

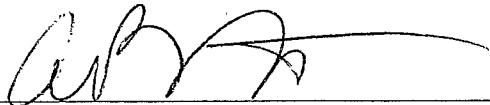
IN THE MATTER OF * BEFORE THE
THE SHMUCKLER GROUP, LLC * COMMISSIONER OF
and * FINANCIAL REGULATION
HOWARD R. SHMUCKLER * CFR FILE NO.: DFR-EU-2009-046
Respondents * OAH NO.: DLR-CFR-76-10-28438
* * * * *

PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 21st day of January, 2011 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondents have twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



Anne B. Norton
Deputy Commissioner of Financial
Regulation

IN THE MATTER OF:

THE SHMUCKLER GROUP, LLC

and

HOWARD R. SHMUCKLER,

Respondents

* BEFORE STEPHEN J. NICHOLS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* CFR FILE NO.: DFR-EU-2009-046
* OAH NO.: DLR-CFR-76-10-28438

* * * * *

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 10, 2009, the Commissioner of Financial Regulation (CFR) issued a Summary Order to Cease and Desist and notification of other possible sanctions against the Respondents alleging that they violated various provisions of the Annotated Code of Maryland, including the Commercial Law Article, Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act), the Financial Institutions Article, Title 11, Subtitles 2 and 3, and the Real Property Article, Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act) while directly or indirectly offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services. On May 27, 2010, Benjamin J. Razi, Esquire, Covington & Burling LLP, requested a hearing on behalf of the

Respondents regarding the allegations and charges listed in the Summary Order to Cease and Desist.

I convened a hearing on October 19, 2010, at 9:30 a.m., at the Office of Administrative Hearings (OAH), in Hunt Valley, Maryland, on behalf of the CFR. Md. Code Ann., Fin. Inst. § 2-115(a) (2003). W. Thomas Lawrie, Assistant Attorney General, represented the CFR. At the time and place scheduled for the hearing, no one appeared on behalf of the Respondents.

On August 12, 2010, the OAH mailed a Notice of Hearing (Notice) to the Respondents via certified and regular first class mail at the address of Mr. Razi, the attorney who had requested a hearing on behalf of the Respondents. The Notice stated that a hearing was scheduled for Tuesday, October 19, 2010, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. The Notice further advised the Respondents that a failure to attend the hearing might result in "a decision against you." The U.S. Postal Service did not return the regular mail to the OAH. On August 17, 2010, a person at the address of Mr. Razi's law firm signed the certified mail "green card," evidencing receipt of the Notice.

Mr. Lawrie advised that he had received an e-mail from Mr. Razi on October 18, 2010, the day before the hearing. The e-mail indicates that Mr. Razi had received the Notice after ceasing to represent the Respondents and had attempted to forward the Notice to his former clients, but without success. The e-mail also indicated that Mr. Razi had spoken with Mr. Howard Shmuckler on October 18, 2010. Mr. Shmuckler had advised Mr. Razi that he had not seen the Notice and that he was under a court order to stay within the metropolitan area of Virginia Beach except to travel to federal court in the District of Columbia. A printout of the copy of that court order along with the printout of the e-mail from Mr. Razi was submitted into the record.

Mr. Razi and Mr. Lawrie also had a conversation by telephone on October 18, 2010. In this conversation, Mr. Razi advised that he could be reached by telephone at the time of the hearing.

Mr. Lawrie also advised that on October 18, 2010 he had telephoned Mr. Shmuckler, who told him that he would not be present at the hearing, but he also could be reached by telephone at the time of the hearing.

No request for a postponement was filed by the Respondents or anyone purporting to represent the Respondents with the OAH. No request was filed by anyone with the OAH to participate in the hearing by telephonic means.

“Notice of any hearing under this section shall be given and the hearing shall be held in accordance with the Administrative Procedure Act.” Md. Code Ann., Fin. Inst. § 2-115(d) (2003). “An agency or the [OAH] shall give all parties in a contested case **reasonable written notice of the hearing.**” Md. Code Ann., State Gov’t § 10-208(a) (2009) (emphasis added). “The [OAH] shall give any notice required by this regulation by U.S. mail, or other method of personal or courier delivery, to the person at the address on record with the Office.” Code of Maryland Regulations (COMAR) 28.02.01.05C(1). “The administrative unit shall send the hearing notice to the person against whom the action is contemplated by certified mail to the person’s last known address . . . [a]t least 20 days before the hearing.” COMAR 09.01.02.07B(1). “If, **after receiving proper notice**, a party fails to attend or participate in a prehearing conference, hearing, or other state of a proceeding, the judge may proceed in that party’s absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party.” COMAR 28.02.01.23A (emphasis added).

The only address for the Respondents on record with the OAH or at the CFR was the address for Mr. Razi. The Notice was received at the offices of Mr. Razi on August 17, 2010. The attorney was responsible for notifying his clients of the date and time for the hearing not only as their legal representative, but also as the listed agent for the receipt of notice as he had requested a hearing for the Respondents. It was the attorney's and the Respondents' obligation -- when the agency relationship had ended -- to contact the CFR and/or the OAH and provide new contact information for the Respondents in advance of the Notice being issued. As Notice had been properly issued to, and received by, the Respondents' attorney who had requested a hearing, "reasonable written notice" had been provided and "received" by the Respondents; in addition, Mr. Shmuckler had actual notice of the hearing, and no request for a postponement or to participate by telephone had been received at the OAH; therefore, the hearing proceeded *in absentia*. COMAR 28.02.01.23A.

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 OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did Respondents engage in a credit services business without first obtaining a license from the CFR in violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article of the Annotated Code of Maryland?
2. Did Respondents 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 sections 14-

1908 and 14-1909 of the Commercial Law Article of the Annotated Code of Maryland?

3. Did Respondents receive money prior to full and complete performance of the services they agreed to perform on behalf of Maryland consumers in violation of section 14-1902(6) of the Commercial Law Article and section 7-307(2) of the Real Property Article of the Annotated Code of Maryland?

4. Did Respondents make or use false or misleading representations in their sale of services of a credit services business to Maryland consumers in violation of section 14-1902(4) of the Commercial Law Article of the Annotated Code of Maryland?

5. Did Respondents engage in acts in connection with the sale of services of a credit services business which operated as a fraud or deception on Maryland consumers in violation of section 14-1902(5) of the Commercial Law Article of the Annotated Code of Maryland?

6. Did the Respondents fail to state their license number or license exemption in their mortgage loan modification advertisements in violation of section 14-1903.1 of the Commercial Law Article of the Annotated Code of Maryland?

7. Did the Respondents fail to provide Maryland consumers with the required information statements in connection with the sale of services of a credit services business in violation of sections 14-1904(a) and 14-1905 of the Commercial Law Article of the Annotated Code of Maryland?

8. Did the Respondents fail to include required contractual terms in their agreements with Maryland consumers in violation of section 14-1906 of the Commercial Law Article of the Annotated Code of Maryland?

9. Did Respondents breach their obligations arising under their contracts with Maryland consumers, which constitutes a *per se* violation of section 14-1907(a) of the Commercial Law

Article of the Annotated Code of Maryland?

10. Did Respondents induce Maryland homeowners to enter into foreclosure consulting contracts which lacked required notices of rescission and related information in violation of sections 7-306(a)(6), (b), (c), and 7-307(10) of the Real Property Article of the Annotated Code of Maryland?

11. Did Respondents breach their duty of reasonable care and diligence in violation of section 7-309(b) of the Real Property Article and section 17-532(c)(1)(vi) of the Business Occupations and Professions Article of the Annotated Code of Maryland?

12. If Respondents violated any of the sections cited above, what is the appropriate sanction(s)?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR submitted the following documents, which I admitted into evidence:

- | | |
|--------|--|
| CFR #1 | Copy of a Notice of Hearing (three pages) |
| CFR #2 | Copy of Summary Order to Cease and Desist, signed December 10, 2009 (twenty-three pages) |
| CFR #3 | Copy of May 27, 2010 email request for a hearing from Benjamin Razi, Covington & Burling LLP |
| CFR #4 | Subpoena Duces Tecum issued to The Shmuckler Group, LLC (TSG) on March 4, 2009 (two pages) |
| CFR#5 | Copies of letter and e-mail correspondence from Benjamin Razi to Thomas Lawrie providing information in response to March 4, 2009 subpoena (six pages) |
| CFR#6 | Spreadsheet listing all Maryland consumers that contracted with TSG, as compiled by the Attorney General's office's review of information |

provided by TSG in response to the March 4, 2009 subpoena (nine pages)

- CFR #7 Copies of e-mail correspondence from Benjamin Razi to Thomas Lawrie, including a list of Maryland Consumers that received loan modifications or other related relief through their contracts with TSG (eight pages)
- CFR #8 Copy of written complaint against TSG and supporting documentation from Mr. [REDACTED] regarding TSG's failure to provide loan modification services (thirty-one pages)
- CFR #9 Copy of information packet provided by former TSG client [REDACTED] to CFR Investigator Ms. Zenaida Velez-Dorsey regarding TSG's failure to provide loan modification services (eighteen pages)
- CFR #10 Copy of written complaint against TSG and supporting documentation from Ms. [REDACTED] regarding TSG's failure to provide loan modification services (fifteen pages)
- CFR #11 Copy of written complaint against TSG and supporting documentation from [REDACTED] regarding TSG's failure to provide loan modification services (twenty-two pages)
- CFR #12 Copy of written complaint against TSG and supporting documentation from [REDACTED] regarding TSG's failure to provide loan modification services (twelve pages)
- CFR #13 Copy of information packet provided by former TSG client [REDACTED] to CFR Investigator Ms. Zenaida Velez-Dorsey regarding TSG's failure to provide loan modification services (eight pages)
- CFR #14 Copy of written complaint against TSG and supporting documentation from [REDACTED] regarding TSG's failure to provide loan modification services (nine pages)
- CFR #15 Copy of August 1, 2008 Mortgage Consultant Marketing Representative Agreement between TSG and Nova Key, LLC (four pages)
- CFR #16 Copy of TSG information packet provided by Nova Key to CFR (forty-two pages)
- CFR #17 Printouts indicating Howard Shmuckler was suspended from the DC Bar for disciplinary reasons and Report and Recommendation of the Board on Professional Responsibility (twelve pages)
- CFR #18 Summary Order to Cease and Desist, In the Matter of: Apply 2 Save, Inc.,

et al., signed March 26, 2009 (eighteen pages)

CFR #19 Final Order to Cease and Desist, In the Matter of: Apply 2 Save, Inc., *et al.*, signed April 30, 2010 (fifteen pages)

CFR #20 Final Order to Cease and Desist, In the Matter of: The Selig Law Group, P.C., *et al.*, signed May 13, 2010 (fourteen pages)

CFR #21 Copy of the Maryland Credit Services Businesses Act, Annotated Code of Maryland, Commercial Law Article §§ 14-901 through 14-903, 14-907, and 14-1912 (seven pages)

As Respondents failed to appear for the hearing, no documents were admitted into evidence on their behalf.

Testimony

The CFR offered the testimony of Mr. Stephen Prozeralik, former Assistant Commissioner for Enforcement and Complaints, CFR, and Ms. Zenaida Velez-Dorsey, CFR Investigator.

The Respondents failed to appear and therefore did not testify or present any witnesses.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. TSG was a business entity operating primarily out of Virginia. At all times relevant, Howard R. Shmuckler was the owner, principal officer, and/or manager of TSG.
2. Neither TSG nor Howard Shmuckler has ever held a license issued by the CFR or obtained a surety bond as required to conduct a credit services business in Maryland.
3. TSG engaged in business activities in Maryland by providing residential mortgage loan modification services to Maryland residents.

4. Mortgage loan modification is the process through which a lender modifies the terms of an existing loan in order to make payments more affordable for the borrower. A lender can do this in many ways, including refinancing the loan, lowering the interest rate, reducing the mortgage principal balance, increasing the length of the repayment period, forgiving payment defaults and fees, allowing a borrower to skip payments and add them to the end of the loan, or fixing adjustable interest rates within the mortgage.

5. On August 1, 2008, TSG and Nova Key, LLC (Nova Key) entered into a Mortgage Consultant Marketing Representation Agreement. The Agreement specified that Nova Key would “represent and sell TSG’s mortgage consulting services, specifically described as alternatives to foreclosure, eviction and loss of property,” in the metropolitan District of Columbia area, including Maryland. (CFR Ex. #15) Nova Key agreed to exclusively market mortgage loan modification services for, and to steer prospective clients to, TSG. TSG agreed to pay Nova Key a commission for the clients it signed.

6. On or about March 10, 2009, TSG and Nova Key ended their relationship.

7. Through Nova Key, TSG heavily advertised its mortgage loan modification services in radio and print media throughout the metropolitan District of Columbia area, including Maryland. Advertising was focused especially in minority communities. The mortgage loan modification services advertisements did not include either a license number issued by the CFR to conduct a credit services business in Maryland or state an exemption to the licensing requirement provided by the CFR.

8. The general sequence of events that occurred for a TSG client in Maryland was as follows:

a. An individual homeowner who is behind, or in danger of becoming behind, on his or her residential mortgage learns, through advertising or word of mouth, about TSG's mortgage loan modification services.

b. The individual contacts Nova Key or one of TSG's other enrollment representatives. The individual provides the representative with details regarding his or her finances, debts and mortgages. The representative uses this information to complete a Mortgage Workout Package. The representative also has the client sign a Representation Agreement, retaining the services of TSG, and pay an upfront fee. The client is promised that he or she will be able to obtain a mortgage loan modification through TSG's services.

c. After this intake meeting, the enrollment representative forwards the Mortgage Workout Package and upfront fee payment to TSG. TSG initiates contact with its new client and promises to contact the lender and engage in negotiations on behalf of the client. TSG advises the individual to cease making any mortgage payments and to not communicate with his or her financial institutions. TSG also sends letters to the client explaining what services it will provide and advising the client on how he or she may assist their assigned TSG negotiator with the upcoming loan modification.

d. After about a week, TSG no longer initiates contact with the client.

e. In most instances, TSG failed to make any contact with its client's mortgage lender. When TSG fails to take action, the client begins to receive letters from his or her lender advising that the client is behind on the mortgage and foreclosure proceedings on their home are underway.

f. When the client then contacts TSG, a person at TSG informs the client that the client's file is being routed among various employees, or misrepresents the progress of the

client's loan modification, and/or fails to provide the client with requested information about the status of the loan modification.

g. In many instances, TSG would fail to return telephone voice-mail messages it received from a client.

h. When the client seeks a refund of paid fees, TSG sends a general letter denying the refund because it claims to have performed services and that modification was denied through some alleged failure of the client, such as failing to provide requested information. The client never receives a refund for the fees paid to TSG.

9. TSG gave Maryland clients a standard letter explaining what they could expect once they retained TSG. This letter stated:

Now that your mortgage consultant has assembled the necessary documents for us to complete the processing procedure you should expect our processing [sic] department to:

Week 1 We notify your financial institution, both institutions if you have a second loan, that we represent your interests and have the power to negotiate a new mortgage payment plan on your behalf. This process takes the bank about one week to get all our contact data confirmed into their database and for us to confirm their actions.

Weeks 3-5 Next, your file moves from our processing department to a mortgage specialist who will put together your financial information, your tax returns, pay stubs, income and expense statement; perform a financial analysis and send this information to the Case Manager at the financial [i]nstitution.

Month 2 The financial [i]nstitution's Case Manager will do a cursory examination of your financial data and assign the case to a Case Worker. During this time, prior to the assignment of the Case Worker, our loan processor will be preparing a workout schedule of payment affordability and drafting a hardship letter explaining to the financial institution why you are behind in payments. Also during the second month, all of these documents will be faxed to the Case Worker and discussed with the Case Worker for preliminary approval.

Month 3 The institution will assign your file to their Loss Mitigation Department. Our Loan Negotiator will then negotiate a final agreement with the financial institution.

The financial [i]nstitution will send to you the client the final negotiated modification ...

(CFR Ex. #10, page five)

10. TSG also gave Maryland clients a standard letter advising them to avoid contact with their financial institution. This letter states, in pertinent part:

The less contact you have with your financial institution the better we can serve you. We cannot stress that enough!!! We prefer that you DO NOT speak to your financial institution at all. Most financial institution use abusive collection techniques designed to elicit fear, shame or guilt when communicating directly with you. In the event communication is unavoidable we encourage you to use the TELEPHONE RESPONSE CARD SCRIPT provided below.

The best way to undermine the efforts of your Settlement Team to settle your debts is to start talking with your financial institution. Our staff has years of experience in settling debt so let them do their job. Use of this card will prove most effective in clearly stating that you are represented by an attorney and they are not allowed to contact you regarding your debts...
[TELEPHONE RESPONSE CARD SCRIPT:]

This is to advise you that I am represented by [TSG]. You can reach my attorney at: (703) 917-0180[.] Please log this information into your database and DO NOT contact me again. Thank you. (**Hang up**)

(CFR Ex. #11, page five, emphasis in original)

11. Many of the Representation Agreements signed by Maryland clients also included a "Refund/Rebate" provision which stated:

Client may discharge TSG at any time. Client acknowledges that because of the urgency of client's mortgage delinquency TSG will immediately expend efforts to implement the mortgage consultant's workout plan for the client. If client discharges TSG within three days of execution of this agreement client agrees to pay TSG 1/3 (33.33%) of the above stated fee; if within ten days of this agreement client agrees to pay TSG 2/3 (66.7%) of the fee stated above; if after ten days of this agreement client understands and accepts that TSG has earned the fee stated ... above.

(CFR Ex. #10, pages two - three)

12. The Representation Agreement signed by Maryland clients specified that “TSG is not obligated to perform services prior to client’s full payment pursuant to [the numbered paragraph stating amount of the fee].” (CFR Ex. #10, page two)

13. The Representation Agreement signed by Maryland clients did not include a statement above the signature line to inform the client of their right to cancel the contract at any time prior to midnight of the third business day after the contract was signed or have an attached copy of a form captioned “Notice of Cancellation” to be used to cancel the agreement. At no time did Nova Key or TSG provide Maryland clients with a form prepared and captioned “Notice of Cancellation” to be used to cancel the agreement and containing related information meeting applicable statutory requirements.

14. The Representation Agreement signed by Maryland clients did not include a statement located in immediate proximity to the space reserved for the homeowner’s signature to inform the client of his or her right to rescind the agreement at any time by informing TSG that he/she wanted to rescind the contract or have an attached copy of a form prepared and captioned “Notice of Rescission” to be used to rescind the agreement. At no time did Nova Key or TSG provide Maryland clients with a form prepared and captioned “Notice of Rescission” to be used to rescind the agreement and containing related information meeting applicable statutory requirements.

15. Before the Representation Agreement was signed by the client and the payment of upfront fees was received, neither Nova Key or TSG provided Maryland consumers with a required information statement listing a complete and detailed description of the services to be provided by TSG, a statement of a consumer’s right to file a complaint with the CFR, the address

of the CFR where such a complaint could be filed, and statement that a surety bond exists for the protection of consumers and an explanation of the right to proceed against the bond.

16. TSG contracted to perform mortgage loan modification services for at least 372 Maryland clients. Of those 372 clients, TSG provided services that resulted in modifications, short sales, or repayment plans for 93 mortgage loans owed by clients. The Respondents never obtained modifications for 279 of the Maryland clients with whom they had entered into loan modification agreements, and never returned their upfront fees. Ultimately, many of the remaining 279 TSG clients lost their homes to foreclosure.

17. A common experience for those 279 TSG clients, when contact with their financial institution was resumed, was to learn that TSG had never contacted the mortgagee on their behalf.

18. Between January 2008 and March 2009, 350 Maryland clients paid upfront fees to TSG in the amount of \$1,210,863.00.¹

19. TSG required upfront fee payments from Maryland clients ranging from \$1,750.00 to \$6,000.00, with an average payment of \$3,440.00 per client.

20. On February 17, 2009, in response to consumer complaints, the CFR initiated an investigation into the business activities of TSG in Maryland.

21. On December 10, 2009, the CFR issued a Summary Cease and Desist Order to prevent the Respondent from engaging in credit services business activities or foreclosure consulting activities with Maryland residents.

¹ During its investigation, CFR was not able to obtain specific information regarding the upfront fees paid by the remaining 22 Maryland TSG clients.

DISCUSSION

The CFR has the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondents violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996). The CFR has charged the Respondents with violating the following statutes found in the Maryland Credit Services Businesses Act (MCSBA).²

Section 14-1902 of the Commercial Law Article provides, in relevant part:

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;

(5) Engage, 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;

(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

Md. Code Ann., Com. Law § 14-1902 (Supp. 2010).

Section 14-1903 of the Commercial Law Article provides, in relevant part:

(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.

² Md. Code Ann., Com. Law §§ 14-1901 through 14-1916 (2005 & Supp. 2010).

(c) A license required by this subtitle shall be issued by the Commissioner.

Md. Code Ann., Com. Law § 14-1903(b), (c) (2005).

Section 14-1903.1 of the Commercial Law Article provides:

A person who advertises a service described in § 14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:

- (1) The license issued under § 14-1903 of this subtitle; or
- (2) If not required to be licensed, the exemption provided by the Commissioner.

Md. Code Ann., Com. Law § 14-1903.1 (2005).

Section 14-1904 of the Commercial Law Article provides, in relevant part:

(a) Before either the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under § 14-1905 of this subtitle.

Md. Code Ann., Com. Law § 14-1904(a) (2005).

Section 14-1905 of the Commercial Law Article provides, in relevant part:

(a) The information statement required under § 14-1904 of this subtitle shall include:

...

(5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services; and

...

(b) A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

(1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;

(2) The address of the Commissioner where such complaints should be filed; and

(3) A statement that a bond exists and the consumer's right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

Md. Code Ann., Com. Law § 14-1905 (2005).

Section 14-1906 of the Commercial Law Article provides:

(a) 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:

(1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

“You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.”;

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) The contract shall be accompanied by a form completed in duplicate, captioned “NOTICE OF CANCELLATION”, which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

“NOTICE OF CANCELLATION
You may cancel this contract, without any penalty or

obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

(Name of seller)

At

(Address of seller)

(Place of business)

Not later than midnight

(Date)

I hereby cancel this transaction.

(Date)(Buyer's signature)"

(c) A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

Md. Code Ann., Com. Law § 14-1906 (2005).

Section 14-1907 of the Commercial Law Article provides, in relevant part:

(a) Any 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.

Md. Code Ann., Com. Law § 14-1907(a) (2005).

Section 14-1908 of the Commercial Law Article provides:

A credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of the Financial Institutions Article.

Md. Code Ann., Com. Law § 14-1908 (2005).

Section 14-1909 of the Commercial Law Article provides:

The surety bond shall be issued by a surety company authorized to do business in this State.

Md. Code Ann., Com. Law § 14-1909 (2005).

Section 11-302 of the Financial Institutions Article provides, in relevant part:

(b) Unless the person is licensed by the Commissioner, a person may not:

(3) Engage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article.

Md. Code Ann., Fin. Inst. § 11-302 (b)(3) (2003).

For the Respondents to be subject to the requirements of the aforementioned statutes, the CFR must prove that TSG was engaging in a credit services business. A credit services business is defined as:

(1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that [it] 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.

Md. Code Ann., Com. Law § 14-1901(e)(1) (Supp. 2010). An extension of credit "means 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." Md. Code Ann., Com. Law § 14-1901(f) (Supp. 2010).

It is clear that TSG engaged in a credit services business. The evidence shows that TSG represented that it would advise clients regarding the loan modification process and negotiate directly with lenders to obtain loan modifications for its clients' home mortgages. Though not

every loan modification is the same, many modifications involve obtaining an extension of credit in the form of a deferred payment of mortgage debt, either by increasing the length of the repayment period or by adding payments due now onto the end of the loan. All of the loans serviced by TSG were mortgages taken out for personal, family or household purposes, i.e., paying for the family home. As TSG engaged in a credit services business, it is subject to all of the aforementioned statutory requirements.

The CFR has also charged the Respondents with violating the following provisions of the Protection of Homeowners in Foreclosure Act (PHIFA):³

Section 7-305 of the Real Property Article provides, in relevant part:

- (a) In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to rescind a foreclosure consulting contract at any time.

Md. Code Ann., Real Prop. § 7-305(a) (2010).

Section 7-306 of the Real Property Article provides, in relevant part:

- (a) A foreclosure consulting contract shall:

...

- (6) Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

“NOTICE REQUIRED BY MARYLAND LAW

...

You have the right to rescind this foreclosure consulting contract at any time by informing the foreclosure consultant that you want to rescind the contract. See the attached Notice of Rescission form for an explanation of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf

³ Md. Code Ann., Real Prop. §§ 7-301 through 7-325 (2010).

as a result of this agreement, along with interest calculated at the rate of 8% a year.

If a contract to sell or transfer the deed or title to your property is involved in any way, you may rescind that contract at any time within 5 days after the date you sign that contract and you are informed of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.”.

(b) The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of rescission is to be mailed; and

(2) The date the homeowner signed the contract.

(c) (1) The contract shall be accompanied by a completed form in duplicate, captioned “NOTICE OF RESCISSION”.

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point

type:

“NOTICE OF RESCISSION
(Date of Contract)

You may rescind this foreclosure consulting contract, without any penalty, at any time.

If you want to rescind this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

After any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

This is an important legal contract and could result in the loss of your home. Contact an attorney before signing.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)
(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.
..... (Date)
..... (Homeowner's signature)".

Md. Code Ann., Real Prop. § 7-306(a)(6), (b), (c) (2010).

Section 7-307 of the Real Property Article provides, in relevant part:

A foreclosure consultant may not:

...

(2) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

...

(10) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.

Md. Code Ann., Real Prop. § 7-307 (2010).

Section 7-309 of the Real Property Article provides, in relevant part:

(b) A foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article.

Md. Code Ann., Real Prop. § 7-309(b) (2010). As referred to immediately above, the duty of care owed to a homeowner is found in section 17-532 of the Business Occupations and Professions Article, which provides, in relevant part:

(c) (1) A licensee shall:

...
(vi) exercise reasonable care and diligence

Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1) (2010).

In order to be subject to PHIFA, the CFR must prove that TSG acted as a foreclosure consultant while providing mortgage loan modification services to Maryland consumers. A foreclosure consultant is defined as a person (or entity) that:

(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;

...
(viii) Save the homeowner's residence from foreclosure;

... [or]

(2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

Md. Code Ann., Real Prop. § 7-301(c) (2010).

The definition of a foreclosure consultant has been broadly construed to include not only a person or entity who happens to initiate contact with the homeowners, but also persons who have contact with a homeowner subsequent to an initial meeting. *Johnson v. Wheeler*, 492 F. Supp. 2d 492 (D. Md. 2007); *Kargbo v. Gaston*, 195 Md. App. 222, 5 A.3d 1231 (2010). A “homeowner” is the recorded owner of a residence in default or in foreclosure. Md. Code Ann., Real Prop. § 7-301(i) (2010). A residence in default is the residential real property occupied and used by the homeowner as the individual’s principal place of residence “and on which the mortgage is at least 60 days in default.” Md. Code Ann., Real Prop. § 7-301(j) (2010). A residence in foreclosure is the residential real property occupied and used by the homeowner as the individual’s principal place of residence “and against which an order to docket or a petition to foreclose has been filed.” Md. Code Ann., Real Prop. § 7-301(k) (2010).

Based on the facts as found, I have drawn a reasonable and permissible inference that all of the Maryland consumers who became clients of TSG were homeowners within meaning of section 7-301(i) and their principal place of residence was in default or in foreclosure as defined in sections 7-301(j), (k) at some point in time when they had contact with Nova Key and/or TSG. In the marketing representation agreement, Nova Key promised to represent to potential clients that TSG would provide services as “alternatives to foreclosure, eviction and loss of property.” (CFR Ex. #15, page one) TSG advised its clients that it would “[draft] a hardship letter explaining to the financial institution why you are behind in payments” and subsequently “negotiate a final agreement with the financial institution,” thereby saving the homeowner from foreclosure. (CFR Ex. #10, page five) By making these representations, TSG acted as a

foreclosure consultant and is subject to the above-stated statutory requirements.⁴

Statutory Violations

The Respondents violated sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article of the Annotated Code of Maryland by engaging in a credit services business without first obtaining a license from the CFR. As already discussed, TSG was engaged in a credit services business in its advertisement, sale, and performance of residential mortgage loan modification services to Maryland consumers. The evidence demonstrates that TSG received monetary compensation from its Maryland clients for these business activities despite its failure to secure a license. Neither TSG nor its principal, Howard Shmuckler, was licensed in Maryland to engage in these credit services business activities.

As TSG was engaging in a credit services business, the Respondents also violated section 14-1903.1 of the Commercial Law Article by failing to state their license number or license exemption in their mortgage loan modification advertisements. Through Nova Key, TSG heavily advertised its mortgage loan modification services in radio and print media throughout the metropolitan District of Columbia area, including Maryland. The loan modification advertisements did not include a license number issued by the CFR to conduct a credit services

⁴ The record reflects that TSG had taken the position that it was not subject to PHIFA. Some of the contracts it executed with Maryland consumers contained the following provision:

NOTICE REQUIRED BY MARYLAND LAW. TSG is not subject to the Maryland Protection of Homeowners in Foreclosure Act. This law was enacted to combat against unscrupulous persons who engage in dealing with the client's title to their own property. TSG's representation herein does not give TSG the right to execute any Deed, Deed of Trust, Lien or Mortgage on client's property. TSG does not hypothecate client's property. TSG does not execute any document or mortgage workout on behalf of clients. TSG presents all negotiated settlements to client for client's original approval and signature.

(CFR Ex. #16, last page, emphasis in original)

business in Maryland or state an exemption to the licensing requirement provided by the CFR.

The Respondents further violated sections 14-1908 and 14-1909 of the Commercial Law Article by engaging in a credit services business without first obtaining a surety bond from a surety company authorized to do business in Maryland. TSG's activities in Maryland meet the definition of a credit services business. The evidence shows that neither TSG nor its principal, Howard Shmuckler, obtained a surety bond to do business in Maryland.

The Respondents violated sections 14-1904(a) and 14-1905 of the Commercial Law Article by failing to provide Maryland consumers they obtained as clients with required information statements. Before the Representation Agreement was signed by the client and the payment of upfront fees was received, neither Nova Key or TSG provided Maryland consumers with a required information statement listing a complete and detailed description of the services to be provided by TSG, a statement of a consumer's right to file a complaint with the CFR, the address of the CFR where such a complaint could be filed, and statement that a surety bond exists for the protection of consumers and an explanation of the right to proceed against the bond.

The Respondents violated section 14-1906 of the Commercial Law Article by failing to include required contractual terms in their agreements with consumers. The Representation Agreement signed by clients did not include a statement above the signature line to inform the client of their right to cancel the contract at any time prior to midnight of the third business day after the contract was signed or an attached copy of a form captioned "Notice of Cancellation" to be used to cancel the agreement. At no time did Nova Key or TSG provide Maryland consumers with a form prepared and captioned "Notice of Cancellation" to be used to cancel the agreement and containing related information required under section 14-1906.

Moreover, the Respondents violated section 14-1902(6) of the Commercial Law Article and section 7-307(2) of the Real Property Article of the Annotated Code of Maryland by charging and receiving money prior to full and complete performance of the services it agreed to perform on behalf of Maryland consumers. As discussed above, TSG engaged in credit services business activities and was a foreclosure consultant subject to these statutes. The retainer agreement that TSG required clients to sign stated that "TSG is not obligated to perform services prior to client's full payment...." (CFR Ex. #10, page two) The evidence further indicates that the Respondents received this upfront payment of fees from all of the Maryland consumers when it contracted with them as its clients and prior to engaging in any of its promised services.

As TSG was engaging in a credit services business, the Respondents violated section 14-1902(4) of the Commercial Law Article by making and using false or misleading representations in its sale of services to Maryland consumers. When clients made contact with Nova Key, which acted on TSG's behalf and according to its direction, and with TSG itself, they were promised that if they engaged its services, TSG would be able to obtain a mortgage loan modification. Correspondence from TSG advised clients that as part of the process "[a] Loan Negotiator will... negotiate a final agreement with the financial institution" and then "[t]he financial [i]nstitution will send to you the client the final negotiated modification or restructure...." (CFR Ex. #10, page five) With these statements, the Respondents clearly promised that if the services of TSG were purchased, then the client would receive a loan modification. Statements assuring a successful outcome are inherently misleading and false because such positive results in a mortgage loan modification negotiation cannot be guaranteed.

Similarly, the Respondents violated section 14-1902(5) of the Commercial Law Article by engaging in acts in connection with a credit services business which operated as a fraud or

deception on Maryland consumers. TSG made willful misrepresentations about its services by guaranteeing that it would obtain a loan modification and did so in connection with selling its services to clients. Because TSG made this same promise to all of its clients, both in writing and through verbal communications, it is clear that the statements were made intentionally. When a person intentionally misrepresents a material fact or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him, there is positive fraud. *McKeever v. Washington Heights Realty Corp.*, 183 Md. 216, 37 A.2d 305 (1944). Despite TSG's promises, the Respondents failed to obtain a mortgage loan modification or any other result for 279 of its 372 Maryland clients. In addition, TSG further deceived Maryland clients by misrepresenting the progress of loan modification negotiations or concealing from clients their true loan modification status.

As TSG was engaging in a credit services business, the Respondents violated section 14-1907 of the Commercial Law Article by failing to perform contractual obligations they had agreed to perform for all of their Maryland clients. TSG contracted to perform mortgage loan modification services for 372 Maryland consumers. Of those 372 clients, TSG provided services that resulted in modifications, short sales, or repayment plans for 93 mortgages. The Respondents never obtained modifications for 279 of the Maryland clients with whom they had entered into loan modification agreements, and never returned their upfront fees. A common experience for those 279 clients, when contact with their financial institution was resumed, was to learn that TSG had never contacted the mortgagee on their behalf. Clearly, in every instance when TSG failed to contact the mortgagee on behalf of a client, the Respondents violated section 14-1907.

As TSG acted as a foreclosure consultant, the Respondents violated sections 7-306(a)(6),

(b), (c), and 7-307(10) of the Real Property Article by inducing Maryland homeowners to enter into foreclosure consulting contracts which lacked required notices of rescission and related information. “[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].” Md. Code Ann., Real Prop. § 7-307(10) (2010). The Representation Agreement signed by clients did not include a statement located in immediate proximity to the space reserved for the homeowner’s signature to inform the client of his or her right to rescind the agreement at any time by informing TSG that he/she wanted to rescind the contract or have an attached copy of a form prepared and captioned “Notice of Rescission” to be used to rescind the agreement. At no time did Nova Key or TSG provide Maryland homeowners with a form prepared and captioned “Notice of Rescission” to be used to rescind the agreement and containing related information required under section 7-306.

As TSG acted as a foreclosure consultant, the Respondents violated section 7-309(b) of the Real Property Article by failing to “exercise reasonable care and diligence.” Md. Code Ann., Bus. Occ. & Prof. § 17-532(c)(1) (2010). TSG advised its clients to stop making mortgage payments, cease all contact with their lenders, and refer their lenders to deal exclusively with TSG. When TSG failed to contact the mortgagee, as happened in many instances, clients fell further behind on their mortgage payments. TSG also failed to keep its clients updated on the status of their loan modifications and often evaded answering client inquiries by routing the clients file among multiple employees and/or failing to return clients’ telephone calls. This put clients in an even worse position with their lenders because their mortgage arrearage continued to grow as they wasted time trying to make contact with TSG. All of this conduct demonstrates

the Respondents' failure to exercise reasonable care and diligence with respect to the handling of TSG's clients' interests.

Regulatory Sanctions

The Respondents violated all of the statutory provisions listed in the issues, posed above. These violations subject the Respondents to regulatory sanctions. Section 2-115 of the Financial Institutions Article provides, in relevant part:

(b) 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.

(c) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Commissioner shall consider the following 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 (b), (c) (2003) (emphasis added).

At closing argument, the agency's representative requested that a civil penalty be imposed for the Respondents' violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article by engaging in a credit services business without first obtaining a license from the CFR. The agency's representative also requested that a civil penalty be imposed for the Respondents' violation of section 14-1902(6) of the Commercial Law Article by charging and receiving money prior to full and complete performance of the services TSG agreed to perform on behalf of Maryland consumers.

These violations are serious; the Respondents ignored licensing requirements and demanded upfront fees contrary to statutory requirements enacted to protect Maryland consumers from unscrupulous or incompetent persons engaging in credit service business activities in this State. The facts as found reflect a deliberate scheme by the Respondents to seek an unconscionable advantage over the Maryland consumers that sought TSG's help in dealing with their mortgagees and, in many instances, operated as a fraud on the persons obtained as clients; therefore, it is reasonable and permissible to draw the inference that the Respondents were not proceeding in good faith. The record is silent as to any previous violations of the MCSBA or PHIFA by the Respondents prior to the matter *sub judice*. Clearly, there was a harmful effect on many of the Maryland consumers that TSG obtained as clients. The Respondents never obtained modifications for 279 of the 372 Maryland clients with whom they had entered into mortgage loan modification services agreements and never returned their upfront fees. The clients fell further behind on their mortgages by not making payments, and, ultimately, many of the clients lost their homes to foreclosure. The record is silent as to the

Respondents' assets. In addition to the Respondents' violations of sections 14-1902(1), 14-1903(b) and 14-1902(6) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article, the Respondents violated other statutory provisions, discussed above. The agency's representative did not request a civil penalty for each and every discussed violation, but only for Respondents' failure to obtain a credit services business license and charging and receiving full payment of fees prior to any performance of services. However, the other violations are aggravating factors relevant to the determination of the amount of the financial penalty to be imposed.

The agency's representative argued that the violations in this case justify civil statutory penalties. I agree, and by weighing all of the relevant factors, conclude that a civil penalty should be imposed in the amount of \$744,000.00. A breakdown of that \$744,000.00 civil penalty follows. The Respondents violated sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article for each of the 372 Maryland clients they obtained without a credit services business license; a \$1,000.00 civil penalty should be imposed for each one of those 372 violations for a combined civil penalty of \$372,000.00 under those statutes. The Respondents also violated section 14-1902(6) of the Commercial Law Article by charging and receiving upfront fees from each of the 372 Maryland clients prior to full and complete performance of the services TSG agreed to perform; a \$1,000.00 civil penalty should be imposed for each one of those 372 violations for a combined civil penalty of \$372,000.00 under that statute.

In addition, the MCSBA provides that the Respondents can be required to pay restitution to the 372 Maryland consumers obtained as TSG clients. "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 . . . 3 times the total amount collected from the consumer, as ordered by the Commissioner.” Md. Code Ann., Com. Law § 14-1912(a)(2) (2005).

During its investigation, CFR identified 372 Maryland consumers that TSG obtained as clients. The Respondents revealed that 350 of those 372 Maryland consumers paid upfront fees to TSG in the amount of \$1,210,863.00. CFR was not able to obtain specific information regarding the upfront fees paid by the remaining 22 Maryland clients. From the information uncovered in the investigation, TSG required upfront fee payments from Maryland clients ranging from \$1,750.00 to \$6,000.00, with an average payment of \$3,440.00 per client. In addition to the \$1,210,863.00 paid by 350 Maryland consumers, the remaining 22 Maryland clients probably paid \$75,680.00 (\$3,440.00 average payment times 22) to TSG in upfront fees. For the purposes of calculating restitution, the total amount TSG collected from Maryland consumers is determined to be \$1,286,543.00.

The record reflects that TSG was aware of Maryland legal requirements, but had simply chosen to take a position that it was not subject to State law. (*See* Footnote 4) As mentioned above, the facts allow an inference to be drawn that the Respondents were not proceeding in good faith. In addition, when a Maryland client would seek a refund of fees paid, TSG would send a general letter denying the refund because it claimed, disingenuously, to have performed services and that a mortgage loan modification was not obtained through some alleged failure of the client. Given that the Respondents did not refund fees to any of the 279 Maryland clients who did not obtain a beneficial loan modification agreement, and that when there was a demand for a return of the upfront fees, there was a universal rejection of the demand, I have been persuaded that the Respondents willfully failed to comply with section 14-1902(6) of the

Commercial Law Article -- 372 times -- by charging and receiving upfront fees prior to full and complete performance of the services TSG agreed to perform. Accordingly, the amount of restitution that the Respondents should be required to pay is "3 times" the \$1,286,543.00 collected from Maryland consumers, equal to \$3,859,629.00. Md. Code Ann., Com. Law § 14-1912(a)(2) (2005).

"[A]fter notice and a hearing," the CFR may "[i]ssue a final cease and desist order against [a] person" who violates a statute over which the agency has jurisdiction. Md. Code Ann., Fin. Inst. § 2-115 (b)(1) (2003). In its Summary Order to Cease and Desist, the CFR informed the Respondents that it would order them to immediately cease and desist from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland residents and from violating the statutory provisions of the Annotated Code of Maryland listed herein. Based on the Respondents' violations, discussed herein, the cease and desist provisions contained in the Summary Order to Cease and Desist should be affirmed and entered as a final Order of the Commissioner.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article of the Annotated Code of Maryland by engaging in a credit services business without first obtaining a license from the CFR.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated sections 14-1908 and 14-1909 of the Commercial Law Article of

the Annotated Code of Maryland by engaging in a credit services business without first obtaining a surety bond from a surety company authorized to do business in this State.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 14-1902(6) of the Commercial Law Article and section 7-307(2) of the Real Property Article of the Annotated Code of Maryland by charging and receiving upfront fees prior to full and complete performance of the services they agreed to perform on behalf of Maryland consumers.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 14-1902(4) of the Commercial Law Article of the Annotated Code of Maryland by making or using false or misleading representations in their sale of mortgage loan modification services to Maryland consumers.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 14-1902(5) of the Commercial Law Article of the Annotated Code of Maryland by engaging in acts in connection with the sale of services of a credit services business which operated as a fraud or deception on Maryland consumers.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 14-1903.1 of the Commercial Law Article of the Annotated Code of Maryland by failing to state their license number or license exemption in their mortgage loan modification services advertisements.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated sections 14-1904(a) and 14-1905 of the Commercial Law Article of the Annotated Code of Maryland by failing to provide Maryland consumers with statutorily required information statements in connection with the sale of services of a credit services

business.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 14-1906 of the Commercial Law Article of the Annotated Code of Maryland by failing to include statutorily required contractual terms in their agreements with Maryland consumers.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated their obligations arising under their contracts with Maryland consumers, which constitutes a *per se* violation of section 14-1907(a) of the Commercial Law Article of the Annotated Code of Maryland.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated sections 7-306(a)(6), (b), (c), and 7-307(10) of the Real Property Article of the Annotated Code of Maryland by inducing Maryland homeowners to enter into foreclosure consulting contracts which lacked required notices of rescission and related information.

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondents violated section 7-309(b) of the Real Property Article and section 17-532(c)(1)(vi) of the Business Occupations and Professions Article of the Annotated Code of Maryland by acts or omissions that constitute a breach of their duty of reasonable care and diligence as foreclosure consultants towards Maryland homeowners.

Based upon the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law, that the Respondents violations justify the imposition of a civil penalty under section 2-115(b)(3) of the Financial Institutions Article of the Annotated Code of Maryland in the amount of \$744,000.00 and the entry of a final cease and desist order.

Based upon the foregoing Findings of Fact and Discussion, I further conclude, as a matter of law, that the Respondents' violations support the entry of order of restitution for the benefit of Maryland TSG clients under section 14-1912(a)(2) of the Commercial Law Article of the Annotated Code of Maryland in the amount of \$3,859,629.00.

ORDER

I **RECOMMEND** that the CFR:

ORDER that the Respondents violated sections 14-1902(1) and 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,

ORDER that the Respondents violated sections 14-1908 and 14-1909 of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1902(6) of the Commercial Law Article and section 7-307(2) of the Real Property Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1902(4) of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1902(5) of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1903.1 of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated sections 14-1904(a) and 14-1905 of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1906 of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 14-1907(a) of the Commercial Law Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated sections 7-306(a)(6), (b), (c), and 7-307(10) of the Real Property Article of the Annotated Code of Maryland; and further,

ORDER that the Respondents violated section 7-309(b) of the Real Property Article and section 17-532(c)(1)(vi) of the Business Occupations and Professions Article of the Annotated Code of Maryland; and further,

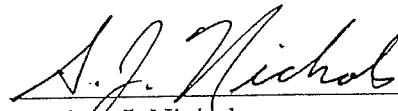
ORDER that the Respondents be assessed a civil statutory penalty in the amount of \$744,000.00 under section 2-115(b)(3) of the Financial Institutions Article of the Annotated Code of Maryland and that payment of this penalty shall be due to the CFR within thirty (30) days of the adoption of this Recommended Order; and further,

ORDER, under section 2-115(b)(1) of the Financial Institutions Article of the Annotated Code of Maryland, that the Respondents shall immediately CEASE AND DESIST from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland residents, including offering, selling, or contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services with Maryland residents and shall immediately CEASE AND DESIST from violating the aforementioned statutory provisions of the Annotated Code of Maryland; and further,

ORDER that the Respondents pay \$3,859,629.00 in restitution for the benefit of 372 Maryland TSG clients under section 14-1912(a)(2) of the Commercial Law Article of the Annotated Code of Maryland; and further,

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

January 7, 2011
Date Decision Mailed



Stephen J. Nichols
Administrative Law Judge

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