

**FINAL ORDER**  
**DATE 2/15/13**

**BEFORE THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION**

**IN THE MATTER OF CHOICE  
NATIONAL LOAN CONSULTING,  
LLC,  
DAVID R. LUND,  
JEFF S. SETLOW,  
JORDAN RUZICKA,  
JEFFRIE B. HARPER, AND  
KARL A. WEBSTER**

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**CASE NO. CFR-FY2011-088**

**OAH NO. DLR-CFR-76A-12-03524**

**RESPONDENTS**

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**OPINION AND FINAL ORDER**

This matter came before the Maryland Commissioner of Financial Regulation (“Commissioner”) for argument on Exceptions filed by Respondents David R. Lund, Karl A. Webster, and Jeff S. Setlow to the Proposed Order of August 10, 2012. On June 20, 2012, Administrative Law Judge Sondra L. Spencer (“ALJ”) filed a Proposed Decision and Recommended Order in which she recommended that the Respondents immediately cease and desist from engaging in any further credit services business activities with Maryland residents, that the Respondents cease and desist from violating certain sections of the Commercial Law Article, that the Respondents pay restitution to a named consumer in the amount of \$14,000, and that the Respondents be assessed a civil statutory penalty in the amount of \$2,000.

On August 10, 2012, the Commissioner issued a Proposed Order that adopted the Proposed Decision and Recommended Order in its entirety. The Respondents were sent a copy of the Proposed Order and notified of their right to file exceptions to it within 20 days of the postmark date of the mailing.

The above-named Respondents filed timely exceptions. The corporate entity and the other two individuals did not file exceptions.

A hearing on the Exceptions was held by Mark A. Kaufman, Maryland Commissioner of Financial Regulation, on November 14, 2012. Although the three Respondents filed additional written legal arguments with the Commissioner's litigation counsel by fax before the scheduled time of the hearing, they did not appear at the hearing. Jedd Bellman, Assistant Attorney General, represented the Commissioner as litigation counsel at the exceptions hearing. A transcript of the hearing before the ALJ was not provided to the Commissioner. The proceedings were electronically recorded.

### **EVIDENCE**

On behalf of the Commissioner, the exhibits from the Office of Administrative Hearings' file were entered into evidence.

### **DISCUSSION**

#### I. Background.

On December 1, 2011, the Deputy Commissioner of Financial Regulation issued a Summary Order to Cease and Desist to Choice National Loan Consulting, LLC f/k/a Choice Loan Consulting, LLC<sup>1</sup>; David R. Lund; Jeff S. Setlow; Jordan Ruzicka; Jeff Harper; and Karl Webster. (CFR Exhibit 3).<sup>2</sup> The Order was based on a transaction in which a Maryland consumer paid \$3,500 in upfront fees to the Respondents in response to their representations that they would be able to obtain a loan modification for the consumer. They did not do so, and refused to refund the monies paid when requested to

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<sup>1</sup> References to Choice National Loan Consulting, LLC, or Choice shall include Choice Loan Consulting, LLC, the name of the LLC before it was changed to Choice National Loan Consulting, LLC on March 1, 2009.

do so by the consumer. None of the Respondents held a license pursuant to the Maryland Credit Services Businesses Act at the time of the transaction.

The Summary Order was served on the corporate Respondent and the five individual Respondents. Three Respondents (David Lund, Jeff Setlow, and Karl Webster) filed requests for a hearing. The remaining Respondents did not respond, and for that reason, the Commissioner finds that the Order to Cease and Desist will be final as to the company and those two individuals.

The hearing requests were identical and noted three issues – jurisdiction, individual liability, and the statute of limitations. A hearing was scheduled to be held before the Office of Administrative Hearings on March 22, 2012. Three days prior to the hearing the three Respondents filed Motions to Dismiss and Vacate the Summary Cease and Desist Order based on lack of personal jurisdiction. On March 22<sup>nd</sup>, the Respondents asked that they be permitted to participate in the hearing by telephone. That request was granted by the judge, and the Respondents presented arguments on their Motions. The judge did not rule on the Motions prior to hearing substantive testimony, and the Respondents chose to disconnect from the call after oral arguments on the Motions, and did not participate for the remainder of the hearing.

The judge subsequently issued a Proposed Decision and Recommended Order, which was adopted by the Commissioner as a Proposed Order. This Order was served on the three Respondents, and they filed joint written exceptions that raised the same issues as in their Motions to Dismiss, as well as arguing that the evidence as outlined by the

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<sup>2</sup> “CFR Exhibit” refers to the exhibits admitted into evidence at the hearing before the Administrative Law Judge.

judge in her Findings of Fact did not support imposing personal liability against them, and that the evidence did not support a willful violation of the law.

## II. Legal Analysis.

### A. Statute of Limitations.

The Respondents contend that the applicable limitations period for the charges brought against them is two years, based on CL §14-1913 of the Credit Services Businesses Act. Subsection (a) of that section provides:

An action to enforce any liability created under this subtitle shall be brought within 2 years from the date the violation at issue occurred.

That section directly follows §14-1912, which sets forth the liability of a credit services business to a consumer under certain circumstances. Plain language interpretation doctrines dictate that the 2-year statute applies to a consumer's action to enforce liability, and not to the State's regulatory authority. The State is not given the authority to "enforce liability" in the Act. That is left to the consumer in an action brought before the court.<sup>3</sup> Instead, the State's role, as set forth in §14-1911, is to process complaints and hold hearings in compliance with Title 10, Subtitle 2 of the State Government Article. There is no statute of limitations provided for in that section, and therefore the instant administrative enforcement action was timely filed and should not be dismissed.

### B. Personal Jurisdiction over the Respondents.

The Respondents first argue that the judge should have decided the threshold question of jurisdiction before proceeding to a hearing on the merits. This argument fails in the face of the Departmental hearing regulation that states, "A motion to dismiss or any

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<sup>3</sup> Subparagraph (a)(4) of §14-1912 specifically refers to the role of the court in the enforcement of liability: the credit services business is liable to the consumer in an amount equal to the sum of four items, including

other dispositive motion may not be granted by the ALJ without the concurrence of all parties.” COMAR 09.01.03.05B.

They then contend that the Deputy Commissioner has no personal jurisdiction over them. The Maryland Long-Arm Statute, §6-103 of the Courts and Judicial Proceedings Article, permits a court to exercise personal jurisdiction over a nonresident person, who directly or by an agent, engages in the following activity – “contracts to supply goods, food, services, or manufactured products in the State.” §6-103(b)(2). The Maryland Court of Appeals has interpreted this provision as authorizing the exercise of personal jurisdiction to the fullest extent allowable under the Due Process Clause of the United States Constitution. See *Geelhoed v. Jensen*, 277 Md. 220, 224 (1976); *Mackey v. Compass Mktg.*, 391 Md. 117, 129-130 (2006).

The evidence in this case shows that an agent of Choice National Loan Consulting (“Choice”) contacted a Maryland resident and offered the services of Choice to negotiate with his mortgage lender for the purpose of obtaining a loan modification. The company then sent the consumer a consulting agreement and a loan modification package to complete, sign, and return. He signed the agreement on November 28, 2008 and sent the required upfront fee of \$3,500. (He also paid the additional amount of \$600 to Choice in exchange for their negotiation of a reduced interest rate on his personal credit card.) Another document that he was required to sign was entitled “Authorization to Represent”, so that Choice could deal directly with his lender. All three Respondents were among those listed as “Authorized agent(s) and/or representative(s) of Choice Loan Consulting”, that is, individuals authorized to act on his behalf in reference to the loan, on

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“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.”

that document. The consumer also signed a form document titled "Guarantee", which provided that he would receive a refund of the entire fee, except \$1,000, if Choice did not "arrange some relief of your current mortgage burden." (Findings of Fact 5-10, CFR Exhibit 5)

The record in the case shows that Respondent David Lund was added as a manager/owner of the company in January 2009, Respondent Jeff Setlow was added as a manager/owner in November 2008, and Respondent Karl Webster was an original manager/owner of the company. (CFR Exhibit 4). All claim to have left the company in the summer of 2009. What is clear from the Authorization to Represent document is that all three were available to assist the consumer at the time he entered into the agreement with the company in November 2008, and he specifically authorized each of them to act on his behalf in negotiations with his lender.

In their Exceptions, the Respondents rely on precedent in tort and contract law for the proposition that there can be no personal jurisdiction over them. However, those precedents involve different considerations from those arising in a matter premised on the State's interest in protecting consumers through regulatory enforcement laws. These laws are intended to protect Maryland consumers from being preyed upon by unscrupulous companies, which may be operating within or without the State.

In this case, the LLC, of which the Respondents were managers, representatives, or both, solicited a Maryland consumer for the purpose of selling him loan modification services. The LLC contracted to provide him those services and collected an upfront fee from him. The Respondents were specifically named as individuals authorized to contact his lender to negotiate the loan modification. This activity clearly falls under the

provision of §6-103 of the State Government Article governing persons who contract “to supply goods, food, services, or manufactured products” in the State.

Having satisfied the requirements of the State Long-Arm Statute, the Commissioner must consider the constitutional issue of whether there were sufficient “minimum contacts” between the Respondents and the State such that the exercise of personal jurisdiction over them “does not offend “traditional notions of fair play and substantial justice.”” *Int’l. Shoe Co. v. Washington*, 326, U.S.310, 316 (1945). The analysis of the contacts must be viewed in light of the regulatory authority of the Commissioner over corporate representatives, rather in than the civil context that Respondents have relied on in their arguments. An officer, director, employee, or agent of the company may be subject to the regulatory enforcement provisions of the Credit Services Businesses Act if he or she directly participated in the illicit activity of his or her company. Thus, if the Commissioner finds this participation, and the requirements of the Long-Arm Statute are met, it is clearly fair for the Maryland regulator to proceed against the out-of-state persons who have harmed a Maryland consumer.

Under Maryland licensing law offering to assist a consumer by contacting his lender to arrange a loan modification requires a Credit Services Businesses License. The LLC at no time applied for that license, and it did not register with the Maryland Department of Assessments and Taxation so that it could even do any business in the State. The Respondents, as company managers and representatives, were acting illegally in contracting to supply the consulting services to a Maryland consumer, even if they had not defrauded the consumer. The evidence found by the ALJ established that each of the Respondents was a control person of this unlicensed company, and was a direct

participant with regard to the illicit conduct described in the Summary Order as they were each listed in the signed agreement as an authorized representative of this consumer in dealing with his lender. Therefore, the interests of “fair play” are not violated by the Commissioner bringing a regulatory action against them based on their dealings with this consumer. To hold that the Commissioner cannot bring actions against individuals under circumstances such as these would severely restrict him in his duty to protect Maryland consumers from out-of-state persons preying on them.

### C. Personal Liability of the Respondents.

In enforcement actions brought under the Maryland Consumer Protection law, the Court of Appeals has held that, in order to hold individuals jointly and severally liable, the State must show that the individual:

1. participated directly in or had the authority to control the deceptions or misrepresentations; and
2. had knowledge of the practices.

*Consumer Protection Division v. Morgan*, 387 Md. 125, 176 (2005). The Court cited with approval the Federal Trade Commission standard set in *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 573 – 574 (1989), where the Court held that the agency must show that the individual:

1. directly participated in the practices or acts or had authority to control them (which could include holding the position of a corporate officer); and
2. had some knowledge of the practices.

A similar inquiry must be made in this case to determine whether the Respondents had authority to control the acts complained of and whether they had knowledge of the

practices. Their ability to control the practices can be inferred from their positions as managers of the company. They could have monitored the sales force to insure that they were not contacting consumers in states where the company was not licensed, and they could have had a system in place to insure that the agreements with consumers were carried out as far as contacts with lenders to effectuate loan modifications. The experience of this consumer certainly indicates that they did not use their positions to see that the company was properly run.

The second part of the test is more problematic. Because the Respondents did not participate in the hearing, the only evidence of their role is the testimony of the consumer and the documents admitted in the proceeding before the ALJ. Based on this evidence, the Commissioner cannot conclude that they had knowledge of the practices that the individuals in contact with this consumer had engaged in. The consumer had no dealings with any of them, and there is no evidence that they knew that this contract had been entered into. While it is easy to speculate that the individuals managing the company knew that their sales force was scouring the country for customers, regardless of the local laws governing the provision of loan modification services, the record does not show that they knew about this Maryland consumer. It is also easy to speculate that they knew that services were not being provided as promised, whether due to the volume of contracts, or from inattentive employees, but again the record does not show their individual knowledge of these practices.

For these reasons, the Commissioner must conclude that the charges against these three Respondents as individuals must be dismissed. The charges and the resulting sanctions against the company and the remaining named Respondents are affirmed.

## ORDER

The Commissioner of Financial Regulation orders:

That Respondents David R. Lund, Karl Webster, and Jeff Setlow did not violate Section 14-1903(b) of the Commercial Law Article and Section 11-302(b) of the Financial Institutions Article of the Annotated Code of Maryland; and further

That Respondents David R. Lund, Karl Webster, and Jeff Setlow did not violate Sections 14-1902(1), 14-1902(4), 14-1902(6), 14-1904(a), 14-1905, 14-1906, 14-1907, 14-1908, and 14-1909 of the Commercial Law Article; and further

That Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka violated Section 14-1903(b) of the Commercial Law Article and Section 11-302(b) of the Financial Institutions Article of the Annotated Code of Maryland; and further

That Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka violated Sections 14-1902(1), 14-1902(4), 14-1902(6), 14-1904(a), 14-1905, 14-1906, 14-1907, 14-1908, and 14-1909 of the Commercial Law Article; and further

That Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka each be assessed a civil statutory penalty in the amount of \$2,000 under Section 2-115(b)(3) of the Financial Institutions Article of the Annotated Code of Maryland; and further

That the agreement between the Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka and Roy Alexander Wallace is void and unenforceable as contrary to the public policy of the State of Maryland pursuant to

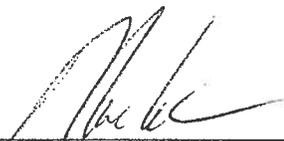
Section 14-1907 of the Commercial Law Article of the Annotated Code of Maryland; and further

That the Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka pay restitution to **[Redacted]** in treble the amount of his damages for a total of \$14,000 pursuant to Section 14-1912(a) of the Commercial Law Article of the Annotated Code of Maryland, and further

That pursuant to Section 2-115(b)(1) of the Financial Institutions Article of the Annotated Code of Maryland the Respondents Choice National Loan Consulting, LLC, Jeff Harper, and Jordan Ruzicka shall permanently Cease and Desist from engaging in any further credit services business activities with Maryland residents and shall permanently Cease and Desist from violating the aforementioned statutory provisions of the Annotated Code of Maryland; and further

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

1/8/13  
Date

  
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Mark A. Kaufman  
Commissioner