

IN THE MATTER OF:

THE LAW OFFICE OF ERIC T. SMITH,  
MODIFY LAW GROUP, A  
PROFESSIONAL LAW CORPORATION,  
a/k/a  
MODIFY LAW GROUP, INC. a/k/a  
MODIFY LAW GROUP

and

ERIC T. SMITH

Respondents.

BEFORE THE MARYLAND  
COMMISSIONER OF  
FINANCIAL REGULATION

Case No.: CFR-FY2010-308

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**FINAL ORDER TO CEASE AND DESIST**

Pursuant to Md. Code Ann., Fin. Inst. Art., § 2-115, and for the reasons stated below, Gordon M. Cooley, the Commissioner of Financial Regulation of the Department of Labor, Licensing and Regulation of the State of Maryland (the “Commissioner”), issues this Final Order to Cease and Desist to The Law Office of Eric T. Smith, Modify Law Group, A Professional Law Corporation, a/k/a Modify Law Group, Inc., a/k/a Modify Law Group, and Eric T. Smith (collectively “Respondents”) for violations of the Maryland Credit Services Businesses Act, Maryland Mortgage Assistance Relief Act and Maryland Protection of Homeowners in Foreclosure Act.

The Summary Order to Cease and Desist (“Summary Order”) issued on May 21, 2015, is herein adopted and incorporated by reference.

**BACKGROUND**

1. As described more fully in the Summary Order, the Office of the Commissioner of Financial Regulation in the Maryland Department of Labor, Licensing and Regulation, (the

“Agency”) undertook an investigation, as a result of a consumer complaint, into the credit services business activities of the Respondents.

2. The Agency’s investigation determined that Respondents The Law Office of Eric T. Smith, and Modify Law Group, A Professional Law Corporation, a/k/a Modify Law Group, Inc., a/k/a Modify Law Group (hereinafter “Modify Law Group”) were law firms operating out of offices located in Irvine, California. Agency’s investigation revealed that Respondents The Law Office of Eric T. Smith and Modify Law Group engaged in business activities with Maryland consumers involving Maryland residential real property, and were not registered to conduct business in the State of Maryland with the State Department of Assessments and Taxation.

3. The Agency’s investigation determined that Respondent Eric T. Smith (“Smith”) was an attorney licensed to practice law in the State of California who engaged in business activities involving Maryland consumers. Smith was disbarred in California in 2010 for acts of misconduct with respect to loan modifications involving thirty-two other consumers nationwide. Smith had a prior record of misconduct for practicing law while suspended from law practice, which was an aggravating circumstance in the 2010 case. Smith is not and has never been licensed to practice law in the State of Maryland. Smith is the owner, director, officer, manager, employee and/or agent of The Law Office of Eric T. Smith and Modify Law Group.

4. The Agency’s investigation revealed that, in September 2009, [REDACTED] (“Consumer A”), who had a Maryland residential mortgage loan and was more than 60 days in default on her residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer A paid \$2,500 in up-front fees to Respondents, in exchange for

which Respondents promised to provide mortgage assistance relief services to Consumer A. The Agency's investigation determined that although Respondents collected \$2,500 in up-front fees, Respondents never obtained a loan modification for Consumer A, nor did they provide her with loan modification services. Further, Respondents ceased communications with Consumer A.

5. The Agency's investigation further revealed that, in July 2009, [REDACTED] ("Consumer B"), paid \$2,995 in up-front fees to Respondents in exchange for which Respondents promised to provide mortgage assistance relief services to Consumer B. The Agency's investigation determined that although Respondents collected \$2,995 in up-front fees, Respondents never obtained a loan modification, nor did they provide any loan modification services for Consumer B. Further, Respondents ceased communications with Consumer B after receiving payment.

6. Furthermore, the Deputy Commissioner's investigation revealed that in his 2010 disbarment case Smith stipulated to performing mortgage assistance relief services to two additional Maryland consumers: [REDACTED] ("Consumer C") and [REDACTED] ("Consumer D"). Smith also stipulated to the fact that he knew these Maryland consumers and their properties were located in jurisdictions in which he was not entitled to practice law.

7. As a result of the Agency's investigation, Deputy Commissioner, Keisha Whitehall Wolfe, found reasonable grounds to believe that the Respondents had engaged in unlicensed credit services business activities with Maryland consumers in violation of Commercial Law Article ("CL"), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"); Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3; and

Real Property Article (“RP”), Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act, hereinafter “PHIFA”), and that action under FI §§ 2-114 and 2-115, and RP § 7-319.1, as described below.

**Violations of the Maryland Credit Services Businesses Act**

8. Respondents’ loan modification activities are subject to the MCSBA, including the MCSBA’s prohibition on engaging in credit services business activities without first being licensed pursuant to CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303. At no time relevant to the facts set forth herein were the Respondents licensed by the Commissioner under the MCSBA.

9. By representing that they could provide loan modification services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents engaged in credit services business activities without the requisite license. Respondents’ unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303.

10. By collecting money from Maryland consumers without first obtaining the requisite license, Respondents violated CL § 14-1902(1).

11. By collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA.

12. Respondents made or used false or misleading representations in their sale of services to Maryland consumers, thereby violating CL § 14-1902(4), when Respondents represented that they would be able to obtain beneficial loan modifications for Maryland homeowners when in fact they never obtained such beneficial modifications for Maryland consumers.

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

14. As the agreements between Respondents and the consumers failed to comply with the specific requirements imposed by the MCSBA, pursuant to CL § 14-1907(b), all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of State of Maryland.

15. By failing to obtain loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

16. The violations of the MCSBA discussed above subject Respondents to the penalty provisions and other sanctions of the MCSBA and FI § 2-115(b).

#### **The Maryland Mortgage Assistance Relief Act**

17. The Maryland Mortgage Assistance Relief Services Act (“Maryland MARS Act,” at RP § 7-501 et seq.) went into effect on July 1, 2013.<sup>1</sup> Pursuant to RP § 7-501(d) of the

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<sup>1</sup> At the time of the violations relating to Consumers A through D, which allegedly occurred between July 2009 and September 2009, the Credit Services Business Act applied to mortgage assistance relief services, which includes, *inter alia*, negotiating a modification of any term of a mortgage or loan on a dwelling. Effective July 1, 2013, the definition of “credit services business” under the Credit Services Business Act was amended to exclude “a mortgage assistance relief service provider regulated under Title 7, Subtitle 5 of the Real Property Article.” See 2013 Md. Laws Ch. 247 and CL § 14-1901(e)(3)(x); see also Md. Code Ann., Real Prop. Art., § 7-501 et seq. (Maryland Mortgage Assistance Relief Services Act). The 2013 amendment further provided:

Maryland MARS Act, “mortgage assistance relief service” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that federal regulation. Further, pursuant to RP § 7-501(e), “mortgage assistance relief service provider” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that regulation, and that definition incorporates the meanings of other terms stated in 12 C.F.R. § 1015.2 to the extent those terms are used to establish the meaning of “mortgage assistance relief service provider.”

18. The loan modification activities of Respondents constitute “mortgage assistance relief services” under 12 C.F.R. § 1015.2, and Respondents satisfy the definition of “mortgage assistance relief service providers” under 12 C.F.R. § 1015.2. As such, pursuant to RP §§ 7-501 and 502, Respondents and their loan modification activities are currently subject to the Maryland MARS Act, including the investigative and enforcement authority of the Commissioner set forth in RP § 7-506.

**Violation of the Maryland Protection of Homeowners in Foreclosure Act**

19. Respondents acted as foreclosure consultants by offering loan modification services to Maryland consumers who were more than 60 days in default on their residential mortgages, and are subject to the investigatory, enforcement, and penalty provisions of Maryland Real Property Article (“RP”), Title 7, Subtitle 3 (the Protection of Homeowners in Foreclosure Act, hereinafter “PHIFA”).

20. Pursuant to CL § 14-111, the Commissioner may enforce the provisions of PHIFA, by issuing an order: (i) requiring a respondent to cease and desist from any violations of the

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(footnote 1 continued) “This Act is not intended, and may not be construed, to have any effect on the authority of the Commissioner of Financial Regulation to regulate mortgage assistance relief service providers under Title 14, Subtitle 19 of the Commercial Law Article, or on any enforcement actions, including litigation, taken under that authority as it existed and based on actions that occurred before the effective date of this Act [July 1, 2013].” 2013 Md. Laws Ch. 247.

PHIFA and any further similar violations; and (ii) requiring a respondent to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation.

21. The violations of the PHIFA discussed above subject Respondents to the penalty provisions and other sanctions of the PHIFA and FI § 2-115(b).

### Summary Order

22. The Deputy Commissioner issued the Summary Order against the Respondents on May 21, 2015, after determining that the Respondents were engaged in credit services business activities; that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents immediately cease and desist from engaging in credit services business activities with Maryland consumers.

23. The Summary Order notified Respondents of, among other things, the following: 1) Respondents were entitled to a hearing before the Commissioner of Financial Regulation to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; 2) the Summary Order would be entered as a final order if the Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and 3) as a result of a hearing or of Respondents' failure to request a hearing the Commissioner may, in his discretion and in addition to taking any other action allowed by law, enter an order making the Summary Order final, issue penalty orders against Respondents, and issue orders requiring Respondents to pay refunds and other monetary awards to Maryland consumers, as well as take other action related to Respondents' business activities.

24. The Summary Order was properly served on and delivered to Respondents via first class mail.

25. Respondents failed to request a hearing in connection with the Summary Order.

**NOW, THEREFORE**, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§ 14-1907 and 14-1911 and FI § 2-115, it is by the Maryland Commissioner of Financial Regulation hereby:

**ORDERED** that the Summary Order is entered as a final order of the Commissioner;

**FURTHER ORDERED** that the Respondents shall permanently **CEASE and DESIST** from engaging in any further credit services business activities with Maryland consumers; that Respondents shall permanently **CEASE and DESIST** from engaging in any further mortgage assistance relief services with Maryland consumers; and that Respondents shall permanently **CEASE and DESIST** from further violation of the Maryland laws identified herein;

**FURTHER ORDERED** that all provisions of this Final Order shall also apply to all named and unnamed partners, employees, and/or agents of Respondents;

**FURTHER ORDERED** that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), Respondents shall pay to the Commissioner a total civil money penalty in the amount of Twelve Thousand Dollars (\$12,000.00) for violations relating to Consumers A and B. That civil money penalty is calculated as follows:



<b>Prohibited Activity and Violation</b>	<b>Penalty per Violation</b>	<b>Number of Violations</b>	<b>Penalty</b>
Unlicensed Activity in Violation of CL §§14-1902(1) and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	2	\$2,000.00
Collecting up-front fees prior to fully and completely performing all services in violation of CL §14-1902 and RP § 7-307(2)	\$1,000.00	2	\$2,000.00
Failing to obtain requisite surety bond(s) in violation of CL §14-1908 and 14-1909	\$1,000.00	2	\$2,000.00
Failing to provide requisite information statements and contractual terms in agreements with consumers in violation of CL §§14-1904, 14-1905 & 14-1906	\$1,000.00	2	\$2,000.00
Making or using false and/or misleading representations in the sale of services to Maryland consumers in violation of CL §14-1902(4)	\$1,000.00	2	\$2,000.00
Collecting fees prior to fully performing loan modification services to consumers more than 60 days in default on their residential mortgages in violation of PHIFA, RP § 7-307(2) and FI 2-115	\$1,000.00	2	\$2,000.00
<b>Total</b>		<b>12</b>	<b>\$12,000.00</b>

**FURTHER ORDERED** that Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of Twelve Thousand Dollars (\$12,000.00) within twenty (20) days from the date of this Final Order;

**FURTHER ORDERED** that, pursuant to FI § 2-115(b), Respondents shall pay Consumer A the monetary award of Two Thousand Five Hundred Dollars (\$2,500.00);

**FURTHER ORDERED** that, pursuant to FI § 2-115(b), Respondents shall pay Consumer B the monetary award of Two Thousand Nine Hundred and Ninety-Five Dollars (\$2,995.00);

**FURTHER ORDERED** that Respondents shall be and hereby are jointly and severally liable for the payment of penalties and monetary awards to Consumers A and B under this Final Order;

**FURTHER ORDERED** that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), Respondent Smith shall pay to the Commissioner a total civil money penalty in the amount of Twelve Thousand Dollars (\$12,000.00) for violations relating to Consumers C and D. That civil money penalty is calculated as follows:

<b>Prohibited Activity and Violation</b>	<b>Penalty per Violation</b>	<b>Number of Violations</b>	<b>Penalty</b>
Unlicensed Activity in Violation of CL §§14-1902(1) and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	2	\$2,000.00
Collecting up-front fees prior to fully and completely performing all services in violation of CL §14-1902 and RP § 7-307(2)	\$1,000.00	2	\$2,000.00
Failing to obtain requisite surety bond(s) in violation of CL §14-1908 and 14-1909	\$1,000.00	2	\$2,000.00
Failing to provide requisite information statements and contractual terms in agreements with consumers in violation of CL §§14-1904, 14-1905 & 14-1906	\$1,000.00	2	\$2,000.00

Making or using false and/or misleading representations in the sale of services to Maryland consumers in violation of CL §14-1902(4)	\$1,000.00	2	\$2,000.00
Collecting fees prior to fully performing loan modification services to consumers more than 60 days in default on their residential mortgages in violation of PHIFA, RP § 7-307(2) and FI 2-115	\$1,000.00	2	\$2,000.00
Total		12	\$12,000.00

**FURTHER ORDERED** that Respondent Smith shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of Twelve Thousand Dollars (\$12,000.00) within twenty (20) days from the date of this Final Order;

**FURTHER ORDERED** that, pursuant to FI § 2-115(b), Respondents shall pay Consumer C the monetary award equal to any amount paid to Respondents by Consumer C in up-front fees for which Respondents promised to provide mortgage assistance relief services and/or loan modification services;

**FURTHER ORDERED** that, pursuant to FI § 2-115(b), Respondents shall pay Consumer D the monetary award equal to any amount paid to Respondents by Consumer D in up-front fees for which Respondents promised to provide mortgage assistance relief services and/or loan modification services;

**FURTHER ORDERED** that Respondent Smith shall be and hereby is solely liable for the payment of penalties and monetary awards to Consumers C and D under this Final Order;

**FURTHER ORDERED** that, because Respondents are in violation of the Maryland Credit Services Business Act, any and all loan modification services agreements made by Respondents with Maryland consumers are void and unenforceable pursuant to CL § 14-1907;

**FURTHER ORDERED** that Respondents shall pay, as described above, the required monetary award to the Consumers A through D herein within thirty (30) days of the date of this Final Order. Respondents shall make payment by mailing to the consumer a check in the amount specified above via First Class Mail, postage prepaid, at the most recent address of the consumer known to the Respondents. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Upon making the required payment, the Respondents shall furnish a copy of the front and back of the cancelled check for the payment to the Commissioner as evidence of having made payment, within sixty (60) days of the date of this Final Order;

**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 N. Calvert Street, Suite 402, Baltimore, MD 21202, Attention: Proceedings Administrator;

**FURTHERED ORDERED** that, notwithstanding the imposition of civil penalties herein, the Commissioner reserves the right to refer any and all of these violations to the State's Attorney for consideration of criminal prosecution pursuant to CL § 14-1915.

Date

1/6/2017

Gordon M. Cooley, Commissioner