

MARYLAND COMMISSIONER * BEFORE THE
OF FINANCIAL REGULATION * COMMISSIONER OF
v. * FINANCIAL REGULATION
FIRST UNIVERSAL * OAH CASE NO: DLR-CFR-76A-11-21623
LENDING, LLC – MARYLAND; *
a/k/a FIRST UNIVERSAL *
WORKOUT SOLUTIONS; *
LENDING PARTNERS; *
FEINGOLD & KAM, LLC; *
DAVID J. FEINGOLD; *
DAVID ZAUSNER; *
SEAN ZAUSNER; *
AND GARY J. LINOWES, *
RESPONDENTS *

FINAL ORDER
DATE 9/9/11

* * * * *

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 15th day of August, 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

MARYLAND COMMISSIONER OF FINANCIAL	*	BEFORE THOMAS G. WELSHKO,
REGULATION	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
FIRST UNIVERSAL	*	ADMINISTRATIVE HEARINGS
LENDING, LLC;	*	OAH CASE NO: DLR-CFR-76A-11-21623
FIRST UNIVERSAL	*	
LENDING, LLC – MARYLAND;	*	
a/k/a FIRST UNIVERSAL WORKOUT	*	
SOLUTIONS;	*	
LENDING PARTNERS;	*	
FEINGOLD & KAM, LLC;	*	
DAVID J. FEINGOLD;	*	
DAVID ZAUSNER;	*	
SEAN ZAUSNER;	*	
AND GARY J. LINOWES,	*	
RESPONDENTS	*	

* * * * *

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 April 21, 2009, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (DLLR), issued a Summary Order to

Cease and Desist to First Universal Lending, LLC. *et al.*, Respondents. The CFR alleges that the Respondents violated various provisions of the Annotated Code of Maryland, including the Commercial Law Article (CL),¹ Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act (MCSBA); Financial Institutions Article (FI),² Title 11, Subtitles 2³ and 3 (addressing the licensing requirements for businesses offering Consumer and Installment Loans); the Real Property Article (RP),⁴ Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act (PHIFA); and FI, Title 11, Subtitle 5 (the Maryland Mortgage Lenders Law (MMLL); The CFR seeks action under sections 2-114 and 2-115 of FI.

On May 7, 2009, the Respondents requested a hearing. On January 5, 2010, 2010, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing and delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

On March 29, 2011, I held a hearing at the OAH in Hunt Valley, Maryland on the Summary Order to Cease and Desist and proposed penalties. Assistant Attorney General Thomas Lawrie appeared on behalf of the CFR. None of the Respondents or anyone authorized to represent the Respondents appeared. On February 8, 2011, the OAH mailed Notices of Hearing by first class and regular mail to the Respondents' addresses of record. The Notices of Hearing came back "undeliverable as addressed."

¹ Unless otherwise noted, all references to the Commercial Article, Annotated Code of Maryland, are to the version in the 2005 Replacement Volume.

² Unless otherwise noted, all references to Financial Institutions Article, Annotated Code of Maryland, are to the version in the 2011 Replacement Volume

³ There are no charges cited in the Summary Order to Cease and Desist related to Title 11, Subtitle 2 of FI.

⁴ Unless otherwise noted, all references to the Real Property Article, Annotated Code of Maryland, are to the version in the 2010 Replacement Volume

Despite the return of the Notices, David J. Feingold, Attorney-at-Law,⁵ and a named co-Respondent, sent a letter to the OAH in which he acknowledged that he (and presumably all of the Respondents, by virtue of his representation of them) received the notice(s) of the hearing. Counsel, however, asserted that the OAH lacked jurisdiction in this matter because the Honorable William J. Zloch, United States District Judge for the Southern District of Florida, issued a Preliminary Injunction on December 18, 2009 staying any legal proceedings against the Respondents pending the conclusion of receivership proceedings. Counsel submitted a copy of Judge Zloch's Preliminary Injunction as an attachment to his letter.

The Respondents' counsel's jurisdictional argument is specious. It lacks merit because, in granting his injunction, Judge Zloch noted, ". . . [n]othing in this Paragraph shall prohibit any federal, state law enforcement or regulatory authority from commencing action or prosecuting an action against the Receivership Defendants." Preliminary Injunction at 28. Those Receivership Defendants include First Universal Lending, LLC⁶ and co-Respondents Sean Zausner, David Zausner and David J. Feingold. Because the CFR is a State regulatory authority, Judge Zloch's stay does not apply to it. Moreover, inasmuch as some co-Respondents identified by the CFR are not identified in Judge Zloch's Preliminary Injunction, the stay does not apply to them in any event. Consequently, I directed that the hearing proceed in the Respondents' absence.

⁵ Counsel is admitted to the practice solely in the State of Florida according to his stationery's letterhead.

⁶ Although the Summary Order to Cease and Desist identifies First Universal Lending, LLC, a.k.a. First Universal, as the primary party, the CFR's January 5, 2011 Delegation of Authority specifically withheld jurisdiction over that party from the OAH. That withholding of delegation was based on exclusive jurisdiction clauses contained in the federal court Preliminary Injunction. When I made my ruling from the bench on the jurisdictional issue raised by Mr. Feingold and noted that the federal court's ruling did not impede the CFR's ability to name First Universal Lending, LLC as a party, the CFR moved to have this case continued so it could issue a new Delegation of Authority naming First Universal Lending, LLC as a party. I denied that Motion as it would needlessly delay the proceedings against the other named entities and individuals.

I heard this case under authority of sections 11-518 and 11-616 of the FI. The Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2010), the OAH's Rules of Procedure; Code of Maryland Regulations (COMAR) 28.02.01, and DLR's Hearing Regulation, COMAR 09.01.03, govern procedure in this case.

I held the record open until May 10, 2011 to allow the CFR to submit written closing argument and proposed Findings of Fact and to allow Respondent-responses to the CFR's submissions. The CFR's submissions were due April 16, 2011, but the CFR's counsel moved for an extension until April 30, 2011, with concurrent extensions for the Respondents to submit responses. The CFR, however, did not submit post-hearing submissions until May 27, 2011, nearly a month after the extended deadline had passed. Therefore, I closed the record and completed my proposed decision in the absence of the CFR's Proposed Findings of Fact and closing argument.

ISSUES

1. Did the Respondents violate provisions of CL, MCSBA, PHIFA, FI, RP, and MMLL?
2. If so, what is the appropriate penalty for those violations?
3. Are Maryland consumers entitled to restitution and, if so, what is the amount of that restitution?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted twenty exhibits on behalf of the CFR, and no exhibits on behalf of the Respondents. (I have attached a complete Exhibit List as an Appendix to this decision.)

Testimony

Calvin I. Wink, Jr., Acting Assistant Commissioner of Enforcement and Consumer Services, CFR, testified for the CFR.

No witnesses testified for the Respondents.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. From October 2006 through October 2008, First Universal Lending, LLC was licensed at two consecutive locations under the MMLL as a Maryland mortgage lender engaged in the mortgage lending business. From October 2006 through February 2007, First Universal Lending, LLC was licensed at 5110 Roanoke Place, Suite 103, College Park, Maryland 20740, and from February 2007 through October 2008, it was licensed at 3300 PGA Boulevard, Suite 410, Palm Beach Gardens, Florida 33410. (CFR Exs. 8, 10, 12 and 19.)
2. First Universal Lending, LLC/Maryland, which served as an agent for First Universal Lending, LLC in this State, was not licensed under the MMLL. (CFR Exs. 8, 10 and 12.)
3. The Respondents advertised to Maryland residents, through the Internet and by other means, that they could obtain loan modifications for homeowners in default or in foreclosure on their residential mortgages. (Test. Wink; CFR Ex. 3.)

4. In August 2008, Consumer A, who was more than 60 days in default on his Maryland residential mortgage loan, entered into a loan modification agreement with the Respondents, at which time Consumer A paid approximately \$4,799.70⁷ in upfront fees to the Respondents. Consumer A paid those fees by means of direct-debit monthly installments from his checking account. In exchange for those fees, the Respondents promised to obtain a loan modification for Consumer A. (CFR Exs. 5 and 13.)

5. Consumer A asked Respondent First Universal Lending, LLC/Maryland for a refund after it failed to obtain a loan modification for him. Respondent First Universal Lending, LLC/Maryland refused to provide a refund and, in fact, continued to debit Consumer A's checking account. (CFR Ex. 13.)

6. Although the Respondents obtained \$4,799.70 in upfront fees from Consumer A, they never obtained the promised loan modification services for him. (CFR Ex. 13.)

7. In August 2008, Consumer B, who was more than 60 days in default on her Maryland residential mortgage loan, entered into a loan modification agreement with the Respondents. Consumer B paid approximately \$2,975.00⁸ in upfront fees to the Respondents. In exchange for those fees, the Respondents promised to obtain a loan modification for Consumer B. (CFR Ex. 14.)

8. The Respondents never obtained the promised loan modification for Consumer B. (CFR Ex. 14.)

⁷ According to the charges contained in the Summary Order to Cease and Desist, the Respondents obtained \$2,800.00 for Consumer A. However, CFR Ex. 5, which Respondent David Zausner prepared on February 7, 2011, is an accounting of all money received by the Respondents from numerous Maryland consumers. That exhibit reveals that the Respondents collected a total of \$4,799.70 from Consumer A. Therefore, I will use this figure as the most accurate because it is more up-to-date than the Summary Order to Cease and Desist.

⁸ This amount also appears in CFR Ex. 5.

9. In approximately January 2009, Consumers C,⁹ who were more than 60 days in default on their Maryland residential mortgage loan, entered into a loan modification agreement with Respondents, at which time Consumers C paid approximately \$1,900.00 in upfront fees to Respondents. In exchange for those fees, the Respondents promised to obtain a loan modification for Consumers C. (CFR Exs. 5 and 15.)

10. Although the Respondents obtained \$1,900.00 in upfront fees from Consumers C, they never obtained the promised loan modification services for them. (CFR Ex. 15.)

11. In approximately May 2009, Consumers D, who were more than 60 days in default on their Maryland residential mortgage loan, entered into a loan modification agreement with Respondents, at which time Consumers D paid \$1,400.00¹⁰ in upfront fees to Respondents. In exchange for those fees, the Respondents promised to obtain a loan modification for Consumers D. The Respondents directed Consumers D to stop making payments on their residential mortgage loan. (CFR Exs. 5 and 16.)

12. Although the Respondents obtained \$1,400.00 in upfront fees from Consumers D, they never obtained the promised loan modification services for them. (CFR Ex. 16.)

13. The Respondents' dealings with respect to Consumer A and B and Consumers C and D were typical of its dealings with at least 642 other consumers who were residents of Maryland. In all, the Respondents obtained upfront fees totaling \$1,090,109.24 from 646 known Maryland consumers who were 60 or more days in

⁹ Plural because they are husband and wife as are Consumers D.

¹⁰ The amounts in the Summary Order to Cease and Desist and CFR Exs. 5 and 16 match with respect to Consumers D.

default on their residential mortgages, promised to obtain mortgage loan modifications for them in exchange for their fees and failed to obtain those modifications. (Test. Wink; CFR Ex. 5.)

Facts Related to the Respondents' Violations of CL and MCSBA

14. The residential mortgage loan modification services (including loss mitigation, foreclosure consulting or similar services) that the Respondents were providing to Maryland consumers potentially involved the extension of credit. Extending credit would come into play if the Respondents attempted to obtain forbearance or other deferrals of payment on consumers' mortgage loans. (Test. Wink; CFR Exs. 13 – 16.)

15. Because their business activities involved the potential extension of credit, the Respondents were acting as credit services businesses. (Test. Wink.)

16. Credit services businesses must obtain a license from the CFR to offer credit services in Maryland. (Test. Wink.)

17. None of the Respondents ever held a license as a credit services business in Maryland. (Test. Wink.)

18. When the Respondents entered into mortgage loan modification agreements with Maryland consumers from October 2006 through October 2008, they did not provide those consumers with a written statement that included the following:

- A complete and detailed description of the services to be performed for or on behalf of the consumer, and the total amount the consumer will have to pay for the services;
- A statement of the consumer's right to file a complaint under authority section 14-1911 of CL;
- the address of the Commissioner where such complaints should be filed; and

- 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 section 14-1910 of CL.

(Test. Wink; CFR Exs. 13 – 16.)

19. The Respondents did not provide a credit services contract to any of the Maryland consumers who entered into mortgage loan modification agreements. By law, such contracts must contain the following:

- Notice of the right to cancel anytime before midnight of the third day after the loan transaction has been completed;
- 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;
- a complete and detailed description of the services to be performed and the results to be achieved;
- 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; and.
- a Notice of Cancellation Form containing specific information required by law.

(Test. Wink; CFR Exs. 13 – 16.)

20. The Respondents did not obtain a credit services business security bond.

(Test. Wink.)

Facts Related to the Respondents' Violations of the PHIFA

21. By advertising and engaging in business activities related to assisting Maryland consumers in obtaining modifications to home mortgage loans currently in default, the Respondents were providing foreclosure consulting services and, therefore, were acting as foreclosure consultants. (Test. Wink.)

22. The loan modification agreements that the Respondents entered into with Maryland consumers were foreclosure consulting contracts. None of the loan modification agreement contracts that the Respondents entered into with Maryland consumers contained a required right of rescission notice. (CFR Exs. 13 – 16.)

23. The Respondents failed to perform the foreclosure consulting services for Maryland consumers that they had promised to provide; they purposely concealed their failure to perform any services by refusing to discuss or address the terms of the loan modification agreements or the progress of loan modifications when Maryland consumers who had already entered into such agreements with the Respondents contacted them. The Respondents also refused to provide refunds to Maryland consumers who requested them when they failed to provide the promised services. (Test. Wink; CFR Exs. 13 – 16.)

Facts Related to the Respondents' Violations of the MMLL

24. In October 2006, First Universal Lending, LLC applied for its Maryland mortgage lender license in the name of First Universal Lending, LLC, but it submitted an Operating Agreement and other materials for a different business entity – Respondent First Universal Lending, LLC/Maryland—and succeeded in passing them off as those of the actual applicant, First Universal Lending, LLC. (Test. Wink; CFR Exs. 10 – 12.)

25. The Respondents represented that Gary Linowes was the managing partner/member of the applicant, when in fact he was the controlling member of the other non-applicant entity, First Universal Lending, LLC/Maryland. The Respondents further submitted fingerprint records for a criminal background check of Gary Linowes, rather than of the controlling partners/members. (CFR Exs. 10 – 12, 19.)

26. In late December 2006, First Universal Lending, LCC requested, and, in February 2007, the CFR ultimately granted, a request for a change in business license location from its Maryland office to its main Florida office location. However, Respondents failed to request a change in control for "First Universal Lending, LLC" from Gary Linowes to David Zausner, Sean Zausner, or David Feingold, who were actually the controlling members of First Universal Lending, LLC's Florida office. The Respondents did not obtain approval from the Office of the Commissioner before implementing a change in control of a licensee. (Test. Wink; CFR Ex. 19.)

27. The Respondents never registered any of the limited liability companies by which they procured business in Maryland with the Maryland Department of Assessments and Taxation. (CFR Ex. 20.)

DISCUSSION

The CFR conducted an investigation into the business activities of the Respondents and, as a result of that investigation, it issued a Summary Order to Cease and Desist (Summary Order) to them on April 21, 2009. The Summary Order charged the Respondents with violating specific provisions of the MCSBA (found in CL), PHIFA (found in RP) and MMLL (found in FI). Based on the alleged violations, the CFR seeks a final order that requires the Respondents to "immediately cease and desist from engaging in credit services business or foreclosure consultant activities with Maryland residents...and immediately cease and desist from violating aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the CL (the Maryland Credit Services Businesses Act), Title 11, Subtitles 2 and 3 of FI, Title 7, Subtitle 3 of the RP (Protection of Homeowners in Foreclosure

Act), and Title 11, Subtitle 5 of FI, (the Maryland Mortgage Lenders Act).” The CFR also seeks statutory monetary penalties against the Respondents, restitution for their violations and for them to produce certain information and documents pertaining to Maryland consumers with whom they did business.

The CFR, as the moving party on the charges, has the burden of proof, by a preponderance of the evidence. *See, e.g.*, Md. Code Ann., State Gov’t Art., § 10-217 (2009); *Comm’r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17 (1996).

To meet its burden of proof, the CFR offered the testimony of Calvin I. Wink, Jr., Acting Assistant Commissioner of Enforcement and Consumer Services, who conducted the CFR’s investigation. The CFR also presented twenty multipage documents to augment Mr. Wink’s testimony. This combined testimonial and documentary evidence constitutes a *prima facie* case in support of the CFR’s charges. Because the CFR made a *prima facie* case, and the Respondents failed to appear at the hearing to offer any contrary evidence or legal defense to the charges, I conclude that the CFR has met its burden of proof (both production and persuasion) in this matter. Therefore, I shall uphold all of the charges that it made in its Summary Order. For the sake of clarity, I will address the charges in the order that they appear in that Summary Order.

The Respondents’ Violations of the MCSBA and Installment Loan Licensing Provisions

Respondent First Universal Lending, LLC/Maryland had a convoluted tie-in with First Universal Lending, LLC of Palm Beach Gardens, Florida. The evidence suggests that although Gary Linowes and members of his family fronted as owners of First Universal Lending, LLC/Maryland, the Florida LLC actually controlled and directed all of

the activities of its Maryland affiliate.¹¹ David Feingold, Esquire, David Zausner, Sean Zausner and the law firm of Feingold & Kam, in turn, managed First Universal Lending, LLC. The relationship between the different LLCs and individuals is confusing and, based on the record as a whole, I conclude it was purposely so.

The MCSBA defines "*credit service businesses*" at CL § 14-1901(e) (Supp. 2010); 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:

...

(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.

Section 14-1903(a) addresses the scope of credit services contracts covered by the MCSBA. Section 14-1903(f) of CL 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."

Here, First Universal Lending, LLC/Maryland and, by extension, the other Respondents, held themselves out as being able to assist Maryland consumers by obtaining loan modifications for Maryland residents who were actually in foreclosure on their residential mortgages or in default on their mortgages more than 60 days and soon faced foreclosure. The Respondents advertised to Maryland residents, through the Internet and, by other means, that they could obtain loan modifications to prevent

¹¹ I make this inference based on the sleight of hand and other machinations that the individual Respondents employed when they applied for a mortgage lenders' license for First Universal Lending, LLC. (See the MMLL violation discussion below.)

foreclosure or remedy a default that might turn into a foreclosure action. Because obtaining loan modifications could potentially involve the offering of credit, First Universal Lending, LLC/Maryland and the other Respondents were all acting as credit services businesses. It is true that Maryland mortgage lenders are usually exempt from the provisions of the MCSBA governing credit services businesses, but in this case, the Respondents are not exempt from the MCSBA because their activities occurred at unlicensed locations. (I will discuss this aspect of the charges in detail below.)

Section 11-302 of FI prohibits a person from engaging in a credit services business unless licensed by the CFR. Section 11-303 sets out licensing procedures. Section 14-1903(b) of CL has a similar provision, which cross-references Title 11, Subtitle 3 of FI.

The Respondents never obtained a credit services business license from the CFR, so they are in violation of the licensing provisions cited above. Moreover, they did not adhere to the requirements of the MCSBA in granting credit through their loan modification activities. They could not adhere to section 14-1903.1 as well, which requires a license number to be displayed conspicuously in any advertisement, because they did not have a license number.

It follows that because the Respondents never obtained a credit services business license, they would not have complied with the statutory requirements mandating how credit services businesses are to conduct their activities. Section 14-1904(a) of CL provides that, "[b]efore 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 [the MCSBA]." Section 14-1905(b) of CL further requires a credit services business "to maintain on file for a period of 2 years from the date of the consumer's acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement."

Section 14-1905 of CL specifies the terms, which must be provided in the information statement, stating the following, in pertinent part:

(a) *In general.* - 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.

...

(b) Additional requirements of licenses.- 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.

Section 14-1906 of CL discusses requirements for contracts between credit services businesses and consumers, providing as follows:

(a) *Requirements.*- 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) *Notice of cancellation form.*- 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.

...

(c) *Copies of completed contract and other documents to be "given to consumer."*- 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.

Section 14-1907 of CL provides, in part, as follows:

(a) *Breach of contract.*- 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.

(b) *Void contracts.*- Any 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.

(c) *Waivers.*-

...

(2) Any attempt by a credit services business to have a consumer waive rights given by this subtitle shall constitute a violation of this subtitle.

Section 14-1908 of CL provides that, "[a] credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of Financial Institutions Article." Further, section 14-1909 of CL provides that, "[t]he surety bond shall be issued by a surety company authorized to do business in this State."

An examination of the "Loan and Workout Program" loan modification agreements related to Consumer A and B and Consumers C and D (found in CFR Exhibits 13 through 16) reveals that they have none of the information or notices required by the above-cited MCSBA sections. Therefore, the Respondents are in violation of all those sections.

Moreover, by collecting upfront fees before performing all services on behalf of Maryland consumers, the Respondents violated 14-1902(6) of CL. They also made or used false or misleading representations in their sale of services to Maryland

consumers, thereby violating section 14-1902(4) of CL. The Respondents' advertisements and other marketing materials claimed that they would obtain beneficial loan modifications for consumers, when in fact they never obtained beneficial modifications for the Maryland consumers with whom the Respondents' contracted.¹² This failure constituted a breach of contract as described in section 14-1907(a) of CL. Because the Respondents' loan modification agreements failed to comply with the MCSBA, section 14-1907(b), they are void and unenforceable as a matter of public policy.

Section 14-1912 of CL 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

¹² There is scant evidence in the record that suggests that the Respondents earnestly tried to obtain any loan modifications for Maryland consumers. The one exception appears in e-mail correspondence that a staff member of First Universal Lending, LCC/Maryland had with representatives of SunTrust Mortgage. That correspondence, however, reveals that this Respondent made half-hearted attempts at best on behalf of Consumer A. Furthermore, there is no evidence that the Respondents *actually* obtained a mortgage loan modification for any Maryland consumer. Therefore, I conclude that because Maryland consumers paid substantial sums of money to the Respondents and got nothing in return, essentially what the Respondents did was tantamount to theft.

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.

The CFR argues that the Respondents violated the MCSBA sections cited above not only with regard to the four sets of Maryland consumers who paid for loan modification services for which it provided specific evidence, but by extension, a total of 646 Maryland consumers overall. Additionally, the CFR contends that the Respondents' violations were willful given their failure to provide any loan modification services despite receiving \$1,090,109.24 in fees from those 646 consumers combined with their non-compliance with the MCSBA. I agree. First Universal Lending, LLC/Maryland and all of the Respondents acted with impunity in taking money for loan modification services and refusing to provide those services. First Universal Lending, LLC/Maryland's loan modification agreements never provided information statements, advised Maryland consumers of their rights to cancel contracts or their right to complain to the CFR. Those agreements also contained vague rather than specific terms as required by section 14-1905. None of the Respondents ever purchased a surety bond. Most important, however, Respondent First Universal Lending, LLC/Maryland and the other Respondents acted as rogue lenders, promising so much but offering nothing in return for the substantial fees they collected. Therefore, I will recommend that the CFR seek restitution from the Respondents, jointly and severally, to reimburse all Maryland consumers harmed by their conduct.

Respondents' Violations of the PHIFA

The PHIFA (specifically section 7-301(i) of RP) defines "homeowner" 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, under RP section 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 according to RP section 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."

Section 7-301(c) defines a "foreclosure consultant" 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 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 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.

According to RP section 7-301(d), a "foreclosure consulting contract" is "a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service."

RP section 7-301(e) lists the kinds of acts that constitute "a foreclosure consulting service." They include the following:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in default;

(5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title;

(6) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure; or

(7) Arranging for or facilitating a homeowner remaining in the homeowner's residence after a sale or transfer as a tenant, renter, or lessee under terms provided in a written lease.

The PHIFA provides that, "a homeowner has the right to rescind a foreclosure consulting contract at any time" (RP section 7-305), and that a foreclosure consulting contract must include appropriate notices of rescission and related information (RP sections 7-306(a)(6), (b), and (c)). RP section 7-307(2) provides that a foreclosure consultant may not "[c]laim, 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."

Further, RP section 7-307(7) states that a foreclosure consultant may not "[r]eceive any money to be held in escrow or on a contingent basis on behalf of the homeowner." RP section 7-307(10) provides that a foreclosure consultant may not "[i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that doesn't comply in all respects with this subtitle." According to RP section 7-309(b), "[a] foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under section 17-532 of the Business Occupations and Professions Article." The duty of care that the statute references is "[the duty to] exercise reasonable care and diligence." Md. Code Ann., Bus. Occ. § 17-532(c)(vi)) (2010).

The evidence that the CFR presented indisputably establishes that the Respondents acted as foreclosure consultants in soliciting foreclosure consulting contracts, as defined by RP sections 7-301(c) and (d), to Maryland homeowners whose

residential mortgages were either in default more than 60 days or in foreclosure, as defined by RP sections 7-301(i) and (j). They were offering foreclosure consulting services, according to RP section 7-301(e) because they were engaged in (or at least promised to engage in) activities that included receiving money for the purpose of contacting creditors on behalf of homeowners, arranging extensions for homeowners to cure a default, delaying or attempting to delay the sale of a residence in default and, in theory, providing all the services specifically listed in RP section 7-301(e) as constituting a "foreclosure consulting service." The Loan and Workout Program agreements that Maryland consumers signed were foreclosure consulting contracts, as defined by RP section 7-301(d), because those agreements clearly list acts that are foreclosure consulting services.¹³

Because the Respondents were acting as foreclosure consultants and were supposedly providing foreclosure consulting services, their activities as well as their foreclosure consulting contracts violated the various listed sections of the PHIFI that the CFR has referenced. The CFR's evidence reveals that the Respondents' Loan and Workout Program contracts did not contain any statement alerting Maryland consumers of a right to rescind the contract, as required by RP section 7-306(a)(6), (b) and (c). In fact, the Respondents would not even allow Maryland consumers to rescind those contracts, which is a violation of RP section 7-305. Consumer A, for example, sought a

¹³ For example, in the Loan and Workout Program agreement, contained in CFR Exhibit No. 14 (which relates to Consumer B), the Respondents make the following statement on page 1: "Our goal is to reduce your present payment and re-work the deal [i.e., the homeowner's mortgage] and to help to put you in a new program that better fits your present financial needs." On page 2, among six numbered items, the Respondents state at ¶ 2 that they would "contact present lender/credit companies and/or loan serving company to determine who is responsible for loan modification decisions." At ¶4, they state that they would "negotiate an agreement on new loan terms and if all parties agree we will then get documents for your review." It is beyond question that these promised acts are among those defined as foreclosure consulting services in RP section 7-301(e).

refund of the money he paid to the Respondents. The Respondents vigorously fought against this request, notifying Consumer A's debit card servicer that it had a "valid contract" and that all fees were "non-refundable." They took this stance despite the statutory mandate that no foreclosure consultant operating within Maryland can charge upfront fees (RP section 7-307(2)) or enter into foreclosure consulting contracts on a contingent basis (RP section 7-307(7)). (The Respondents violated this latter section by demanding not only upfront but monthly fees, which would qualify as a contingency.) The Respondents obviously did not engage in the same duty of care that a real estate broker must adhere to in dealing with clients, so they violated RP section 7-309(b). Moreover, they violated RP section 7-307(10) by inducing Maryland homeowners to enter into foreclosure modification contracts that in practically no way adhered to any section contained within RP Title 7.

Respondents' Violation of the MMLL

The MMLL gives the CFR the responsibility to license and regulate the activities of mortgage lenders that offer consumer loans secured by residential real property located in Maryland. The MMLL is contained within FI. The portions of the MMLL that are relevant here are set out in detail below.

FI section 11-505 provides the following, in pertinent part:

(a) *Scope of license - Authority conferred.* - A license issued under this subtitle authorizes the licensee to act as a mortgage lender under the license at the licensed place of business.

(b) *Same - Places of business.* - Only 1 place of business maybe maintained under any 1 license.

...

(d) *Name and location.* -

(1) The Commissioner [of Financial Regulation] shall include on each license:

(i) The name of the licensee; and

(ii) The address at which the business is to be conducted.

(2) A person may not conduct any mortgage loan business at any location or under any name different from the address and name that appears on the person's license.

FI section 11-506.1(b) states, "in connection with an initial application and at any other time the Commissioner requests, each applicant or licensee shall provide fingerprints for use by the Federal Bureau of Investigation and the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services to conduct criminal history records checks."

FI section 11-507 provides the following in pertinent part:

(a) *In general.*-

(1) To apply for a license, an applicant shall complete, sign, and submit to the Commissioner an application made under oath on the form that the Commissioner requires.

(2) The applicant shall comply with all conditions and provisions of the application for licensure and be issued a license before acting as a mortgage lender at a particular location.

(3) The application shall include:

(i) If the applicant is an individual, the applicant's name, business address and telephone number, and residence address and telephone number;

(ii) If the applicant is a partnership or other noncorporate business association, the business name, business address and telephone number, and the residence address and telephone number of each:

1. General partner, if the applicant is a limited partnership;

2. General partner who holds an interest in the partnership of more than 10 percent, if the applicant is a general partnership; or

3. Member, if the applicant is another noncorporate business association;

(iii) If the applicant is a corporation:

1. The name, address, and telephone number of the corporate entity; and

2. The name, the business telephone number, and - the residence address and telephone number of the president, senior vice presidents, secretary, and treasurer, each director, and each stockholder owning or controlling 10 percent or more of any class of stock in the corporation;

(iv) The name under which the mortgage lending business is to be conducted;

(v) The name and address of the applicant's resident agent, if any; and

(vi) Any other information that the Commissioner reasonably requests.

...

(d) *Surcharge.*- In addition to any sanctions that may be imposed under this *subtitle* by the Commissioner, a nonrefundable surcharge of \$500 shall be paid with an application if the applicant has begun acting as a mortgage lender without a license at the location for which an application is filed.

(e) *False statement; penalty.*- A person who knowingly makes a false statement under oath on an application filed with the Commissioner under this section is guilty of perjury and on conviction is subject to the penalties of § 9-101 of the Criminal Law Article.

FI section 11-512 discusses the issues of change of control of a business entity, as well as sanctions for violations, as follows:

(b) *Change in control.* –

(1) A licensee may not undergo a change in control unless the licensee:

(i) Notifies the Commissioner in writing of the proposed change;

(ii) Makes a written request that the Commissioner approve the proposed change;

(iii) Provides any information the Commissioner may require under paragraph (3) of this subsection; and

(iv) Receives the written approval of the Commissioner.

...

(c) *Sanction.*:- In addition to any sanctions which may be imposed under this subtitle by the Commissioner, a licensee who fails to timely provide the notice required under subsection (a) (1) or (b) (1) of this section shall:

(1) For each such failure pay to the Commissioner a surcharge in the amount of \$500; and

(2) File with the Commissioner an application for a new license, together with all applicable application and investigation fees.

According to PI section 11-515(b)(2), "the Commissioner may make any other investigation of any person if the Commissioner has reasonable cause to believe that the person has violated any provision of this subtitle, or any regulation adopted under this subtitle, or of any other law regulating mortgage loan lending in the State."

FI section 11-516 provides the following in pertinent part

(a) *Issuance.*- if the Commissioner finds that the conduct of any other business conceals a violation or evasion of this subtitle or of any rule or regulation adopted under this subtitle, or of any law regulating mortgage loan lending in" the State, the Commissioner may issue a written order to a licensee to:

(1) Stop doing business at any place in which the other business is conducted or solicited; or

(2) Stop doing business in association or conjunction with the other business.(b) *Penalties.*- A licensee who violates an order of the Commissioner issued under this section shall be subject to the penalties provided by § 11-517 of this subtitle.

Fl section 11-517 states the following in pertinent part:

(a) *Suspension or revocation of license - In general.* Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

...

(1) Makes any material misstatement in an application for a license;

...

(3) In connection with any mortgage loan or loan application transaction:

(i) Commits any fraud;

(ii) Engages in any illegal or dishonest activities; or

(iii) Misrepresents or fails to disclose any material facts to anyone entitled to that information;

(4) Violates any provision of this subtitle or any rule or regulation adopted under it or any other law regulating mortgage loan lending in the State; or

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

...

(c) - *Enforcement of subtitle, regulations, etc. - Orders, civil penalties*

(1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under § 11-503 of this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and

2. Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation; and;

(ii) Imposing a civil penalty not exceeding \$1,000 for each violation.

....

The Respondents violated FI sections 11-505, 11-506.1, 11-507(a), 11-507(e), and 11-517(a)(1) between July and October 2006 in connection with their original mortgage lender application by making material misstatements in their application documents and by submitting false and misleading information with the intent to deceive the CFR. They basically engaged in bait and switch tactics. The Respondents applied for their Maryland mortgage lender license in the name of "First Universal Lending, LLC," but failed to submit the information for that LLC as required under FI section 11-507(a). Instead, they submitted an Operating Agreement and other materials for First Universal Lending, LLC/Maryland. A review of the record as a whole reveals that what the Respondents did was intentional, and was not a mere scrivener's error. Various letters from the other Respondents during the licensing application process, including letters from Respondents David Feingold, Esquire and Feingold & Kam, LLC to the CFR's Licensing Unit included multiple intentionally false representations and material misstatements, thereby violating sections 11-507(e) and 11-517(a)(1). Among other things, the Respondents represented that Gary Linowes was the managing partner/member of the applicant, when in fact he was the ostensible controlling member

of the *non-applicant entity* - First Universal Lending, LLC/Maryland. The Respondents further submitted fingerprint records for a criminal background check of Gary Linowes, rather than of the actual controlling partners/members as required by the Office of the Commissioner. Therefore, they violated FI section 11-506.1.

As noted with regard to my discussion of the Respondents' violations of the MCSBA, from October 2006 through October 2008, First Universal Lending, LLC (again, *not* First Universal Lending, LCC/Maryland) was licensed at two named locations under the MMLL as a Maryland mortgage lender engaged in the mortgage lending business as FI sections 11- 501(i) and (j) define those terms. From October 2006 through February 2007, it was licensed at 5110 Roanoke Place, Suite 103, College Park, Maryland 20740, and from February 2007 through October 2008, it was licensed at 3300 PGA Boulevard, Suite 410, Palm Beach Gardens, Florida 33410.

When the Respondents requested – and the CFR ultimately granted – a request for a change in business license location from their Maryland office to their Florida office under the MMLL, the Respondents failed to request a change in control for Respondent First Universal Lending, LLC from Gary Linowes to David Zausner, Sean Zausner, and/or David Feingold. These latter three individuals were the actual controlling members of First Universal Lending, LLC's Florida office. As such, Respondents violated FI section 11-512(b) by failing to obtain approval from the CFR before to implementing a change in control of a licensee.

The CFR's April 21, 2009 Summary Order contained charges, at ¶s 58 through 60, which indicated that because of the various Respondents' violations of PHIFA (as discussed in detail above), First Universal Lending, LLC's mortgage lender's license,

granted under the authority of the MMLL, could be subject to revocation. Nevertheless, as I noted at page 3, footnote 6, the CFR did not delegate the necessary authority to the OAH to adjudicate the charges against First Universal Lending, LLC. Therefore, I cannot and will not address those charges or possible revocation of that entity's mortgage lender's license in this decision.

Nevertheless, to the extent that the other Respondents committed violations in connection with residential mortgage loan transactions that demonstrated unworthiness, bad faith, dishonesty, and other qualities indicating that the business of Respondents has not been or will not be conducted honestly, fairly, equitably, and efficiently and to the extent that their conduct constituted fraudulent, illegal, and dishonest activities pertaining to mortgage lending in the State, as evidenced by their violations of the PHIFI, I find them in violation of FI sections 11-517(a)(3)(i), 11-517(a)(3)(ii), 11-517(a)(4), 11-517(a)(5). Because the other Respondents are not MMLL licensees, however, I cannot recommend any suspension or revocation action against them. Despite my inability to impose any licensing sanctions against the Respondents, I can still propose monetary penalties and order restitution by them as non-licensees. (See Discussion below.)

Restitution and Penalties

Respondent's MCSBA and Installment Loan Licensing Violations

Section 14-1912 of CL provides the following with respect to penalties for violating the MCSBA:

§ 14-1912. Failure to comply with requirements

(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.

I infer from the evidence that the Respondents' violations of the MCSBA were not merely negligent, but willful. The Respondents made no effort to comply in any way with the requirements of the MCSBA. Moreover, assuming that the Respondents' interaction with the specific consumers that the CFR highlighted were typical, not only did the Respondents fail to inform consumers of their rights under the MCSBA, they purposely *concealed* those rights from them. When consumers either complained about receiving no services or attempted to rescind their contracts with the Respondents, First Universal Lending, LLC/Maryland either (1) tried to badger them into paying irrespective of the lack of services that they received or, (2) in the case of attempted rescissions, used every supposedly "legal" method at its disposal to prevent them from rescinding. CFR

Exhibit No. 5 contains the names of 646 consumers and the amounts collected from them by the Respondents. I will consider each transaction a separate violation of the MCSBA. Therefore, pursuant to CL section 14-1912(b)(2), I am recommending that the CFR order restitution to each Maryland consumer listed in CFR Exhibit No. 5 in the amount of three times that collected by the Respondents. As noted above, each Respondent will be jointly and severally liable for providing restitution to these Maryland consumers. The total amount of restitution owed Maryland consumers by the Respondents, therefore, is \$3,270,327.72.

Respondent's PHIFA/MMLL Violations

As noted, section 11-516(c) of FI allows the CFR to issue a cease and desist order against any person or entity that violates the MMLL to prevent any further similar violations, to require the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation, and to impose a civil penalty not exceeding \$1,000.00 for each violation. Because of the Respondents' egregious violations of the PHIFA and the MMLL, as well as the MCSBA, as already recounted, I will propose that the Summary Order be upheld to prevent the Respondents from engaging in further violations of the statutory sections mentioned thus far. Additionally, I am recommending that the CFR impose a civil statutory penalty of \$1,000.00 per violation for the Respondents' (1) being unlicensed¹⁴ under the MMLL and (2) obtaining upfront fees from Maryland consumers. This translates to \$646,000.00 (\$1,000.00 x 646) for the licensing violation and \$646,000.00 (\$1,000.00 x 646) for the upfront fee-taking violation for a total civil penalty of \$1,292,000.00.

¹⁴ For the sake of clarity, I will reiterate that First Universal Lending, LLC (the entity over whom I have no jurisdiction) was the only licensed party. The other Respondents were acting without a license.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondents violated:

1. The MCSBA, specifically, sections 14-1903(b), 14-1903.1, 14-1904(a), 14-1905(a)(5) and (b), 14-1906(a), (b) and (c), 14-1907(a),(b) and (c)(2), 14-1908, and 14-1909 of the Commercial Law Article, Annotated Code of Maryland, and, because their violations were willful, they are jointly and severally liable to 646 Maryland consumers to pay a monetary award three times the amount they collected under 14-1912(a)(3) of that same article.

2. The Installment Loan Licensing Provisions, specifically sections 11-302 and 11-303 of the Financial Institutions Article.

3. The PHIFA, specifically sections 7-305, 7-306(a)(6), (b), and (c), 7-307(2), 7-307(7), 7-307(10), and 7-309(b) of the Real Property Article, Annotated Code of Maryland.

4. The MMLL, specifically sections 11-505(a), (b) and (d)(1) and (2), 11-506.1(b), 11-507(a)(1), (2), (3), (d) and (e), and 11-512(b)(1) of Financial Institutions Article, Annotated Code of Maryland; and, because of their violations, they are subject to a cease and desist order as well as civil penalties under sections 11-516 and 11-517(c) of that same article.

PROPOSED ORDER

I **PROPOSE** that the Commissioner of Financial Regulation:

ORDER that Respondents shall immediately **CEASE AND DESIST** from engaging in any further credit services business activities and/or foreclosure consultant

activities with Maryland residents, including contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services with Maryland residents, and that Respondents are prohibited from engaging in any other mortgage lending or origination activities with Maryland residents; and further,

ORDER that Respondents shall immediately **CEASE AND DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the Commercial Law Article (the Maryland Credit Services Businesses Act), Title 11, Subtitle 3 of Financial Institutions Article, Title 7, Subtitle 3 of the Real Property Article (Protection of Homeowners in Foreclosure Act), and Title 11, Subtitle 5 of Financial Institutions Article, (the Maryland Mortgage Lenders Act); and further,

ORDER that because of the Respondents' violations of the Maryland Credit Services Businesses Act, that pursuant to section 14-1912(a)(3) of the Commercial Law Article, Annotated Code of Maryland, that the Respondents be jointly and severally liable to reimburse the 646 Maryland Consumers named in CFR Ex. 5 three times the amounts that they collected from them for a total of \$3,270,327.72; and further,

ORDER that because of the Respondents' violations of the Protection of Homeowners in Foreclosure Act and Maryland Mortgage Lender Law, the Respondents be jointly and severally liable for paying a civil penalty of \$1,292,000.00 to the Commissioner of Financial Regulation as permitted by section 11-516(c)(1)(ii) of Financial Institutions Article, Annotated Code of Maryland; and further,

ORDER that Respondents shall provide to the Office of the Commissioner of Financial Regulation each of the following within 15 days of the receipt of the Commissioner's Final Decision:

- The names, addresses, and phone numbers of all Maryland residents, homeowners and/or consumers (Maryland residents) who, at anytime on or after January 1, 2007, retained or contracted with Respondents for the purpose (in whole or in part) of providing mortgage loan modification, loss mitigation, foreclosure consulting, or similar services related to residential real property (loan modification services) for them or on their behalf.

- For each Maryland resident identified above, specify whether the person was current, in default, or in foreclosure on their residential mortgage loan as of the date they entered into the agreement to obtain loan modification services.

- Additionally, if the person was in default, specify the number of days that they were in default as of the date that they entered into the agreement. Also indicate whether the person was directed to stop making payments on their residential mortgage loan.

- Any and all documents under Respondents' control or in their possession pertaining to their loan modification services, agreements, and activities on or after January 1, 2007 related to the Maryland residents identified above.

- The names, addresses, and phone numbers of third-party individuals or business entities ("third parties") who, at any time on or after January 1, 2007, referred or agreed to refer consumers, potentially including Maryland residents, to Respondents for the purpose (in whole or in part) of providing loan modification services.

- The names, addresses, and phone numbers of third-parties to whom, at anytime on or after January 1, 2007, Respondents referred or agreed to refer, consumers, potentially including Maryland residents, for the purpose (in whole or in part) of providing loan modification services, or to whom Respondents referred or agreed to refer consumers, potentially including Maryland residents, for the purpose of obtaining a consumer loan in order to finance loan modification services.

- Any and all documents under Respondents' control or in their possession pertaining to the third-parties identified above, the content of which documents relates in any way to loan modification services to be performed on or after January 1, 2007, or to any associated referral arrangements, fees, or other forms of compensation.

- Copies of all marketing and advertising materials potentially reaching Maryland residents on or after January 1, 2007 which Respondents, or which third parties marketing directly or indirectly on Respondents' behalf, use or have used to market or advertise Respondents' loan modification services, including, but not limited to copies of all printed marketing materials, internet advertisements, and radio and television advertisements.

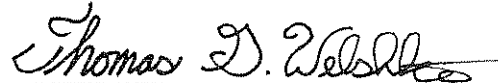
- The names, addresses, and phone numbers of all of Respondents' current and former owners, partners, members, officers, employees, associates, agents, and/or contractors who, on or after January 1, 2007 and during their period of employment or association with Respondents, agreed to provide, provided, or assisted in providing, Maryland residents with loan modification services

- **The brokerage agreements and HUD 1 statements** for all residential home loans involving Maryland residents, including both completed loans and

applications that were never approved, for which Respondents functioned as the mortgage loan originator, broker, lender, and/or servicer on or after January 1, 2007; and further,

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

June 13, 2011
Date Decision Mailed


Thomas G. Welshko,
Administrative Law Judge

DOCS #123554

