IN THE MATTER OF:	BEFORE THE MARYLAND
ALARCON & ASSOCIATES P.C. a/k/a ALARCON LAW FIRM, P.C. a/k/a ALARCON LAW GROUP a/k/a R.M.A. LEGAL NETWORK a/k/a ATTORNEYS LEGAL NETWORK	COMMISSIONER OF FINANCIAL REGULATION
and	Case No.: CFR-FY2012-125
RORY M. ALARCON	
Respondents.	

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Deputy Commissioner of Financial Regulation (the "Deputy Commissioner") undertook an investigation into the credit services business activities of Alarcon & Associates P.C. a/k/a Alarcon Law Firm, P.C a/k/a, Alarcon Law Group a/k/a, R.M.A. Legal Network, a/k/a, Attorneys Legal Network and Rory M. Alarcon (collectively, the "Respondents"); and

WHEREAS, as a result of that investigation, the Deputy Commissioner finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"), Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3, and Real Property Article ("RP"), Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act, hereinafter "PHIFA"), and the Commissioner finds that action under FI §§ 2-114 and 2-115, and RP § 7-319.1 is appropriate.

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist (the "Summary Order") against Respondents on May 29, 2013 , after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents cease and desist from engaging in credit services business activities and/or foreclosure consulting activities with Maryland residents, homeowners and/or consumers (hereinafter "Maryland consumers"), including directly or indirectly offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services related to residential real property (hereinafter "loan modification services"); and

WHEREAS, the Summary Order notified Respondents of, among other things, the following: that Respondents were entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondents' failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue penalty orders against Respondents, issue orders requiring Respondents to pay restitution and other money to consumers, as well as take other actions related to Respondents' business activities; and

WHEREAS, the Summary Order was properly served on Respondents via First Class U.S. Mail and Certified U.S. Mail; and

WHEREAS, Respondents failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI § 2-115(a)(2), CL § 14-1911 and RP §7-319.1, and have not

filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

WHEREAS, the Commissioner has based his decision in this Final Order on the following determinations:

1. The MCSBA defines "*credit services business*" at CL § 14-1901(e); this provision provides, in part, 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.

Additionally, CL § 14-1901(f) defines "*extension of credit*" as "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."

2. Unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1903(d), persons engaged in the business of offering or providing residential loan modification services, which include offering or providing extensions of credit to consumers, fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

3. The following relevant and credible evidence, obtained pursuant to the Commissioner's investigation, was considered in the issuance of the Summary Order: Respondents'

standard documents for providing loan modification services for Maryland consumers; communications between Respondents and the Commissioner; communications between Respondents and Maryland consumers; statements by Maryland consumers who had entered into loan modification agreements with Respondents but for whom Respondents failed to obtain a loan modification for the consumers; and the Commissioner's licensing records. More particularly, at all times prior to the issuance of the Summary Order, the evidence adduced supports the following findings:

a. Alarcon & Associates is a purported law firm operating out of offices located in Holbrook, New York and Hauppauge, New York and is engaged in business activities with Maryland consumers involving Maryland residential real property, although it was not a registered business entity in the State of Maryland.

b. Rory M. Alarcon is a New York state barred attorney who engaged in business activities involving Maryland consumers. Rory M. Alarcon is the owner, director, officer, manager, employee and/or agent of Alarcon & Associates. Rory M. Alarcon is not and has never been licensed to practice law in the State of Maryland.

c. Respondents advertised and marketed to Maryland consumers that Respondents could obtain loan modifications for homeowners on their residential mortgages. Further, Respondents entered into agreements to provide loan modification services, which included obtaining extensions of credit as defined by the MCSBA, for Maryland consumers on their residential mortgage loans.

d. In July 2011, [redacted] ("Consumer A"), entered into a loan modification agreement with Respondents. Consumer A paid approximately $2,955 in up-front fees

to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A within 60 days. Although Respondents collected $2,955 in up-front fees, Respondents never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, which the Respondents have yet to provide.

e. In January 2011, [redacted] ("Consumer B"), who was more than 60 days in default on her Maryland residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer B paid approximately $7,300 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to prevent foreclosure and obtain a loan modification for Consumer B. Although Respondents collected $7,300 in up-front fees, Respondents never obtained a loan modification for Consumer B. Further, Consumer B requested a refund of the up-front fees, which the Respondents have yet to provide.

f. Respondents engaged in willful conduct which was intended to deceive and defraud Consumer A and Consumer B as referenced above, which demonstrated a complete lack of good faith and fair dealings by Respondents, and which breached any duties that Respondents owed to these consumers. Such conduct included, but was not limited to, the following:

(i) Respondents failed to perform those loan modification services for Consumer A and Consumer B that they promised to provide and for which they had collected up-front fees;

(ii) Respondents purposely concealed this information when contacted by Consumer A and Consumer B who had entered into loan modification agreements with Respondents by intentionally misrepresenting the progress of the loan modifications, when in fact Respondents

had either not even attempted to modify their residential mortgage loan or made very little effort to accomplish the modifications;

(iii) Respondents refused to return telephone calls from Consumer A and Consumer B once they became concerned that Respondents had done nothing to obtain loan modifications on their behalf; and

(iv) Finally, Respondents refused to provide full refunds to Consumer A and Consumer B when refunds were due for lack of service.

4. In the present matter, Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA. *See* CL § 14-1902(1) ("[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) [r]eceive 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. . . ."); CL §14-1903(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"); FI § 11-302(b) ("[u]nless the person is licensed by the Commissioner, a person may not: . . . (3) [e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article"); and FI § 11-303 ("[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions").

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of May 29, 2013 have the Respondents been licensed by the Commissioner under the MCSBA.

6. Respondents have engaged in credit services business activities without having the requisite license by advertising that they could provide loan modification services as described above, and by entering into contractual agreements with Consumer A and Consumer B to provide such services. Respondents' unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, thereby subjecting Respondents to the penalty provisions of the MCSBA.

7. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (6) [c]harge 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").

8. Further, although Respondents made representations that they would obtain beneficial loan modifications for Consumer A and Consumer B, the Commissioner's investigation supports a finding that Respondents never obtained the promised loan modifications for these consumers; as such, Respondents violated CL § 14-1902(4) ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (4) [m]ake or use any false or misleading representations in the offer or sale of the services of a credit services business").

9. Respondents further violated the MCSBA through the following: in their loan modification advertisements, they failed to clearly and conspicuously state their license number under the MCSBA or their exemption, in violation of CL § 14-1903.1; they failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and Respondents failed to include all of the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

10. By failing to obtain beneficial loan modifications for Consumer A and Consumer B, which Respondents had agreed to provide, Respondents breached their contracts with Consumer A and Consumer B and/or breached the obligations arising under those contracts. Such breaches constitute *per se* violations of the MCSBA pursuant to CL § 14-1907(a) ("[a]ny 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").

11. As the contracts between Respondents and Consumer A and Consumer B failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all loan modification contracts between Respondents and Consumer A and Consumer B are void and unenforceable as against the public policy of the State of Maryland pursuant to CL § 14-1907(b) ("[a]ny contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State").

12. The MCSBA prohibits fraud and deceptive business practices at CL § 14-1902(5), which provides as follows:

> [a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (5) [e]ngage, 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.

13. CL § 14-1912 discusses liability for failing to comply with the MCSBA, providing as follows:

> (a) *Willful noncompliance.*– 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 the sum of:
>
> (1) Any actual damages sustained by the consumer as a result of the failure;
>
> (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;
>
> (3) Such amount of punitive damages as the court may allow; and
>
> (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
>
> (b) *Negligent noncompliance.*– Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:
>
> (1) Any actual damages sustained by the consumer as a result of the failure; and
>
> (2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

14. Respondents engaged, directly or indirectly, in acts, practices, or other activities which operated as a fraud or deception on persons in connection with the offer or sale of the services of a credit services business, and thereby violated CL § 14-1902(5); such actions also constituted willful noncompliance with the MCSBA under CL § 14-1912(a). Respondents' fraudulent, deceptive, and willful conduct included the following: they failed to perform those loan

modification services for Consumer A and Consumer B which they promised to provide and for which they had collected up-front fees; Respondents purposely concealed this information when contacted by Consumer A and Consumer B who had already entered into loan modification agreements with Respondents by intentionally misrepresenting the progress of the consumer's loan modification; Respondents failed to return telephonic communications from Consumer A and Consumer B once those consumers became concerned that Respondents had done nothing to obtain a loan modifications on their behalf; and Respondents refused to provide full refunds to Consumer A or Consumer B when such refunds were due for lack of service.

15. Under PHIFA, (specifically RP § 7-301(i)), the term "*homeowner*" is defined as "the record owner of a residence in default or a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article." In turn, pursuant to RP § 7-301(j), the term "*residence in default*" refers to homeowner-occupied Maryland residential real property "on which the mortgage is at least 60 days in default," while pursuant to RP § 7-301(k), "*residence in foreclosure*" refers to homeowner-occupied Maryland residential real property "against which an order to docket or a petition to foreclose has been filed."

16. Pursuant to RP § 7-301(c), a "*foreclosure consultant*" is defined as a person who:

> (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;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

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

(ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or

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

17. Unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which a person or business entity solicits, offers, sells, provides, or enters into an agreement to provide, residential mortgage loan modification services (a/k/a loss mitigation, foreclosure consulting, and similar services) pertaining to homeowner-occupied Maryland residential real property which is in default or in foreclosure.

18. The Commissioner's investigation revealed that the business activities of the Respondents are subject to PHIFA. By entering into agreements with Maryland homeowners in default or in foreclosure to provide residential mortgage loan modification services pertaining to homeowner-occupied Maryland residential real property, the Respondents acted as "foreclosure consultants" under PHIFA (as that term is defined at RP § 7-301(c)), as they had entered into

"foreclosure consulting contracts" with homeowners for the provision of "foreclosure consulting services" (as those terms are defined under RP §§ 7-301(d) and (e), respectively). As such, the Respondents are required to comply with all provisions of PHIFA applicable to foreclosure consultants.

19. Respondents failed to comply with the requirements of PHIFA. First, the Respondents violated RP § 7-307(2) by requiring Consumer B to pay up-front fees prior to successfully obtaining a loan modification for the Consumer B.

20. The Respondents also violated PHIFA by inducing Consumer B to enter into a foreclosure consulting agreement which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c), and thus the Respondents violated RP § 7-307(10) ("[a] foreclosure consultant may not . . . [i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA])."

21. The Respondents further violated PHIFA when they breached the duty of reasonable care and diligence required under RP § 7-309(b) and BO&P § 17-532(c)(vi), including, but not limited to, the following conduct: they failed to perform those loan modification services for Consumer B which they promised to provide and for which they had collected an up-front fee.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§ 14-1902, 14-1907, 14-1912, and FI § 2-115(b), RP §7-319.1 it is by the Maryland Commissioner of Financial Regulation, hereby:

ORDERED that the Summary Order issued by the Deputy Commissioner against Respondents on May 29, 2013, is entered as a final order of the Commissioner as modified herein,

and that Respondents shall permanently **CEASE** and **DESIST** from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland consumers, including contracting to provide, or otherwise engaging in loan modification services, foreclosure consulting, or similar services with Maryland consumers; and it is further

ORDERED that, pursuant to FI §2-115(b) and RP §7-319.1, and upon careful consideration of (i) the seriousness of the Respondents' violations; (ii) the lack of good faith of Respondents, (iii) the history and nature of Respondents' violations; and (iv) the deleterious effect of Respondents' violations on the public and on the credit services businesses and mortgage industries, Respondents shall pay to the Commissioner a total civil money penalty in the amount of **$8,000**, which consists of the following:

Prohibited Activity and Violation	**Penalty per Violation**	**x Number of Violations**	**= Penalty**
Unlicensed Activity in Violation of MCSBA	$1,000	2 Md. Consumers	$2,000
Charging Up-Front Fees in Violation of MCSBA	$1,000	2 Md. Consumers	$2,000
Failure to secure a Surety Bond in Violation of MCSBA	$1,000	2 Md. Consumer	$2,000
Charging Up-Front Fees in Violation of PHIFA	$1,000	1 Md. Consumer	$1,000
Breaching the Duty of Reasonable Care and Diligence in Violation of PHIFA	$1,000	1 Md. Consumer	$1,000
		Total	$8,000

And it is further,

ORDERED that Respondents shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **$8,000** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all loan modification agreements which Respondents entered into with Maryland consumers described herein, are void and unenforceable as contrary to the public policy of the State of Maryland; and it is further

ORDERED that, as Respondents' activities constituted willful noncompliance with the MCSBA, pursuant to CL § 14-1912(a) Respondents shall pay a monetary award in an amount equal to three times the amount collected from these consumers; and thus Respondents shall pay a monetary award of **$8,865** to Consumer A and **$21,900** to Consumer B (consisting of the $2,955 up-front fee collected from Consumer A, multiplied by three; and $7,300 up-front fee collected from Consumer B, multiplied by three) and it is further

ORDERED that Respondents shall pay the required monetary award to those consumers described herein within 30 days of the date of this Final Order. Respondents shall make payment by mailing to each consumer a check in the amount specified above via U.S. First Class Mail at the most recent address of that consumer known to the Respondents. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payments, the Respondents shall furnish evidence of having made the payments to the Commissioner within sixty (60) days of this Final Order being signed, which

evidence shall consist of a copy of the front and back of the cancelled check for each payment; and it is further

ORDERED that Respondents shall send all correspondence, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator.

8/26/13
Date

Mark A. Kaufman
Commissioner of Financial Regulation