

FINAL ORDER

DATE 7/16/19

IN THE MATTER OF:

PAULA RUSSELL MEDLEY

Respondent.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

OAH No.: DLR-CFR-76-18-30106

CFR No.: FY2016-0020

PROPOSED FINAL ORDER

The Proposed Decision of the Administrative Law Judge (“ALJ”) issued on May 3, 2019 (“Proposed Decision”), in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation (“Commissioner”) this 19 of June, 2019

ORDERED:

- A. That the Findings of Fact in the Proposed Decision be, and hereby are, **ADOPTED**;
- B. That the Conclusions of Law be, and hereby are, **ADOPTED**.
- C. Respondent shall immediately **CEASE AND DESIST** from all engaging in any further credit services business activities in the State of Maryland;
- D. The civil penalties in the Proposed Decision be, and hereby are **ADOPTED** after having considered the factors under Md. Code Ann., Fin. Inst. §2-115(c), and determined that the violation are serious; Respondents’ conduct showed the absence of good faith; and Respondents’ actions had deleterious effect on the public and the industry. The Commissioner does not have any information regarding Respondents’ history of previous violations or assets.

- E. Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$11,000.00, in penalties, within twenty (20) days from the date of this Proposed Final Order;
- F. The restitution in the Proposed Decision be, and hereby is **ADOPTED**.
- G. Respondent shall pay restitution to Consumer A in the amount of \$3,500 by mailing a check via First Class Mail, postage prepaid, to the address stated in Exhibit "A", attached hereto. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making the payment. Upon making the required payment, 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 **ORDER**;
- H. Respondent 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, Maryland 21202, Attention: Proceedings Administrator; and
- I. The records and publications of the Commissioner shall reflect this decision.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Pursuant to COMAR 09.01.03.09A(1), Respondent has twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Proposed Final Order shall be deemed to be the final decision of the Commissioner, and subject to judicial review pursuant to Md. Code Ann., State Gov't § 10-222.

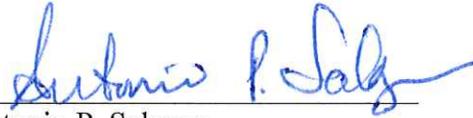
Respondent may have the right to file a petition for judicial review; however filing of a petition for judicial review does not automatically stay the enforcement of this Proposed Final Order.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

Date: _____

6/19/19

By: _____



Antonio P. Salazar
Commissioner of Financial Regulation

EXHIBIT "A"

RESTITUTION

Consumer A



COMMISSIONER OF FINANCIAL
REGULATION

v.

PAULA RUSSELL MEDLEY,
RESPONDENT

* BEFORE NANCY E. PAIGE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: DLR-CFR-76-18-30106
* CFR No.: CFR-FY2016-0020

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 7, 2018, the Deputy Commissioner of Financial Regulation (Commissioner) issued a Statement of Charges and Order for Hearing against Paula Russell Medley (Respondent), alleging she violated Commercial Law Article (CL), Title 14, Subtitle 19, the Maryland Credit Services Businesses Act (MCSBA),¹ and Financial Institutions Article (FI),² Title 11, Subtitles 2 and 3, respectively, by engaging in unlicensed credit services business activities with Maryland consumers without fully complying with these laws. The Commissioner further asserts in the Charge Letter it may enforce these provisions by issuing an order requiring the Respondent to cease and desist from these violations and further similar violations, to take affirmative action to correct the violations, and to impose a civil monetary

¹ Unless otherwise noted, all references to the Commercial Law article are to the 2013 Replacement Volume.

² Unless otherwise noted, all references to the Financial Institutions article are to the 2011 Replacement Volume.

penalty up to the maximum amount of \$1,000.00 for the first violation and up to the maximum amount of \$5,000.00 for each subsequent violation.

On March 20, 2019, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(a) (2018). Sophie Asike, Assistant Attorney General, represented the Commissioner. Neither the Respondent nor anyone on her behalf appeared for the hearing.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent engage in credit services business activities, as defined by CL section 14-1901(e)(Supp. 2018)?
2. If so, did the Respondent engage in credit services business activities without first obtaining a license from the Commissioner in violation of CL section 14-1903(b) and FI section 11-302(b)?
3. If the Respondent engaged in a service described in CL section 14-1901(e)(1), did she fail to state her license number in violation of CL section 14-1903.1?
4. Did the Respondent, while engaged in credit services business activities, receive money or other valuable consideration in violation of CL section 14-1902(1)?
5. Did the Respondent, while engaged in credit services business activities, collect up-front fees prior to fully and completely performing all services in violation of CL section 14-1902(6)?

6. Did Respondent engage in a credit services business without first obtaining a surety bond from a surety company authorized to do business in this State in violation of CL sections 14-1908 and 14-1909?

7. Did the Respondent fail to provide Consumer A with the required information statements in connection with the sale of services of a credit services business in violation of CL sections 14-1904(a) and 14-1905?

8. Did the Respondent violate CL section 14-1906 by failing to enter into a written contract with Consumer A, including required contractual terms?

9. If Respondent violated any of the sections cited above, what is/are the appropriate sanction(s)?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following numbered exhibits the Commissioner offered:

1. December 12, 2018 Notices of Hearing
2. October 9, 2018 MAGLOCLEN³ Inquiry Request
3. October 10, 2018 memorandum to file from Zenaida Velez-Dorsey
4. December 7, 2018 Delegation to the OAH with attached Statement of Charges and Order for Hearing
5. October 10, 2015 email from [REDACTED] to Respondent with attachments
6. April 5, 2017 Affidavit of [REDACTED]
7. November 23, 2015 letter from Marie Lott Pharaoh, Esquire, to the Commissioner
8. March 29, 2017 letter from Betty McBride, Commissioner, to Zenaida Velez-Dorsey

³ Middle Atlantic Great Lakes Organized Crime Law Enforcement Network

9. June 8, 2016 Report of Investigation, Enforcement Unit, Commissioner

The Respondent was not present to offer evidence.

Testimony

The Commissioner presented the following witnesses:

- Zenaida Velez-Dorsey, Financial Fraud Examiner for the Commissioner
- 

The Respondent was not present to offer evidence.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence as alleged in the Commissioner's charges:

1. By email on August 27, 2015, the Respondent emailed promotional materials to Consumer A purporting to show that she had assisted another individual whose credit scores were "low 416[;] business days later she was in the mid 700s." CFR #5.
2. In September 2015, Consumer A gave the Respondent \$3,500.00, in two cash installments, to repair his credit rating. On September 3, 2015, Consumer A gave the Respondent \$2,000.00 and on September 15, 2015, he gave her an additional \$1,000.00.
3. There was no written agreement between the parties.
4. The Respondent did not inform Consumer A of his rights under the MCSBA.
5. The Respondent was not licensed and did not secure a surety bond.
6. The Respondent did not perform any work on Consumer A's behalf and has not refunded his money.

DISCUSSION

The CFR bears the burdens of production and persuasion.

The Commissioner bears the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondent violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.01.02.16A; *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

The Respondent failed to appear after proper notice to last known address.

Because neither the Respondent nor anyone on her behalf attended the hearing, I first address whether she received proper notice of the hearing. The OAH issued hearing notices to the Respondent on December 12, 2018 by first-class mail as well as certified mail to the following addresses:

13401 Vandiver Court
Upper Marlboro, MD 20774

6138 Surrey Square Lane, Apt T-4
District Heights, MD 20747

Ms. Velez-Dorsey testified that the addresses were secured by inquiry to MAGLOCLLEN, an entity used by law enforcement to search for such information. The response from MACLOCLLEN, dated October 9, 2019, included the above addresses. Both notices to the Vandiver Court address were returned by the United States Postal Service, "Not deliverable as addressed; Unable to forward." The certified mail to the Surrey Square Lane address was returned, "Unclaimed; Unable to forward." The first class notice to the Surrey Square Lane address was not returned. I am satisfied that notice was reasonably calculated, under the circumstances, to apprise the Respondent of the pendency of this action and afford her an

opportunity to present her objections. *State Board of Nursing v. Sesay*, 224 Md. 432, 446-448 (2015); quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Therefore, I proceeded with the hearing in the Respondent's absence.

The Evidence

Consumer A testified that his pastor, as well as a mutual friend, referred him to the Respondent to help him repair his credit. The friend gave him the Respondent's telephone number and he called her. She explained how she would get his credit rating, which was then 520, to 700. The Respondent sent Consumer A information purporting to show her success in helping another client repair her credit rating.

The Respondent and Consumer A agreed on the telephone that he would pay her \$3,500.00 for her help. They met in person at a Bojangles restaurant in New Carrollton and he gave the Respondent \$2,500.00. She did not give him a receipt, but did subsequently send a receipt by telephone for \$1,000.00 when he paid the balance. Consumer A contacted the Respondent again after thirty days because nothing had been done. She told him to wait, but after a few months, she stopped accepting phone calls and he contacted a lawyer. The Respondent has not returned the money Consumer A paid her.

Zenaida Velez-Dorsey, the Financial Fraud Examiner, described her investigation, including interviews of Consumer A and Consumer A's pastor. The pastor said that he knew the Respondent, but she was not a friend. He said the Respondent told him that she used to work in a bank but now was on her own helping people with their credit. Ms. Velez-Dorsey testified that she checked the data base used by federal and state police and learned the Respondent's then-current address and date of birth, and also that the Respondent used the names Paula Russell

Medley and Paula Medley. She then learned from Judiciary Case Search that the Respondent had served thirty-seven months in prison for bank fraud. Ms. Velez-Dorsey was unable to find any record that the Respondent had ever been licensed to perform credit services business activity (or in any other capacity) in Maryland.

As described above, Ms. Velez Dorsey then secured updated information about the Respondent's addresses from MACLOCLLEN.

Applicable Law

A credit services business is defined 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.

CL § 14-1901(e)(1) (Supp. 2018).

The duties of a credit services business include the following:

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) Receive 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;

(4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;

...

(6) Charge 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;

CL § 14-1902.

A person who offers, provides or performs credit services is required to be licensed and is required to state her license number in each advertisement of the credit services business. CL §§ 14-1903(b) and 14-1903-1; FI 11-302(b). A person engaged in a credit services business is also required to obtain a surety bond issued by a Maryland surety company. CL §§ 14-1908 and 14-1909.

Before executing a contract or agreement with a consumer, or the receipt of any money, a person engaged in a credit services business is required to provide a written information statement including the following information:

- A complete and detailed description of the services to be performed and the total amount the consumer will have to pay for the services
- The consumer's right to file a complaint with the Commissioner, including the address where such complaints should be filed
- A statement that a bond exists and the consumer's right to proceed against the bond under specified circumstances.

CL §§ 14-1904 and 14-1905.

"Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer" and shall include notice of the right to cancel within three business days. CL § 14-1906. The contract must be accompanied by a "Notice of Cancellation" form prescribed by the statute. *Id.* Any breach of a contract by a credit services business is a violation of the statute. CL § 14-1907.

Analysis

It is clear from the testimony of Consumer A, as well as from Ms. Velez-Dorsey's report on her conversation with Consumer A's pastor, that the Respondent was engaged in providing advice or assistance with repair of credit scores. It is, therefore, clear that she is within the definition of a "credit services business" and, as such, is subject to the statutory duties and responsibilities of such businesses, including the duty to secure a license; enter into a written contract before engaging in the rendering of such services, including the right to cancel and the right to file a complaint; disclose her license number on such a contract; and secure a surety bond. The Respondent failed to fulfill any of these duties.

It is also clear that the Respondent accepted a fee before performing any services, in violation of the MCSBA, and that she misrepresented to Consumer A that she would assist him to repair his credit, but did nothing on his behalf.

Available Penalties

When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

Md. Code Ann., Fin. Inst. § 2-115(b)(Supp. 2018). The Commissioner may also order restitution to an aggrieved consumer. CL § 14-1911(f)(1).

A financial penalty is based on consideration of six factors:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and the industry involved;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

Md. Code Ann., Fin. Inst. § 2-115(c)(Supp. 2018).

The evidence supports the conclusion of the CFR that the Respondent has committed eleven violations of the MCSBA and the FI, as follows:

CL § 14-1902(1): Receiving money without being licensed

CL § 14-1902(4): Making false statements

CL § 14-1902(6): Receiving money before performing any services

CL § 14-1903(b) and FI § 11-302(b): Failing to secure a license before offering credit services⁴

CL § 14-1903.1: Failing to include a license number in advertisements (promotional materials)

CL § 14-1904: Failing to provide a required Information Statement

CL § 14-1905: Failing to provide a written statement of services to be performed and total cost

CL § 14-1906: Failing to enter into a written contract, including required provisions

CL § 14-1907: Breaching oral contract

CL §§ 14-1908 and 1909: Failing to secure a surety bond

FI §§ 11-303 and 11-302: Failing to comply with licensing provisions

⁴ The license requirement of both statutes is identical. Therefore, while failure to secure a license violates both statutes, it is the same violation, not two separate violations.

The Commissioner identified twelve violations, including violation of FI § 11-203.1(a) (mistakenly cited as FI § 11-204(b)), which prohibits an unlicensed person from using any advantage of the Maryland Consumer Loan Law. There is no evidence that the Respondent attempted to use any such advantage or to engage in any of the activities covered by the Consumer Loan Law, other than the licensing provisions. The specific duties of a licensee are set forth in FI § 11-203.1(b). Although the Respondent has not complied with these duties, this section is not quoted or cited in the Statement of Charges. I therefore find that the Commissioner may not impose a separate penalty for these violations. Based upon the foregoing analysis, I find that the Respondent has committed eleven violations of the MCSBA and the FI article.

There can be no doubt of the seriousness of the violations. They have cost Consumer A \$3,500.00, which is a substantial loss to him, and he has received no help with his credit. In view of the fact that the Respondent took Consumer A's money and did nothing for him, there can be no finding of good faith, and the Respondent's prior history of bank fraud suggests a pattern of illegal behavior, to the detriment of the public. While there was no evidence of the Respondent's assets, I find that the evidence justifies the maximum penalty of \$1,000.00 for each violation and I will recommend a penalty of \$11,000.00.

I will also recommend that the Commissioner order the Respondent to pay restitution to Consumer A for the amount of upfront fees he paid totaling \$3,500.00. The statute permits the recovery of treble damages, plus costs and attorney's fees, in a court action by a consumer to enforce liability for willful failure to comply with any requirement imposed by the MCSBA. Such a remedy is not, however, available in this proceeding.

CONCLUSIONS OF LAW

The Commissioner has proven by a preponderance of the evidence that the Respondent:

1. Violated the provisions of Md. Code Ann., Com. Law §§ 14-1902(1), (4) and (6); 14-1903; 14-1903.1; 14-1904, 14-1905; 14-1906; 14-1907; 14-1908 (2013); 14-1909 and Md. Code Ann., Fin. Inst. §§ 11-302 and 11-303 (2011).
2. Is subject to a cease and desist order, financial penalty, and restitution. Md. Code Ann., Fin. Inst. § 2-115(b)(Supp. 2018) and Md. Code Ann. Com. Law § 14-1911(f)(1)(2013).

RECOMMENDED ORDER

I **RECOMMEND** that the Commissioner:

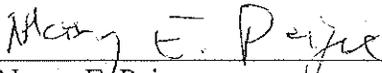
ORDER that the Respondent shall immediately **CEASE AND DESIST** from engaging in any further credit services business activities; and

ORDER that for violations of the Maryland Credit Services Businesses Act and the Financial Institutions article, the Respondent pay a total penalty of \$11,000.00 and further;

ORDER, that the Respondent shall pay restitution to Consumer A totaling \$3,500.00; and

ORDER that the records and publications of the Commissioner reflect this decision.

May 3, 2019
Date Decision Issued



Nancy E. Paige
Administrative Law Judge

NEP/sw
#179193

COMMISSIONER OF FINANCIAL
REGULATION

v.

PAULA RUSSELL MEDLEY,
RESPONDENT

* BEFORE NANCY E. PAIGE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: DLR-CFR-76-18-30106
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* * * * *

FILE EXHIBIT LIST

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