

IN THE MATTER OF:

**FRANCO B. VILLATORO d/b/a
METROPOLITAN FINANCIAL
SOLUTIONS,**

Respondent.

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No.: CFR-FY2012-034

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Office of the Commissioner of Financial Regulation, under the supervision of the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”), conducted an investigation into the mortgage lending, mortgage originating, and credit services business activities of Franco B. Villatoro d/b/a Metropolitan Financial Solutions (the “Respondent”); and

WHEREAS, as a result of that investigation, the Deputy Commissioner found evidence to support that Respondent has engaged in acts or practices constituting a violation of a law, regulation, rule or order over which the Commissioner of Financial Regulation (the “Commissioner”) has jurisdiction, namely that Respondent has violated various provisions of the Annotated Code of Maryland, including, Title 11, Subtitle 5 of the Financial Institutions Article (“FI”), Annotated Code of Maryland (the Maryland Mortgage Lender Law, or “MMLL”), Title 11, Subtitle 6 of the Financial Institutions Article, Annotated Code of Maryland (the Maryland Mortgage Originators Law, or “MMOL”), Title 7, Subtitle 4 of the Real Property Article (“RP”), Annotated Code of Maryland (the Maryland Mortgage Fraud Protection Act, or “MMFPA”), Title 14, Subtitle 19 of the Commercial Law Article

(“CL”), Annotated Code of Maryland (the Maryland Credit Services Businesses Act, or “MCSBA”), Title 7, Subtitle 3 of the Real Property Article, Annotated Code of Maryland (the Protection of Homeowners in Foreclosure Act, or “PHIFA”), and Title 11, Subtitles 2 and 3 of the Financial Institutions Article, as well as violating Maryland law prohibiting the commission of acts resulting in fraud and/or theft; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist on August 20, 2012 (the “Summary Order”), after determining that Respondent was in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondent immediately cease and desist from originating, brokering, lending, mitigating, or engaging in any other activities involving Maryland mortgage loans or otherwise pertaining to the mortgage industry in Maryland, as well as engaging in credit services business activities and/or foreclosure consulting 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, foreclosure consulting, or similar services related to residential real property (hereinafter “loan modification services”); and

WHEREAS, the Summary Order notified Respondent of, among other things, the following: that Respondent was entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondent did not request a hearing within fifteen (15) days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondent’s 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 Respondent, issue orders requiring Respondent to pay restitution and other money to consumers, as well as take other actions related to Respondent's business activities; and

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

WHEREAS, Respondent failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in the Summary Order, and as provided for and in compliance with FI § 2-115(a)(2), and has not filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

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

1. Relevant and credible evidence regarding Respondent obtained pursuant to the Deputy Commissioner's investigation, including: Respondent's standard documents for providing mortgage brokering, loan origination, and loan modification services for Maryland consumers; statements by Maryland consumers who had entered into a mortgage brokering, loan origination, and/or loan modification service agreements with Respondent in which Respondent engaged in a scheme involving both fraud and the dishonest and illegal conversion of property (*i.e.*, *stealing*); public records; and the Commissioner's licensing records. More particularly, this evidence supports the following findings:

- a. That Respondent Villatoro engages in business activities in the State of Maryland involving Maryland consumers and/or Maryland residential real property. Respondent is the owner, president, and chief executive officer of Metropolitan Financial

Solutions, an unregistered business entity in the state of Maryland, and the alter ego/fictitious name of Franco B. Villatoro.

b. That Respondent engaged in unlicensed mortgage brokering, mortgage origination, and loan modification activities in perpetration of a mortgage fraud scheme and/or fraud scheme. More specifically, Respondent, individually, and through his alter ego business entity, Metropolitan Financial Solutions, routinely offered, contracted to provide, or otherwise engaged in direct or indirect mortgage lending and/or loan modification services with Maryland consumers. Respondent either directly entered into contracts with Maryland consumers to provide such services, and/or acted as third party vendors/subcontractors directly involved in the mortgage lending and/or loan modification process that involved the following:

i. That, in June 2011, [REDACTED] (“Consumer A”) entered into a loan modification agreement with Respondent. Consumer A paid approximately \$2,060.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be able to obtain a loan modification for Consumer A. Although Respondent collected \$2,060.00 in up-front fees, Respondent never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, to which the Respondent has yet to provide a refund;

ii. That, in September 2011, [REDACTED] (“Consumer B”), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer B paid approximately \$2,300.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be

able to obtain a loan modification for Consumer B. Although Respondent collected \$2,300.00 in up-front fees, Respondent never obtained a loan modification for Consumer B;

iii. That, in September 2011, [REDACTED] (“Consumer C”), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer C paid approximately \$5,200.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be able to obtain a loan modification for Consumer C. Although Respondent collected \$5,200.00 in up-front fees, Respondent never obtained a loan modification for Consumer C;

iv. That, in September 2011, [REDACTED] (“Consumer D”), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer D paid approximately \$3,200.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be able to obtain a loan modification for Consumer D. Although Respondent collected \$3,200.00 in up-front fees, Respondent never obtained a loan modification for Consumer D;

v. That, in July 2011, [REDACTED] (collectively, “Consumers E”), who were in default on their Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumers E paid approximately \$5,000.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be able to obtain a loan modification for Consumers E. Although Respondent collected \$5,000.00 in up-front fees, Respondent never obtained a loan modification for Consumers E;

vi. That, in July 2010, [REDACTED] (“Consumer F”) entered into an agreement with Respondent to assist Consumer F in obtaining a mortgage loan to purchase a piece of real property in the State of Maryland. Respondent informed Consumer F that Consumer F was required to provide a \$4,000.00 deposit/down payment to be applied towards the mortgage transaction. Thereafter, Consumer F delivered \$4,000.00 to Respondent. Respondent did not provide any of the loan origination and/or mortgage brokering services for which he had contracted to provide to Consumer F. Respondent has yet to provide a refund of the purported deposit/down payment to Consumer F;

vii. That, in July 2011, [REDACTED] (“Consumer G”), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer G paid approximately \$3,500.00 in up-front fees to Respondent in exchange for which Respondent represented that he would be able to obtain a loan modification for Consumer G. Although Respondent collected \$3,500.00 in up-front fees, Respondent never obtained a loan modification for Consumer G;

viii. That, in February 2011, [REDACTED] [REDACTED] (collectively, “Consumers H”) entered into an agreement with Respondent to assist Consumers H obtaining a mortgage loan to purchase a piece of real property in the State of Maryland. Respondent informed Consumers H that Consumers H were required to provide a \$7,500.00 deposit/down payment to be applied towards the mortgage transaction. Thereafter, Consumers H delivered \$7,500.00 to Respondent. Respondent did not provide any of the loan origination and/or mortgage brokering services for which he had contracted

to provide to Consumers H. Respondent has yet to provide a refund of the purported deposit/down payment to Consumers H;

ix. That, in February 2011, [REDACTED] (collectively, "Consumers I") entered into an agreement with Respondent to assist Consumers I in obtaining a mortgage loan to purchase a piece of real property in the State of Maryland. Respondent informed Consumers I that Consumers I were required to provide a \$11,500.00 deposit/down payment to be applied towards the mortgage transaction. Thereafter, Consumers I delivered \$11,500.00 to Respondent. Respondent did not provide any of the loan origination and/or mortgage brokering services for which he had contracted to provide to Consumers I. Respondent has yet to provide a refund of the purported deposit/down payment to Consumers I;

x. That Respondent's activities discussed above constitute a theft and/or fraud upon Maryland consumers and that such theft and/or fraud was conducted through a mortgage fraud/loan modification scheme;

xi. That at all times relevant to the alleged conduct described herein, the Respondent has not been duly licensed under either the MMLL or the MMOL;

xii. That by contracting with Maryland residents to perform mortgage brokering and loan origination services, and by taking funds from Maryland consumers' to that end, Respondent acted as an unlicensed mortgage broker and mortgage originator;

xiii. That at all times relevant to the alleged conduct described herein, the Respondent has not been duly licensed under the MCSBA; and

xiv. That with regard to loan modification services, Respondent engaged in willful conduct which was intended to deceive and defraud Maryland consumers, which demonstrated a complete lack of good faith and fair dealings by Respondent, and which breached any duties that Respondent owed to these consumers. Such conduct included, but was not limited to, the following:

(A). Respondent failed to perform the loan modification services for the Maryland consumers that he promised to provide and for which he had collected up-front fees;

(B). Respondent purposely concealed this information when contacted by Maryland consumers who had entered into loan modification services agreements with Respondent by intentionally misrepresenting the progress of those services contracted for, when in fact Respondent had not even attempted to modify their residential mortgage loans;

(C). Respondent refused to return communications from Maryland consumers once they became concerned that Respondent had done nothing to obtain loan modifications on their behalf; and

(D). Finally, Respondent refused to provide refunds to these Maryland consumers when refunds were due for lack of service.

xv. That by providing loan modification services to Maryland consumers who were in default or in foreclosure on their residential mortgage loans, Respondent acted as a foreclosure consultant.

Maryland Mortgage Lender Law

2. The determination that Respondent acted as a mortgage broker without being duly licensed. Respondent's activity included advertising and contracting with Maryland consumers to perform mortgage brokering services. The MMLL defines "mortgage broker" at FI § 11-501(i); this provision provides as follows:

- (i) *Mortgage broker.* – "Mortgage broker" means a person who:
 - (1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and
 - (2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of the indebtedness.

3. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of August 20, 2012, or in this Final Order, has Respondent been duly licensed under Title 11, Subtitle 5 of the Financial Institutions Article. It is a violation of the MMLL to engage in unlicensed mortgage brokering activity. FI § 11-504; *see also* FI § 11-501(j) & (k).

Maryland Mortgage Originator Law

4. The determination that Respondent acted as a mortgage loan originator without being duly licensed. Respondent's activity included contracting with Maryland consumers to perform mortgage loan origination services, and by taking Maryland consumers' loan applications. The MMOL defines "mortgage loan originator" at FI § 11-601(q); this provision provides, in part, as follows:

- (1) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain:
 - (i) Takes a loan application; or
 - (ii) Offers or negotiates terms of a mortgage loan.

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of August 20, 2012, or in this Final Order, has Respondent been duly licensed under Title 11, Subtitle 6 of the Financial Institutions Article. It is a violation of the MMOL to engage in unlicensed mortgage origination activity. FI § 11-602(b); *see also* FI § 11-603(a) (for a "licensee to act as a mortgage loan originator," he/she must be, "acting within the scope of employment with . . . (1) [a] mortgage lender . . . or (2) [a] person who is exempt from licensing as a mortgage lender").

Maryland Mortgage Fraud Protection Act

6. The determination that Respondent committed mortgage fraud. Mortgage fraud is defined under Maryland law as including "[k]nowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a . . . borrower." Md. Code Ann., Real Prop. ("RP") § 7-401(d); *see also* RP § 7-402 (prohibiting mortgage fraud). Mortgage fraud is also a violation of the MMLL and the MMOL. *See* FI § 11-517(a)(3) (permitting the Commissioner to suspend or revoke a mortgage lender license where a licensee "in connection with any mortgage loan or loan application transaction . . . (i) [c]ommits any fraud, (ii) [e]ngages in any illegal or dishonest activities, or (iii) [m]isrepresents or fails to disclose any material facts to anyone entitled to that information."); FI § 11-615(a)(3) (permitting the Commissioner to suspend or revoke a license where a licensee "in connection with any mortgage loan or loan application transaction . . . (i) [c]ommits any fraud, (ii) [e]ngages in any illegal or dishonest activities, or (iii) [m]isrepresents or fails to disclose any material facts to a person entitled to that information."); *see also* FI § 11-517(c) & 11-615(c) (permitting the Commissioner to

enforce the MMLL and MMOL, respectively, and regulations adopted thereunder, by imposing sanctions including an order to: (i) cease and desist, (ii) take affirmative action to correct a violation, and (iii) impose a civil penalty not to exceed \$5000.).

7. Respondent committed mortgage fraud by misstating and misrepresenting to Maryland consumers, described above, that Respondent could and would arrange mortgage loans for Maryland consumers. Respondent omitted material facts that Respondent in many instances took no action to arrange a mortgage loan for these Maryland consumers. Respondent intended that these Maryland consumers rely on these misstatements, misrepresentations, and omissions as evidenced by the fact that Respondent took large sums of money from these Maryland consumers for supposed deposits to be used towards closing on these alleged mortgages, which he then refused to return to the Maryland consumers and instead converted for his own use and benefit.

Maryland Law Prohibiting Acts of Theft and/or Fraud

8. The determination that Respondent committed a dishonest and illegal activity by converting Maryland consumers' funds to his own use by receiving and then refusing to return these funds obtained through fraudulent means. This dishonest and illegal activity in connection with mortgage transactions, which constitutes theft and/or fraud, is a violation of the MMLL and the MMOL. See FI § 11-517(a)(3); FI § 11-517(c); FI § 11-615(a)(3); FI § 11-615(c).

Maryland Credit Services Businesses Act

9. The determination that Respondent provided loan modification services without being duly licensed. The MCSBA defines "*credit services business*" at CL § 14-1901(e); this provision provides 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."

10. 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.

11. In the present matter, Respondent is 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”).

12. According to the Commissioner’s records, at no time relevant to the facts set forth in the Summary Order of August 20, 2012, or in this Final Order, has Respondent been duly licensed under Title 14, Subtitle 19 of the Commercial Law Article.

13. Respondent has engaged in credit services business activities without having the requisite license, and by entering into contractual agreements with Maryland consumers, described above, to provide loan modification services. Respondent’s 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 Respondent to the penalty provisions of the MCSBA.

14. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of Maryland consumers, described above, Respondent 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”).

15. Further, although Respondent made representations that he would obtain beneficial loan modifications for Maryland consumers, the Commissioner’s investigation supports a finding that Respondent never obtained the promised loan modifications for these consumers; as such, Respondent 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”).

16. Respondent further violated the MCSBA through the following: he failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909; he failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and the Respondent failed to provide a written contract to the consumers in the form required under CL § 14-1906.

17. By failing to even attempt to obtain beneficial loan modifications, which Respondent had agreed to provide, Respondent breached his contracts with Maryland consumers, described above, and/or breached the obligations arising under those contracts. 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").

18. As the contracts between Respondent and Maryland consumers, described above, failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all loan modification contracts between Respondent and Maryland consumers, described above, are void and unenforceable as against the public policy of the State of Maryland pursuant to CL § 14-1907(b) ("[a]ny contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State").

19. 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.

20. 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.

21. Respondent 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). Respondent's fraudulent, deceptive, and willful conduct included the following: he failed to perform those loan modification services for Maryland consumers which he promised to provide and for which he had collected up-front fees; Respondent purposely concealed this information when contacted by Maryland consumers who had already entered into loan modification agreements with Respondent; Respondent failed to return communications from Maryland consumers once those consumers became concerned that Respondent had done nothing to obtain a loan modification on their behalf; and Respondent refused to provide refunds to Maryland consumers when such refunds were due for lack of service.

Protection of Homeowners in Foreclosure Act

22. The determination that Respondent engaged in impermissible foreclosure consulting activities. Under PHIFA, (specifically RP § 7-301(i)), the term "*homeowner*" is defined as "the record owner of a residence in default or a residence in foreclosure, or an

individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article.” In turn, pursuant to RP § 7-301(j), the term “*residence in default*” refers to homeowner-occupied Maryland residential real property “on which the mortgage is at least 60 days in default,” while pursuant to RP § 7-301(k), “*residence in foreclosure*” refers to homeowner-occupied Maryland residential real property “against which an order to docket or a petition to foreclose has been filed.”

23. Pursuant to RP § 7-301(c), a “*foreclosure consultant*” is defined as 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.

24. Unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which a person or business entity solicits, offers, sells, provides, or enters into an agreement to provide, residential mortgage loan modification services (a/k/a loss mitigation, foreclosure consulting, and similar services) pertaining to homeowner-occupied Maryland residential real property which is in default or in foreclosure.

25. The Deputy Commissioner's investigation revealed that the business activities of Respondent are subject to PHIFA. By entering into agreements with Maryland homeowners in default or in foreclosure to provide residential mortgage loan modification services pertaining to homeowner-occupied Maryland residential real property, the Respondent acted as "foreclosure consultants" under PHIFA (as that term is defined at RP § 7-301(c)), as he had entered into "foreclosure consulting contracts" with homeowners for the provision of "foreclosure consulting services" (as those terms are defined under RP §§ 7-301(d) and (e), respectively). As such, the Respondent is required to comply with all provisions of PHIFA applicable to foreclosure consultants.

26. Respondent failed to comply with the requirements of PHIFA. First, the Respondent violated RP § 7-307(2) by requiring Maryland consumers to pay up-front fees prior to successfully obtaining a loan modification for those Maryland consumers.

27. The Respondent also violated PHIFA by inducing Maryland consumers to enter into foreclosure consulting agreements which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c), and thus the

Respondent violated RP § 7-307(10) (“[a] foreclosure consultant may not . . . [i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA]).”

28. The Respondent further violated PHIFA when he breached the duty of reasonable care and diligence required under RP § 7-309(b) and BO&P § 17-532(c)(vi), including, but not limited to, the following conduct: he failed to perform those loan modification services for the Maryland consumers described herein which he promised to provide and for which he had collected up-front fees; Respondent purposely concealed this information when contacted by those Maryland consumers who had already entered into loan modification agreements with Respondent by intentionally misrepresenting the progress of the consumers’ loan modifications; and Respondent failed to return telephonic communications from those Maryland consumers once those consumers became concerned that Respondent had done nothing to obtain a loan modification on their behalf.

NOW, THEREFORE, having determined that Respondent waived his right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to FI §§ 2-115(b), 11-517(c) and 11-615(c), CL §§ 14-1902, 14-1907, and 14-1912, and RP §§ 7-319.1 and 7-404.1, it is by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that the Summary Order issued by the Deputy Commissioner against Respondent on August 20, 2012, is entered as a final order of the Commissioner as modified herein, and that Respondent shall permanently **CEASE** and **DESIST** from engaging in any of the following: any and all activities which constitute a mortgage lending business as defined in FI § 11-501(k), including acting as a mortgage broker as defined under FI § 11-

501(i) or as a mortgage lender as defined under FI § 11-501(j); acting as a mortgage originator as defined in FI § 11-601(q); or in any other way acting as a mortgage lender, broker, or originator in the State of Maryland or with Maryland consumers, either by acting directly, or by acting indirectly through other individuals or business entities; and it is further

ORDERED that Respondent shall permanently **CEASE** and **DESIST** from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland consumers, including contracting to provide, or otherwise engaging in loan modification services, foreclosure consulting, or similar services with Maryland consumers; and it is further

ORDERED that, pursuant to FI §§ 11-517(c), 11-615(c) and 2-115(b), and RP §§ 7-319.1 and 7-404.1, and upon careful consideration of (i) the seriousness of the Respondent’s violations; (ii) the lack of good faith of Respondent, (iii) the history and ongoing nature of Respondent’s violations; and (iv) the deleterious effect of Respondent’s violations on the public and on the mortgage and credit services businesses industries, Respondent shall pay to the Commissioner a total civil penalty in the amount of **\$85,000.00**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Civil Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Activity in Violation of FI § 11-504</i>	\$5,000	3 Violations	\$15,000
<i>Committing Mortgage Fraud and Dishonest and Illegal Conversion of Funds in Violation</i>	\$5,000	3 Violations	\$15,000

<i>of FI §11-517(c);</i>			
<i>Unlicensed Activity in Violation of FI § 11-602(b)</i>	\$5,000	3 Violations	\$15,000
<i>Committing Mortgage Fraud and Dishonest and Illegal Conversion of Funds in Violation of FI §11-615(c)</i>	\$5,000	3 Violations	\$15,000
<i>Committing Mortgage Fraud in Violation of RP § 7-402</i>	\$1,000	3 Violations	\$3,000
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	6 Violations	\$6,000
<i>Charging Up-Front Fees in Violation of MCSBA</i>	\$1,000	6 Violations	\$6,000
<i>Charging Up-Front Fees in Violation of PHIFA</i>	\$1,000	5 Violations	\$5,000
<i>Breaching the Duty of Reasonable Care and Diligence in Violation of PHIFA</i>	\$1,000	5 Violations	\$5,000
		TOTAL	\$85,000

and it is further,

ORDERED that Respondent shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **\$85,000.00** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to FI §§ 11-517(c) and 11-615(c), and RP § 7-404.1, Respondent shall pay restitution to each Maryland consumer with whom Respondent entered

into mortgage lending, brokering, and/or originating agreements; and thus Respondent shall pay restitution of \$4,000.00 to Consumer F, \$7,500.00 to Consumers H, and \$11,500.00 Consumers I, with whom Respondent entered into lending, brokering, and/or originating agreements, with the total amount of restitution owed to these Maryland consumers equaling \$23,000.00; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all loan modification and/or credit repair agreements that Respondent entered into with Maryland consumers described herein, are void and unenforceable as contrary to the public policy of the State of Maryland; and it is further


ORDERED that, pursuant to CL §§ 14-1902, 14-1907, and 14-1912, and RP § 7-319.1(c), Respondent shall pay restitution to each Maryland consumer with whom Respondent entered into loan modification agreements; and that as Respondent's activities constituted willful noncompliance with the MCSBA, pursuant to CL § 14-1912(a) Respondent shall pay a monetary award in an amount equal to three times the amount collected from these consumers; and thus Respondent shall pay a monetary award of \$6,180.00 to Consumer A, \$6,900.00 to Consumer B, \$15,600.00 to Consumer C, \$9,600.00 to Consumer D, \$15,000.00 to Consumers E, and \$10,500.00 to Consumer G, with whom Respondents entered into loan modification agreements, with the total amount of restitution owed to these consumers equaling \$63,780.00 (consisting of the \$2,060.00 up-front fee collected from Consumer A, plus the \$2,300.00 up-front fee collected from Consumer B, plus the \$5,200.00 up-front fee collected from Consumer C, plus the \$3,200.00 up-front fee collected from Consumer D, plus the \$5,000.00 up-front fee collected from Consumers E,

plus the \$3,500.00 up-front fee collected from Consumer G, multiplied by three); and it is further

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

ORDERED that Respondent 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.

11/14/12
Date



Mark A. Kaufman
Commissioner of Financial Regulation