

IN THE MATTER OF:
SOUTHWEST CONSULTING
ENTERPRISES, INC., d/b/a
HOME MATTERS USA
and
ROGER SCOTT DYER
and
ROY WILLIAMSON
RESPONDENTS

BEFORE THE COMMISSIONER OF
FINANCIAL REGULATION

OAH NO.: LABOR -CFR-76-23-21220
CFR NO.: FY2023-0009

PROPOSED FINAL ORDER

The Proposed Decision ("Proposed Decision") of the Administrative Law Judge (the "ALJ"), issued on December 13, 2023, in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 9th day of February 2024 ORDERED,

A. That the Proposed Findings of Fact ("FF") listed on pages 4-7 of the Proposed Decision and enumerated as 1 through 18 be, and hereby are, ADOPTED, except that two additional FFs are added as FF 19 and FF 20 which shall state in their entirety as follows:

19. The Respondents received notice in accordance with Maryland law of these proceedings and the hearing scheduled before the Maryland Office of Administrative Hearings on November 14, 2023.

20. The Maryland Office of Administrative Hearings timely convened the hearing scheduled in this matter on November 14, 2023, at which time the Respondents failed to appear.

B. Pursuant to Md. Code Ann., State Gov. §10-220(d), the Commissioner finds that the Proposed Decision contained information confirming: the Respondents received notice of these proceedings in accordance with Maryland law, including the hearing scheduled for November 14, 2023; the Office of Administrative Hearings timely convened the hearing; and the Respondents did not appear for the hearing. The Commissioner desires to formalize that information into FF 19 and 20.

C. That the Proposed Conclusions of Law ("COL") listed on pages 13-14 of the Proposed Decision be, and hereby are, ADOPTED, except that an additional COL is hereby added as COL 1., the ALJ's COL 1 is therefore renumbered as COL 2, and COL 2 is therefore renumbered as COL 3. The new COL 1. shall read in its entirety as follows:

1. Operated as a mortgage assistance relief service provider within the meaning of Md. Code Ann., Real Prop. §7-502 (e)(2) and are therefore subject to the requirements of the C.F.R. and MARS.

D. Pursuant to Md. Code Ann., State Gov. §10-220(d), the Commissioner finds that adding a new COL 1 and renumbering ALJ COL 1 and ALJ COL 2 as COL 2 and COL 3 clarifies that the Respondents operated as a mortgage assistance relief service provider within the meaning of Md. Code Ann., Real Prop. §7-502 (e)(2) and are therefore subject to the requirements of the C.F.R. and MARS. ALJ FF 5 and 6 and information presented in the case support this conclusion of law.

E. The ALJ's recommendation for a cease and desist order be and hereby is ADOPTED;

F. Respondents shall immediately CEASE AND DESIST from operating as a mortgage assistance relief service provider within the meaning of Md. Code Ann., Real Prop. §7-502 (e)(2) in the State of Maryland;

- G. The ALJ's recommendation of the amount of the civil penalty or fine imposed on the Respondents and the analysis supporting such recommendation be and hereby is ADOPTED¹;
- H. The Respondents shall pay a civil penalty of \$60,000;
- I. The Respondents shall pay the Commissioner the penalty imposed herein, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$60,000, within twenty (20) days from the date of this Proposed Final Order;
- J. The ALJ's recommendation that the Respondents shall pay restitution to the complainants totaling \$28,170.57 is ADOPTED;
- K. The Respondents shall pay restitution to the complainants in the amount of \$28,170.57;
- L. The Respondents shall pay the restitution in the amount of \$28,170.57 to the complainants, by cashier's check or certified check made payable to the complainants the amount of \$28,170.57 and mailed to the Commissioner as set forth herein, within twenty (20) days from the date of this Proposed Final Order;
- M. The ALJ's recommendation that the Respondents be jointly and severally liable for the payment of the penalty and the restitution is ADOPTED;
- N. The Respondents shall be jointly and severally liable for payment of the penalty and the restitution;

¹ In adopting the ALJ's recommendation of the amount of the civil penalty or fine imposed on the Respondents, the Commissioner considered the criteria set forth in Md. Code Ann., Fin. Inst. §2-115(c) and finds that the analysis provided by the ALJ correctly applied these criteria. While the Commissioner has no evidence of previous violations by the Respondents and no information on the Respondents' respective assets, the Respondents' chose not to engage with the Commissioner's office in addressing the complainants' complaint and therefore did not offer any mitigating information. The ALJ clearly found the Respondents engaged in egregious violations of applicable law resulting in substantial harm to the complainants. These factors justify the significant penalty recommended by the ALJ.

- O. Respondents shall send all correspondence, notices, civil penalties, restitution and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 1100 North Eutaw Street, Suite 611, Baltimore, MD 21201, Attention: Proceedings Administrator; and
- P. The records and publications of the Commissioner reflect the Proposed Final Order.

Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Respondents have twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). 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 and subject to judicial review pursuant to Md. Code Ann., State Gov. §10-222.

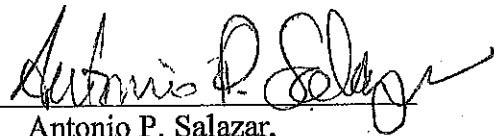
Respondents may have the right to file a petition for judicial review; however, the filing of a petition for judicial review does not automatically stay the enforcement of this order.

Date:

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

February 9, 2024

By:



Antonio P. Salazar,
Commissioner of Financial
Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

SOUTHWEST CONSULTING
ENTERPRISES, INC., d/b/a
HOME MATTERS USA, et al.,

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BEFORE DENISE O. SHAFFER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS
OAH NO.: LABOR-CFR-76-23-21220
CFR NO.: CFR-FY2023-0009

RESPONDENTS

* * * * *

PROPOSED DECISION¹

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

STATEMENT OF THE CASE

On July 20, 2023, the Assistant Commissioner of Financial Regulation (Commissioner or CFR) issued a Statement of Charges and Order for Hearing against Southwest Consulting Enterprises, Inc., doing business as Home Matters USA, (Respondent Home Matters), Roger Scott Dyer, (Respondent Dyer) and Roy Williamson, (Respondent Williamson), (collectively, Respondents), alleging that Respondent Home Matters violated the Maryland Mortgage Assistance Relief Services Act (MARS), Md. Code Ann., Real Prop. §§ 7-501-511 (2023) and Title 12, Sections 1015.1-11 of the Code of Federal Regulations (C.F.R.).

The Statement of Charges informed the Respondents of the Commissioner's authority to issue a Cease and Desist Order, require affirmative action, including the payment of restitution,

¹ By letter of July 20, 2023, Shereefat Bologun, Assistant Commissioner, delegated authority to the Office of Administrative Hearings (OAH) to issue proposed findings of fact, proposed conclusions of law, and a recommended order.

and notified the Respondents of the potential sanctions, including financial penalties, that the Commissioner may impose for the alleged violations. The Statement of Charges also advised the Respondents that a hearing on the charges and proposed sanctions would be conducted by the OAH and further advised the Respondents that failure to appear at the hearing may result in the imposition of sanctions.

On August 18, 2023, the OAH issued a Notice of Remote Hearing to the Respondents advising them that a hearing would be conducted on the Statement of Charges on November 14, 2023, at the OAH offices in Hunt Valley, Maryland. The OAH mailed the Notice by both certified mail and regular mail to the Respondents' business addresses. The Notices sent by regular mail were returned as undeliverable. The certified mail receipts show the following: On August 23, 2023, someone signed for the notice directed to Respondent Dyer at 941 S. Vermont Avenue, Suite 101 # 63, Los Angeles, California, 90010; on an unspecified date, someone signed for the three notices directed to Respondent Home Matters, Respondent Dyer, and Respondent Willaimson at 9100 Wilshire Boulevard, # 725 E, Beverly Hills, California, 90213; and on August 24, 2023, Glen Fernando accepted service of the notice directed to Respondent Home Matters at 941 S. Vermont Avenue, Suite 101 # 63, Los Angeles, California, 90010.²

On November 14, 2023, I convened the hearing as scheduled. Md. Code Ann., Fin. Inst. § 2-115(a) (Supp. 2023).³ Kevin McGivern, Assistant Attorney General, appeared on behalf of the CFR. No one appeared on behalf of any Respondent. After waiting for approximately fifteen minutes and confirming the addresses, for the reasons stated on the record, I concluded that the Respondents were properly notified of the location, date, and time of the hearing and conducted the hearing.

² CFR Ex. 5.

³Unless otherwise noted, all references to the Financial Institutions Article are to the 2023 Supplement to the 2020 Replacement Volume.

Procedure is governed by the provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondents violate the C.F.R. and MARS by requesting or receiving payment of a fee or consideration prior to the consumer obtaining a mortgage loan modification?
2. Did the Respondents violate the C.F.R. and MARS by failing to provide proper disclosures in commercial communications with consumers?
3. Did the Respondents violate the C.F.R. and MARS by failing to provide proper disclosures when advising consumers to stop making mortgage payments?
4. Did the Respondents violate the C.F.R. and MARS by failing to investigate consumer complaints?
5. If the Respondents committed the charged violations, should
 - a. a cease and desist order be issued;
 - b. civil penalties be imposed; and
 - c. a restitution order be issued?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following numbered exhibits offered by the Commissioner:

- CFR Ex. 1 - Notice of Remote Hearing, August 17, 2023
- CFR Ex. 2 - Statement of Charges and Order for Hearing, July 20, 2023
- CFR Ex. 3 - Delegation Letter, July 20, 2023
- CFR Ex. 4 - Subpoena, issued August 18, 2023
- CFR Ex. 5 - Certified Mail Return Receipts, various dates
- CFR Ex. 6 - Report of Investigation, December 13, 2022
- CFR Ex. 7 - Home Matters Agreement, July 1, 2020
- CFR Ex. 8 - Payment/Money Order Receipts, various dates

CFR Ex. 9 - Correspondence from [REDACTED] (Complainant) to the Respondents, various dates

CFR Ex. 10 - Documentation of Undeliverable Mail, various dates? Undated?

The Respondents did not appear and, therefore, offered no exhibits.

Testimony

The CFR presented the testimony of Heidi Boyd, Assistant Director, Enforcement, CFR, and [REDACTED] (the Complainant).

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this matter, the Respondents were not licensed to do business in Maryland by the CFR and were not registered with the State Department of Assessments and Taxation.
2. Respondent Home Matters is a business that operates from various locations in California.
3. Respondent Dyer is the Chief Executive Officer and resident agent of Respondent Home Matters, a company with a designated office in California. Respondent Dyer is the owner, director, office, manager, and/or agent of Respondent Home Matters and directs or exercises control over the activities and finances of it, including its mortgage relief services and foreclosure consulting services. Respondent Dyer directed or exercised control over Respondent Home Matters' activities in Maryland related to the Complainant and her husband Stephen Swinford (collectively, the Complainants).
4. Respondent Williamson is the Supervisor of Customer Service and an Account Representative for Respondent Home Matters. He was the point of contact for the Complainants and is listed as their "specific agent." In this capacity, he directed and exercised control over the

activities and finances of Respondent Home Matters, including mortgage relief services and foreclosure consulting services.

5. Respondent Home Matters is a business that offers to, "prepare and file a Federal Regulatory Complaint with a federal government agency" and to prepare a loan modification "settlement packet" for a homeowner's mortgage servicer. (CFR Ex. 7.)

6. Offering to obtain a loan modification is a mortgage relief service.

7. The Complainants are Maryland residents and homeowners. In July of 2020, their mortgage payments were current.

8. In June of 2020, the Complainants began discussions with Respondent Williamson concerning Respondent Home Matters seeking a loan modification on their behalf for their primary residential property located at 811 San Mateo Trail, Lusby, Maryland 20657.

9. The Complainants entered into a contract with Respondent Home Matters on July 1, 2020. Under that contract, Respondent Home Matters charged the Complainants upfront fees totaling \$5,948.02 over five months: \$1,387.03 in July 2020, \$1,223.30 in August 2020, \$1,119.23 in September 2020, \$1,109.07 in October 2020, and \$1,109.07 in November 2020. The contract required the payments to be made by money order or certified check. The Complainants sent those payments as directed.

10. Respondent Home Matters agreed to apply for and obtain a mortgage loan modification; reducing the principal by 30% and lowering the monthly mortgage payments. Respondent Home Matters provided a "sample" loan modification to the Complainants, showing a reduced mortgage payment and savings of over \$30,000.00 over the first five years of the loan. (CFR Ex. 7.)

11. Respondent Home Matters never submitted a loan modification packet to the Complainants' servicer, Carrington Mortgage Services (Carrington). At some point, Respondent

Home Matters filed a cease and desist “hold” with Carrington, requiring Carrington to direct its communications to Respondent Home Matters and prohibiting it from contacting the Complainants. Because of that hold, the Complainants did not receive failure to pay or late notices from Carrington.

12. After the initial five payments were sent from the Complainants to Respondent Home Matters, Respondent Williamson directed the Complainants to stop making payments to Carrington and to pay Respondent Home Matters \$1000.00 per month instead. They did so through July of 2022. Based on misrepresentations by Respondent Williamson and other unidentified representatives of Respondent Home Matters, the Complainants believed that these payments were being remitted to their mortgage loan servicer.

13. The Complainants made a total of twenty-five payments to Respondent Home Matters in the amount of \$25,387.03.⁴ Because Respondent Home Matters required that the payments be made by certified check or money order, the payments required the Complainants to purchase twenty-five money orders at an additional cost of \$2,783.54.

14. On July 1, 2022, the Complainants received a Notice of Intent to Foreclose from Carrington and, for the first time, learned that their mortgage was delinquent.

15. When the Complainants realized that Respondent Home Matters had not submitted any information on their behalf and had been taking the monthly payments without applying them to any mortgage, the Complainant called Respondent Home Matters. Respondent Williamson encouraged her to continue to send her checks on a monthly basis.

16. On September 7, 2022, the Complainant wrote to Respondent Home Matters and demanded a refund of the money she had paid to them. She has not received a response and has not been able to reach anyone at Respondent Home Matters since then.

⁴ CFR Exhibit 8 contains a chart listing the payments and receipts for the money orders.

17. The contract with Respondent Home Matters did not disclose that the Complainants could accept or reject any offer of mortgage assistance, and did not disclose that they were not required to pay the Respondents if they rejected a lender's offer of mortgage assistance. It did not disclose that Respondent Home Matters was not associated with the government or that the services offered by Respondent Home Matters were not approved by the government or the lender.

18. The Respondents did not disclose that if the Complainants stopped making mortgage payments, they could lose their home and damage their credit rating.

DISCUSSION

The Commissioner bears the burdens of production and persuasion to demonstrate by a preponderance of the evidence that the Respondents violated the statutory and regulatory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.01.02.16A; *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

The Commissioner alleges that the Respondents violated provisions of the C.F.R. and MARS. The Commissioner contends that the Respondents engaged with the Complainants, Maryland homeowners, and promised to obtain a loan modification for them – and then failed not only to provide required information and disclosures but also to make good on the promise of a loan modification. The Commission's investigation revealed that the Respondents made false representations, improperly collected upfront fees, failed to make required disclosures, and failed to provide promised services. These violations, argued the Commissioner, subject the Respondents to both penalties and restitution.

MARS provides that, “[a] mortgage assistance relief service provider providing mortgage assistance relief service in connection with a dwelling in the State that does not comply with 12 C.F.R. §§ 1015.1 through 1015.11 and any subsequent revision of those regulations is in

violation of this subtitle.” Md. Code Ann., Real Prop. § 7-502 (2023). The Commissioner has established violations of the following specific provisions of the C.F.R.:

§1015.2 Definitions

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service.

§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Disclosures in All General Commercial Communications—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”\

(b) Disclosures in All Consumer-Specific Commercial Communications—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

- (1) “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.” For the purposes of this paragraph (b)(1), the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.
- (2) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

§ 1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

- (a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer;
- (b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to §1015.4(b)(1)] for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT

NOTICE: Before buying this service, consider the following information.”
The heading must be in bold face font that is two point-type larger than the
font size of the required disclosure;

§ 1015.9(b)(2) Recordkeeping and compliance requirements.

A mortgage assistance relief service provider also must . . . Investigate promptly
and fully each consumer complaint received.

The Respondents are subject to MARS because they promised to engage in mortgage
relief services for the Complainants. 12 C.F.R. §1015.2. The Complainant’s credible testimony,
supported by the CFR’s exhibits, establishes that the Complainants were the victims of a
deceptive and atrocious scam. Through deception and manipulation, the Respondents preyed on
the Complainants’ kind and trusting instincts. The Respondents stole more than money from the
Complainants. The Complainant testified that her marriage suffered, her sense of her own self-
worth was undermined, and they had to move from their home.⁵

I agree with the Commissioner that the Respondents violated the regulations as follows:

- 12 C.F.R. § 1015.4 (a), requiring every general commercial communication for a mortgage relief service to state that the company is not associated with the government or approved by the government or the lender. None of Respondent Home Matters’ communications contain this statement.
- 12 C.F.R. § 1015.4(b), requiring all consumer-specific commercial communications to include a disclosure regarding the consumers’ right to accept or reject any offer of mortgage assistance from the lender or servicer, not to pay the mortgage assistance relief provider if the consumer rejects the offer of mortgage assistance. None of these disclosures were included in the contractual offer made to the Complainants and the Complainant testified credibly that these disclosures were never made in any other written document or conversation.

⁵ The Complainant calmly and thoroughly explained what happened and why she made the decisions she did. She was suspicious, but each time, Respondent Williamson or some other agent of the Respondent would assure her that things were progressing and all was well. Since she was not receiving late notices from Carrington, she did not suspect that the Respondents were so cunning and dishonest. Mrs. Swinford described her feeling of being gullible and foolish to have fallen victim to this scam. She cried when discussing how it impacted her long and happy marriage and the decision to move from the home where they had lived for over twenty years. The Complainant, who was sitting in the hearing room, also became emotional during this testimony. The Respondents actions were reprehensible. After observing the Complainants, I believe that they did not become victims of this scam because they were gullible or foolish. Rather, because they are trusting, good and moral, and the Respondents manipulated them.

- 12 C.F.R. § 1015.4(c), requiring, when a mortgage relief service advises a consumer to temporarily or permanently discontinue payments, a clear prominent statement that doing so could result in losing the home or damaging the credit score. That disclosure was never made by the Respondents. The Complainant testified credibly that Respondent Williamson advised her to stop making payments to Carrington and to make the payments to Respondent Home Matters instead.
- 12 C.F.R. § 1015.5(a), which prohibits requesting or receiving payment of a fee until the consumer and the lender or servicer have executed a written agreement incorporating the offer of mortgage assistance relief. The Respondents collected over \$5,000 in upfront fees over five months. The “written agreement” was a complete sham and did not incorporate any legitimate offer of mortgage assistance relief. The Respondents had no intention of seeking a loan modification.
- 12 C.F.R. § 1015.5(b), which requires a disclosure that the offer of mortgage assistance be obtained from the lender or servicer, that the consumers have a right to accept or reject the offer, and that if the offer is rejected, no fee is required. This disclosure was not made as the Respondents are the perpetrators of a scam. There was no offer from a lender or services because the Respondents did not seek one.
- 12 C.F.R. § 1015.9(b)(2), which requires a mortgage assistance relief provider to promptly investigate consumer complaints. When the Complainants learned their mortgage was delinquent, they called the Respondents. Respondent Williamson encouraged them to continue to make payments. After they demanded a refund, the Respondents never communicated again. There was obviously no investigation.

As the Commission established the violations, the Commissioner may take action to address the violations. The Commissioner relies on section 2-115(b) of the Financial Institutions Article of the Maryland Annotated Code:

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

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000.00 for a first violation; and
 - (ii) \$25,000.00 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

A financial penalty is based on consideration of six factors:

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

Md. Code Ann., Fin. Inst. § 2-115(c).

Additionally, the Commissioner may issue an order requiring the Respondents to take affirmative action to correct the violations, including the payment of restitution. Md. Code Ann., Real Prop. §7-506(c).

The Commissioner requested a cease and desist order, a financial penalty of \$60,000.00 and full restitution of all moneys paid by the Complainants to Respondent Home Matters. This proposed penalty is based on a \$10,000.00 penalty for the first violation, collecting the upfront fee, \$25,000.00 for the failure to disclose violations, and \$25,000.00 for the failure to investigate violations. Counsel for the CFR noted that this was a floor and that the Commissioner has the discretion to consider each payment made by the Complainants as a separate violation of 12 C.F.R. § 1015.5 (a).

I agree with the Commissioner that a substantial penalty is appropriate in this case based on the factors set out in section 2-115 of the Financial Institutions Article. The violations are serious – the Respondents clearly took advantage of Maryland homeowners concerned about retaining their home and not only failed to assist them but, in fact, inflicted further financial and emotional harm. The Respondents' misleading communications and promises, without required disclosures, demonstrate that the Respondents' actions were deliberate and calculated. The fact that the Respondents took all of the money and did nothing for the Complainants shows that they are thieves; there can be no plausible claim of good faith. Further, the Respondents' unresponsiveness to the Complainants once they learned their home was in foreclosure supports

the conclusion that the Respondents were not acting in good faith. Instead of attempting to rectify the situation, the Respondents sought to perpetuate the scam.

The harm to consumers and the deleterious effect on both the public and the industry is significant. Legitimate mortgage loan modification provides an important service to struggling homeowners, an effort that is damaged by the actions of scammers and the distrust they cause. The egregiousness of the Respondents' actions merits a severe penalty. While I would be inclined to recommend more than \$60,000.00, I also understand that these penalties are unlikely to be collected as the Respondents are running a criminal enterprise, not a legitimate business.

In addition, I agree with the Commissioner that a cease and desist order is appropriate to ensure that the Respondents do not further engage in activities prohibited by MARS.

Finally, as the Respondents harmed the Complainants and have not taken any action to correct the violations, I recommend that the Respondents pay restitution to the Complainants in the amount of \$28,170.57.

PROPOSED CONCLUSIONS OF LAW

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

1. Engaged in the following conduct in violations of the C.F.R. and MARS:
 - a. Requested and received payment of fees prior to the consumer obtaining a mortgage loan modification in violation of 12 C.F.R. § 1015.5 and Md. Code Ann., Real Prop. §7-502;
 - b. Failed to make necessary disclosures to the consumers in general and specific consumer communications in violation of 12 C.F.R. § 1015.4(a) and (b) and Md. Code Ann., Real Prop. §7-502;

- c. Provide proper disclosure when advising a consumer to stop making mortgage payments in violation of 12 C.F.R. § 1015.4(c) and Md. Code Ann., Real Prop. §7-502; and
 - d. Failing to investigate a consumer complaint in violation of 12 C.F.R. § 1015.9(b) and Md. Code Ann., Real Prop. §7-502.
2. I further conclude that the specific sanctions and remedies requested by the CFR are authorized by law and appropriate. Md. Code Ann., Fin. Inst. § 2-115 and Md. Code Ann., Real Property § 7-506.

RECOMMENDED ORDER

I **RECOMMEND** that the Commissioner:

ORDER that the Respondents shall immediately **CEASE AND DESIST** from engaging in any further mortgage assistance relief services; and

ORDER that for violations of the Maryland Mortgage Assistance Relief Services Act, the Respondents pay a penalty of \$60,000.00 and further;

ORDER, the Respondents shall pay restitution to the Complainants totaling \$28,170.57;

ORDER, the Respondents are jointly and severally liable for the payment of the penalty and restitution; and

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

December 13, 2023
Date Decision Issued

Denise O. Shaffer

Denise O. Shaffer
Administrative Law Judge

DOS/ja
#208770

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

SOUTHWEST CONSULTING
ENTERPRISES, INC., d/b/a
HOME MATTERS USA, et al.,

* BEFORE DENISE O. SHAFFER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH NO.: LABOR-CFR-76-23-21220
* CFR NO.: CFR-FY2023-0009

RESPONDENTS

* * * * *

FILE EXHIBIT LIST

I admitted the following numbered exhibits offered by the Commissioner:

- CFR Ex. 1 - Notice of Remote Hearing, August 17, 2023
- CFR Ex. 2 - Statement of Charges and Order for Hearing, July 20, 2023
- CFR Ex. 3 - Delegation letter, July 20, 2023
- CFR Ex. 4 - Subpoena, issued August 18, 2023
- CFR Ex. 5 - Certified mail return receipts, various dates
- CFR Ex. 6 - Report of Investigation, December 13, 2022
- CFR Ex. 7 - Home Matters Agreement, July 1, 2020
- CFR Ex. 8 - Payment/money order receipts, various dates
- CFR Ex. 9 - Correspondence from Complainant to Respondents, various dates
- CFR Ex. 10 - Documentation of undeliverable mail

The Respondents did not appear and, therefore, offered no exhibits.