

IN THE MATTER OF:

TREVELYN OTTS d/b/a
BETTER LIFE BETTER CREDIT

and

HAVEN REALTY CENTERS, LLC

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2010-188

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Commissioner of Financial Regulation (the "Commissioner"), undertook an investigation into the credit services business activities of Trevelyn Otts ("Otts") d/b/a Better Life Better Credit and Haven Realty Centers, LLC ("Haven Realty"), (collectively, the "Respondents"); and

WHEREAS, as a result of that investigation, the 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 the Commissioner finds that action under FI §§ 2-114 and 2-115, is appropriate.

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist and Order to Produce (the "Summary Order") against Respondents on April 8, 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 with Maryland residents, homeowners and/or consumers (hereinafter "Maryland Consumers"); 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) this Final Order to Cease and Desist (this "Final Order") is issued; 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.

* * *

(3) "Credit services business" does not include:

* * *

(iv) Any person licensed as a real estate broker by this State *where the person is acting within the course and scope of that license...* (emphasis added).

2. CL §14-1903(a) addresses the scope of credit services contracts covered under the MCSBA, providing as follows:

(a) *In general.* – Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:

- (1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;
- (2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or
- (3) The credit services business makes and verbal or written solicitation or communication that originates either inside or outside of this State but is received in the State of a resident of this State.

3. Pursuant to CL §14-1903.1,

A person who advertises a service described in §14-1901(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.

4. Unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1903(d), persons engaged in the business of offering or providing credit services, which include offering or providing extensions of credit to consumers, assistance or advice to consumers on improving consumers' credit record, history or rating, or establishing a new credit file or record, fall under the statutory definition

of “credit services businesses,” and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

5. 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 credit repair services for Maryland Consumers; communications between Respondents and the Commissioner; communications between Respondents and Maryland consumers; statements by Maryland consumers who had entered into contracts with Respondents but for whom Respondents failed to perform or deliver the contracted for or agreed upon credit repair services 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. Better Life Better Credit is an active Maryland trade name held by Otts. The trade name application filed with the Maryland Department of Assessments and Taxation describes the Better Life Better Credit as “Credit [sic] interventionist, assist client in correcting/improving their credit.” During the period covering the Maryland Consumer complaints in this matter, Otts held an active Maryland Real Estate Salesperson’s license and currently holds an active Maryland Real Estate Broker’s license which expires in January 2014.

b. Otts engaged in credit services business activities with Maryland Consumers outside the course and scope of his real estate broker license. Otts is the owner, director, officer, manager, employee and/or agent of Haven Realty.

c. Respondents advertised and marketed to Maryland Consumers that Respondents could obtain and/or provide credit repair services. Further, Respondents entered into contracts to provide credit repair services for Maryland Consumers.

d. In June 2009, [REDACTED] ("Consumer A") engaged Respondents to provide him with credit repair services so that he would qualify for a "Rent to Own" program advertised by Haven Realty. Consumer A paid an up-front fee of \$179 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer A in repairing his credit. Respondents failed to perform the services promised. The written contract provided by Respondents did not comply with the requirements of the MCSBA, including but not limited to the following: (i) it did not contain a complete and detailed description of the services to be performed and the results to be achieved. *See* CL §14-1906(a); (ii) charged up front fees in violation of CL §14-1902(6); and (iii) did not contain the required information statement pursuant to CL §14-1904. In December 2009, Consumer A filed a complaint with the Commissioner.

e. After learning of Consumer A's complaint, the Commissioner contacted Respondents to obtain more information about their credit services business activities. Respondents provided Consumer A with a full refund and agreed to obtain a license before engaging in any further credit services business activities with Maryland Consumers. Respondents also represented to the Commissioner that they had only provided credit services to two Maryland consumers, Consumer A and [REDACTED] ("Consumer B").

f. In May 2009, the Commissioner received a complaint from [REDACTED] [REDACTED] ("Consumer C"). The Commissioner's investigation revealed that in December 2008, Consumer C engaged Respondents to provide her with credit repair services. Consumer C paid an initial up-front fee of \$270 to Respondents in exchange for which Respondents represented that they would be able to assist Consumer C in repairing her credit. Respondents failed to perform the services promised, and although Consumer C has requested a refund, Respondents have failed to

provide one. Respondents failed to disclose to the Commissioner that they had contracted to provide credit repair services to Consumer C.

g. 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”).

6. According to the Commissioner’s records, at no time relevant to the facts set forth in the Summary Order of April 8, 2013 have the Respondents been licensed by the Commissioner under the MCSBA.

7. By representing that they could provide credit repair services, and by entering into contracts with Maryland Consumers to provide credit repair services, Respondents have engaged in credit services business activities without having the requisite license. Respondents’ unlicensed credit repair services business 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.

8. 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”).

9. Further, Respondents made or used false or misleading representations in their sale of services to Maryland Consumers, thereby violating CL §14-1902(4), for example, when Respondents represented to Maryland Consumers that they could assist consumers in repairing their credit in just one year so that the consumer would be eligible for financing necessary to purchase a home.

10. Respondents further violated the MCSBA through the following: 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 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.

11. By failing to obtain or accomplish the credit repair services for Consumers A, B or C, which Respondents had agreed to do, Respondents breached their contract with Consumers A, B and C and/or breached the obligations arising under that contract. Such breaches constitute *per se* violations of 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 constipate a violation of this subtitle”).

12. As the contracts between Respondents and the Maryland Consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above), pursuant to CL §14-1907(b), all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of the State of Maryland.

13. Finally, Respondents refused to provide a full refund to Consumer C when a refund was due for lack of service.

14. The MCSBA prohibits fraud and deceptive business practices at CL § 14-1902(4) and (6), which provides, in part, 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: . . . (4) [m]ake or use false or misleading representations in the offer or sale of the services of a credit services business; (6) [c]harge or receive any money or other valuable consideration prior to the full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer” engage, directly or indirectly, in any act, practice, or course of

15. 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.

16. 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 credit repair services for Consumers A, B and C which they promised to provide and for which they had collected up-front fees; Respondents represented to Consumers that they could assist them in repairing their credit in just one year so that the consumer would be eligible for financing necessary to purchase a home.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§, 14-1907, 14-1912, FI §2-114 and FI § 2-115(b), it is by the Maryland Commissioner of Financial Regulation, hereby:

ORDERED that the Summary Order issued by the Commissioner against Respondents on April 8, 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 with Maryland Consumers, including contracting to provide, or otherwise engaging credit repair services with Maryland consumers; and it is further

ORDERED that, pursuant to FI §2-115(b) 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 **\$13,000**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	3 Md. Consumers	\$3,000
<i>Charging Up-Front Fees in Violation of MCSBA</i>	\$1,000	3 Md. Consumers	\$3,000
<i>No Surety Bond in Violation of MCSBA</i>	\$1,000	3 Md. Consumers	\$3,000
<i>No Information Statement in Violation of MCSBA</i>	\$1,000	3 Md. Consumers	\$3,000
<i>Failure to Comply with Subpoena in Violation of FI § 2-114</i>	\$1,000	1 Violation	\$1,000
		Total	\$13,000

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 **\$13,000** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all contracts 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 **\$810.00 to Consumer C** (consisting of the \$270 up-front fee collected multiplied by three); and it is further

ORDERED that Respondents shall pay the required monetary award to Consumer C 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