Miami, Florida. Franklin Financial Group US LLC, engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

f. Respondent Franklin Financial Group USA, LLC, is an active Florida corporation with principal offices in Miami, Florida. Franklin Financial Group USA, LLC, engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

g. Respondent Franklin Debt Settlement, LLC, is an active Florida corporation with principal offices in Miami, Florida. Franklin Debt Settlement, LLC, engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

h. Respondents Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, Richard Zafrani a/k/a Rick Zafrani, and Michael M. Cooper engage in business activities with Maryland consumers involving Maryland residential real property. Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, Richard Zafrani a/k/a Rick Zafrani, and Michael M. Cooper are the owners, directors, officers, managers, employees and/or agents of Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation

Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, and Franklin Debt Settlement, LLC.

i. Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, and Franklin Debt Settlement, LLC are a common enterprise engaged in a common scheme to deceive consumers with regard to loan modification services. Each entity shares similar office spaces and employees, are commonly controlled, and, thus, represent an alter ego of themselves, as well as alter egos of their owners, directors, officers, managers, including Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, and Richard Zafrani a/k/a Rick Zafrani.

j. Respondents advertised and marketed to Maryland consumers that Respondents could obtain loan modifications for homeowners on their residential mortgages. Further, Respondents entered into an agreement to provide loan modification services, which included obtaining extensions of credit as defined by the MCSBA, for a Maryland consumer on her residential mortgage loans.

k. In approximately March 2009, [redacted] ("Consumer A") entered into a loan modification agreement with Respondents. Consumer A paid $1,150.00 in an up-front fee to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A. Although Respondents collected $1,150 in an up-front fee, Respondents never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, but the Respondents have yet to provide a refund.

l. Respondents engaged in willful conduct which was intended to deceive and defraud Consumer A, as referenced above, which demonstrated a complete lack of good faith and fair dealings by Respondents, and which breached any duties that Respondents owed to this consumer. Such conduct included, but was not limited to, the following:

(i). Respondents failed to perform those loan modification services for Consumer A that they promised to provide and for which they had collected an up-front fee;

(ii). Respondents purposely concealed this information when contacted by Consumer A who had entered into a loan modification agreement with Respondents by intentionally misrepresenting the progress of her loan modifications;

(iii). Respondents refused to return telephone calls from Consumer A once she became concerned that Respondents had done nothing to obtain loan modifications on her behalf; and

(iv). Finally, Respondents refused to provide a refund to Consumer A when a refund was due for lack of service.

4. 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 ("[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").

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of July 29, 2010, or in the present Final Order, have the Respondents been licensed by the Commissioner under the MCSBA.

6. Respondents have engaged in credit services business activities without having the requisite license by advertising that they could provide loan modification services as described above, and by entering into a contractual agreement with Consumer A to provide such services. Respondents' unlicensed loan modification 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.

7. Additionally, by collecting an up-front fee prior to fully and completely performing all services on behalf of Consumer A, 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").

8. Further, although Respondents made representations that they would obtain beneficial loan modifications for Consumer A , the Commissioner's investigation supports a finding that Respondents never obtained the promised loan modifications for this consumer; as such, Respondents violated 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").

9. Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909; they failed to provide Consumer A with the requisite information statement, in violation of CL §§ 14-1904 and 14-1905; and Respondents failed to include all of the requisite contractual terms in their agreement with Consumer A as required under CL § 14-1906.

10. By failing to obtain beneficial loan modifications for Consumer A which Respondents had agreed to provide, Respondents breached their contract with Consumer A and/or breached the obligations arising under that contract. Such breaches constitute *per se* violations of the MCSBA pursuant to CL § 14-1907(a) ("[a]ny breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle").

11. As the contract between Respondents and Consumer A failed to comply with the specific requirements imposed by the MCSBA (as discussed above), the loan modification contract between Respondents and Consumer A is 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").

12. The MCSBA prohibits fraud and deceptive business practices at CL § 14-1902(5), which provides 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: . . . (5) [e]ngage, 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.

13. CL § 14-1912 discusses liability for failing to comply with the MCSBA, providing as follows:

> (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;
>
> (3) Such amount of punitive damages as the court may allow; and
>
> (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
>
> (b) *Negligent noncompliance.*– Any credit services business which is negligent in failing 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; and

(2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

14. Respondents engaged, directly or indirectly, 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, and thereby violated CL § 14-1902(5); such actions also constituted willful noncompliance with the MCSBA under CL § 14-1912(a). Respondents' fraudulent, deceptive, and willful conduct included the following: they failed to perform those loan modification services for Consumer A which they promised to provide and for which they had collected an up-front fee; Respondents intentionally misrepresented the progress of the Consumer A's loan modifications when contacted by Consumer A; Respondents failed to return telephonic communications from Consumer A once that consumer became concerned that Respondents had done nothing to obtain a loan modification on her behalf; and Respondents refused to provide a refund to Consumer A when such a refund was due for lack of service.

NOW, THEREFORE, having determined that Respondents either waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, or have agreed to the entry of this Final Order, and pursuant 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 July 29, 2010, is entered as a final order of the Commissioner as modified herein, and that Respondents shall permanently **CEASE** and **DESIST** from engaging in credit services business activities with Maryland consumers, including contracting to

provide, or otherwise engaging in, loan modification, loss mitigation, 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 Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, Franklin Debt Settlement, LLC, Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, and Michael M. Cooper's violations; (ii) the lack of good faith of these respondents, (iii) the history and ongoing nature of their violations; and (iv) the deleterious effect of these violations on the public and on the credit services businesses and mortgage industries, Respondents Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, Franklin Debt Settlement, LLC, Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, and Michael M. Cooper shall pay to the Commissioner a total civil money penalty in the amount of **TWO THOUSAND DOLLARS ($2,000.00)**, which consists of the following:

Prohibited Activity and Violation	**Penalty per Violation**	**x Number of Violations**	**= Penalty**
Unlicensed Activity in Violation of MCSBA	$1,000	1 Md. Consumer	$1,000
Charging Up-Front Fees in Violation of MCSBA	$1,000	1 Md. Consumer	$1,000
		TOTAL	**$2,000**

And it is further,

ORDERED that Respondents Truman Foreclosure Assistance, LLC., Truman Foreclosure Defense LLC, Truman Mitigation Services, LLC., Truman Modification Services Inc, Franklin Financial Group US LLC, Franklin Financial Group USA, LLC, Franklin Debt Settlement, LLC, Eli Hertz, Benzion Jack Itzkowitz a/k/a Jack Itzkowitz, and Michael M. Cooper shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **TWO THOUSAND DOLLARS** ($2,000.00) within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), any loan modification agreements which Respondents entered into with Consumer A described herein, are void and unenforceable as contrary to the public policy of the State of Maryland; 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.

MARYLAND COMMISSIONER OF FINANCIAL REGULATION

1/27/16
Date

By: Mark A. Kaufman
Commissioner