

**IN THE MATTER OF:  
HOME GUARDIAN SOLUTIONS d/b/a  
HOME GUARDIAN MANAGEMENT  
SOLUTIONS, LLC.**

**And**

**MARK NAGY ATALLA,  
  
Respondents.**

**BEFORE THE MARYLAND  
COMMISSIONER OF  
FINANCIAL REGULATION**

**Case No. CFR-FY2013-078**

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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, issues this Final Order to Cease and Desist to Home Guardian Solutions d/b/a Home Guardian Management Solutions, LLC, and Mark Nagy Atalla for violations of the Maryland Credit Services Business Act and the Protection of Homeowners in Foreclosure Act.

The Summary Order to Cease and Desist (“Summary Order”) issued on November 10, 2014 is herein adopted and incorporated by reference.

**Background**

1. As described more fully in the Summary Order, the Deputy Commissioner of the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the “Agency”) undertook an investigation, as a result of a consumer complaint, into the credit services business activities of Home Guardian Solutions d/b/a Home Guardian Management Solutions, LLC, and Mark Nagy Atalla (collectively “Respondents”).

2. The Deputy Commissioner’s investigation determined that Respondent Home Guardian Solutions is a purported business entity offering loan modification services and operating out of offices in the state of California. Further, the Deputy Commissioner’s investigation revealed that Respondent Home Guardian Solutions engaged in business activities with Maryland consumers

involving Maryland residential real property, although it has not registered to do business in the State of Maryland with the State Department of Assessments and Taxation (“SDAT”).

3. The Deputy Commissioner’s investigation determined that Respondent Mark Nagy Atalla is an owner, director, officer, manager, employee and/or agent of Home Guardian Solutions.

4. The Deputy Commissioner’s investigation revealed that in August 2011, [REDACTED] (“Consumer A”), who was more than sixty (60) days behind on his residential mortgage, entered into a loan modification agreement with Respondents. Consumer A paid \$1,945 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A. Although Respondents collected \$1,945 in up-front fees, Respondents never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, which the Respondents have yet to provide.

5. As a result of the Agency’s investigation, the Deputy Commissioner found reasonable grounds to believe that Respondents violated various provisions of the Annotated Code of Maryland, including 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”).

Violations of the Maryland Credit Services Businesses Act

6. Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA 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 in the Summary Order have Respondents been licensed by the Commissioner under the MCSBA.

7. Respondents represented 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 having the requisite license. Respondents' unlicensed loan modification activities constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, and subject Respondents to the penalty provisions of the MCSBA.

8. 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. 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.

9. Respondents made or used false or misleading representations in their sale of services to Maryland consumers, and thus violated CL § 14-1902(4). For example, Respondents represented that they would be able to stop a scheduled foreclosure auction and obtain beneficial loan modifications for Maryland homeowners when in fact Respondents were not realistically able to halt foreclosure auctions and never obtained such beneficial modifications for Maryland consumers.

10. 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.

11. By failing to obtain beneficial loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents had 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.

Violations of the Homeowners in Foreclosure Act

12. The Deputy Commissioner's investigation revealed that the business activities of Respondents 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, Respondents acted as "foreclosure consultants" under PHIFA (as defined at RP § 7-301(c)), as they had entered into "foreclosure consulting contracts" with homeowners for the provision of "foreclosure consulting services" (as defined under RP §§ 7-301(d) and (e), respectively). As such, Respondents are required to comply with all provisions of PHIFA applicable to foreclosure consultants.

13. The Deputy Commissioner's investigation revealed that Respondents failed to comply with the requirements of PHIFA. First, Respondents violated RP § 7-307(2) by requiring Maryland homeowners to pay up-front fees prior to successfully obtaining a loan modification for the Maryland consumers.

14. Respondents also violated PHIFA by inducing Maryland homeowners 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 Respondents 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])."

15. Respondents violated PHIFA when they breached the duty of reasonable care and diligence required under RP § 7-309(b) and Md. Code Ann., Bus. Occ. & Prof. Article (“BO&P”), § 17-532(c)(vi), including, but not limited to, the following conduct: Respondents failed to perform those loan modification and foreclosure prevention services for Maryland consumers which they promised to provide and for which they had collected up-front fees.

16. Pursuant to RP § 7-319.1, the Commissioner may enforce the provisions of PHIFA, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of PHIFA and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the Commissioner may impose a civil penalty not exceeding \$1,000 for each violation of PHIFA, as well as \$5,000 for each subsequent violation.

The Maryland Mortgage Assistance Relief Services Act Now Applies.

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 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),

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<sup>1</sup> At the time of the alleged violation, in August 2011, 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: “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.

“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 the 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 7-502, 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.

#### The Summary Order

19. The Deputy Commissioner issued the Summary Order against the Respondents on November 10, 2014, after determining that the Respondents were engaged in credit services business activities, including loan modification services, including mortgage assistance relief services, as defined by Maryland law; 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 and/or mortgage assistance relief services with Maryland consumers related to residential real property.

20. The Summary Order notified Respondents of, among other things, the following: 1) Respondents were entitled to 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.

21. The Summary Order was mailed to Respondents via first class mail and Certified U.S. Mail at the last known business addresses. 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, 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 Seven Thousand Dollars (\$7,000). That civil money penalty is calculated as follows:

Prohibited Activity and Violation	Penalty per Violation	Number of Violations	Penalty
Unlicensed Activity in Violation of CL §§14-1902(1) and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	1	\$1,000.00
Violation of CL §14-1902 and RP § 7-307(2) (collecting up-front fees prior to fully and completely performing all services)	\$1,000.00	1	\$1,000.00
Violation of CL §14-1908 and 14-1909 (failing to obtain requisite surety bonds)	\$1,000.00	1	\$1,000.00
Violations of CL §§14-1904, 14-1905 (failing to provide requisite information statements)	\$1,000.00	1	\$1,000.00
Violation of CL §14-1906 and RP §§ 7-305, and 7-306(a)(6), (b), and (c), and 7-307(10) (failing to include all requisite contractual terms in agreements, including notices of rescission, and thereby inducing homeowner to enter into foreclosure consulting agreements)	\$1,000.00	1	\$1,000.00
Violation of CL §14-1907 (breached contract with consumer by not obtaining loan modification)	\$1,000.00	1	\$1,000.00
Violation of RP § 7-309(b) and BO&P § 17-532(c)(vi) (breach of duty of reasonable care and diligence)	\$1,000.00	1	\$1,000.00
Total		7	\$7,000.00

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 Seven Thousand Dollars (\$7,000.00) within twenty (20) days from the date of 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, pursuant to FI § 2-115(b), Respondents shall pay Consumer A the monetary award of One Thousand Nine Hundred and Forty-Five dollars (\$1,945.00);

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

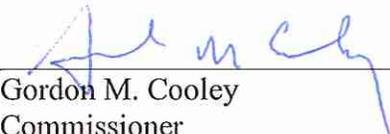
FURTHER ORDERED that Respondents shall pay the required monetary awarded to the consumers herein within thirty (30) days of the date of this Final Order. Respondents shall make payment by mailing to the consumer a check in the amount specified above via First Class Mail, postage prepaid, at the most 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.

11/22/2016  
Date

  
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Gordon M. Cooley  
Commissioner