

IN THE MATTER OF:

COMMUNITY ASSISTANCE CENTER,

And

JONATHAN OBED HERRERA,
Individually

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINAL ORDER
DATE: 03/23/2020

FINANCIAL REGULATION

OAH No.: LABOR-CFR-76-19-
29591

CFR No.: FY2018-0043

PROPOSED FINAL ORDER

The Proposed Decision of the Administrative Law Judge ("ALJ") issued on January 9, 2020 ("Proposed Decision"), in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation ("Commissioner") this 21st of February, 2020 **ORDERED:**

- A. That the Findings of Fact in the Proposed Decision be, and hereby are, **ADOPTED**;
- B. That the Conclusions of Law in the Proposed Decision be, and hereby are, **ADOPTED**;
- C. The civil penalties in the Proposed Decision be, and hereby are **ADOPTED** after having considered the factors under Md. Code Ann., Fin. Inst. §2-115(c), and determined that the violation are serious; Respondents' conduct showed the absence of good faith; and Respondents' actions had deleterious effect on the public and the industry. The Commissioner does not have any information regarding Respondents' history of previous violations or assets.

- D. Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$20,000.00, in penalties, within twenty (20) days from the date of this Proposed Final Order;
- E. Pursuant to Md. Code Ann., Real Prop. §7-506(c), Respondents shall pay restitution to Consumer A in the amount of \$3,277.00, and Consumer B in the amount of \$2,250.00. Respondents shall make payment by mailing to each consumer a check in the amount specified herein via First Class Mail, postage prepaid, at the most recent address of the consumer known to the Respondents. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Upon making the required payment, Respondents shall furnish a copy of the front and back of the cancelled check for the payment to the Commissioner as evidence of having made payment, within sixty (60) days of the date of this Proposed Final Order;
- F. Respondents shall immediately **CEASE AND DESIST** from all engaging in any further foreclosure consultant activities in the State of Maryland;
- G. Respondents shall send all correspondence, notices, civil penalties, and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 N. Calvert Street, Suite 402, Baltimore, MD 21202, Attention: Proceedings Administrator; and
- H. The records and publications of the Commissioner reflect the Proposed Final Order.

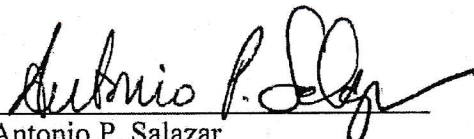
Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Respondents have twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the

Commissioner. COMAR 09.01.03.09A(1). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Proposed Final Order shall be deemed to be the final decision of the Commissioner, and subject to judicial review pursuant to Md. Code Ann., State Gov't. § 10-222.

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

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

Date: 2/21/2020

By: 
Antonio P. Salazar
Commissioner of Financial Regulation

<p>IN THE MATTER OF</p> <p>COMMUNITY ASSISTANCE</p> <p>CENTER AND</p> <p>JONATHAN OBED HERRERA,</p> <p>RESPONDENTS</p>	<p>* BEFORE WILLIS GUNTHER BAKER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE OF</p> <p>* ADMINISTRATIVE HEARINGS</p> <p>* OAH NO: LABOR-CFR-76-19-29591</p> <p>* CFR NO: CFR-FY2018-0043</p>
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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 September 6, 2019, the Deputy Commissioner of Financial Regulation (Commissioner) issued a Charge Letter against Community Assistance Center (CAC) and its President, Jonathan Obed Herrera (Respondents), alleging that they violated various provisions of the Real Property Article of the Annotated Code of Maryland, specifically sections 7-301 through 7-325 (the Protection of Homeowners in Foreclosure Act, or PHIFA, related to mortgage foreclosure) and sections 7-501 through 7-511 (Maryland Mortgage Assistance Relief Services Act, or MARS, related to loan modification services and mortgage assistance relief service activities).¹

The Charge Letter further asserted that the Commissioner may enforce these provisions by issuing an order requiring the Respondents to cease and desist from these violations and

¹ Unless otherwise noted, all references to the Real Property Article are to the 2015 Replacement Volume.

further similar violations and requiring affirmative action to correct the violations. In addition, the Charge Letter stated that the Commissioner may impose a civil monetary penalty up to the maximum amount of \$1,000.00 for the first violation and up to the maximum amount of \$5,000.00 for each subsequent violation.

On November 5, 2019, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(a) (2011).¹ Sophie Asike, Assistant Attorney General, represented the Commissioner. Neither the Respondents nor anyone on their behalf appeared for the hearing.

Procedure in this case 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 (2014 & Supp. 2019); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondents engage in the following conduct, in violation of PHIFA:
 - a. Failing to disclose all required contractual terms in agreements;²
 - b. Improperly collecting fees before performing services;³
 - c. Inducing homeowners into entering foreclosure consulting contracts that were not fully compliant with PHIFA;⁴
 - d. Breaching the duty of reasonable care and diligence?⁵

¹ Unless otherwise noted, all references to the Financial Institutions Article are to the 2011 Replacement Volume and 2017 Supplement. The alleged violations occurred in 2017-18.

² Md. Code Ann., Real Prop. §§ 7-305 and 7-306 (2015); 12 Code of Federal Regulations (C.F.R.) § 1015.4(a) and (b). All references to the C.F.R. are to the 2017 volume.

³ Md. Code Ann., Real Prop. § 7-307(2); 12 C.F.R. § 1015.3(b)(7).

⁴ Md. Code Ann., Real Prop. § 7-307(10).

⁵ Md. Code Ann., Real Prop. § 7-309(b).

2. Did the Respondents engage in the following conduct, in violation of the C.F.R. and MARS:
- a. Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer;¹
 - b. Misrepresenting a consumer's obligation to make scheduled periodic payments to their lender;²
 - c. Misrepresenting the terms or conditions for obtaining a refund;³
 - d. Misrepresenting the amount of money or percentage of the debt amount a consumer may save;⁴
 - e. Failing to disclose all requisite contractual terms in agreements, including notices of rescission in specific communications;⁵
 - f. Receiving payment before the consumer has executed a written agreement with his or her loan holder or servicer.⁶
3. What, if any, sanctions should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits offered by the Commissioner:

Comm Ex. 1 - Notice of Hearing, date?

Comm Ex. 2 - Statement of Charges and Order for Hearing (undated)

¹ 12 C.F.R. § 1015.3(a).

² 12 C.F.R. § 1015.3(b)(4).

³ 12 C.F.R. § 1015.3(b)(6).

⁴ 12 C.F.R. § 1015.3(b)(10).

⁵ 12 C.F.R. § 1015.4(a), (b).

⁶ 12 C.F.R. § 1015.5(a).

- Comm Ex. 3 - Report of Investigation Enforcement Unit, CFR-FY2018-0043, December 4, 2018
- Comm Ex. 4 - Regus Online Virtual Office Agreement with the Respondents, February 16, 2017
- Comm Ex. 5 - Respondents' Application for Delivery of Mail through Agent, April 12, 2017
- Comm Ex. 6 - Bank of America production of the Respondents' bank records
- Comm Ex. 7 - Bank of America Statement of the Respondents, May 1, 2018 to May 31, 2018
- Comm Ex. 8 - MAGLOCLLEN¹ records regarding the Respondents
- Comm Ex. 9 - Complaint of [REDACTED] (Consumer A), April 4, 2018
- Comm Ex. 10 - Consumer A's CAC Client Agreement, January 24, 2018
- Comm Ex. 11 - CAC/Consumer A's Cease and Desist letter to Wells Fargo, January 24, 2018
- Comm Ex. 12 - Wire Fund and Checking Transfers from Consumer A to CAC
- Comm Ex. 13 - Complaint of [REDACTED] (Consumer B), November 1, 2017
- Comm Ex. 14 - Consumer B's CAC Client Agreement, August 15, 2017
- Comm Ex. 15 - Consumer B's Authorization for CAC to act on his behalf, August 15, 2017
- Comm Ex. 16 - CAC/Consumer B's Cease and Desist letter to Freedom Mortgage, August 15, 2017
- Comm Ex. 17 - Emails between Commissioner and Consumer B with Proof of Payment from Consumer B to CAC, August 7, 2018
- Comm Ex. 18 - Emails between Consumer B and CAC, August 22-23, 2017
- Comm Ex. 19 - Email to Commissioner from Consumer B, September 11, 2017
- Comm Ex. 20 - Email to CAC from Consumer B, September 11, 2017, attaching termination letter
- Comm Ex. 21 - Emails between Consumer B and CAC, August 22, September 11, and October 19, 2017

The Respondents did not submit any documents into the record.

¹ Middle Atlantic Great Lakes Organized Crime Law Enforcement Network

Testimony

The Commissioner presented the following witnesses:

- Zenaida Velez-Dorsey, Financial Fraud Examiner II
- [REDACTED] (Consumer A)¹
- [REDACTED] (Consumer B)²

No witnesses testified on behalf of the Respondents, as the Respondents did not appear for the hearing.

FINDINGS OF FACT

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

Background

1. Respondent Community Assistance Center (CAC) was established as a business entity operating in California and Washington, with a principal business address of 208 S. E. Bristol Street, Suite 216, Newport Beach, California 92660.
2. Respondent Herrera was the president of CAC at all times relevant to this matter.
3. CAC is not registered with the Maryland State Department of Assessment & Taxation and is not authorized to conduct business in Maryland.

Consumer A

4. In January 2018, Consumer A was unemployed and was more than sixty days in default on her Maryland residential mortgage loan. Consumer A contacted CAC after receiving a flyer in the mail. She spoke to "Ray" (no last name provided), a representative of CAC, who advised that her case would need to go before the "board" for review, but that if she was approved, her mortgage payment would be lowered, some of her payments would be

¹ As identified in the Statement of Charges.

² As identified in the Statement of Charges.

forgiven, and that any missed payments would be added to the end of the loan, so she did not have to make any more payments on the loan.

5. Consumer A was subsequently contacted by CAC and told she had been approved and an agreement was signed between the parties. Consumer A agreed to pay CAC \$3,277.00 up front and was advised to not have any contact with her mortgage company Wells Fargo, that CAC would do all further communications. CAC provided Consumer A with a “cease and desist” letter for her signature to be given to Wells Fargo so that Wells Fargo could no longer contact her. Consumer A signed the “cease and desist” letter and CAC provided it to Wells Fargo. As instructed by CAC, Consumer A ceased further contact with Wells Fargo.
6. Consumer A made a wire transfer of \$1,079.00 to CAC, then made two cash payments to CAC’s Citibank account in the amounts of \$1,119.00 and \$1,079. 00, totaling \$3,277.00.
7. Consumer A requested information from CAC regarding their contact with Wells Fargo, but was not provided with information, but was only requested to provide CAC with more information regarding her personal information, taxes, and bank accounts.
8. Consumer A subsequently received notice of foreclosure from Wells Fargo. She attempted to contact CAC, but the phone had been disconnected.
9. The agreement that Consumer A signed with CAC did not include notice of Consumer A’s right to rescind the contract at any time without penalty, did not disclose that Consumer A could accept or reject any offer of mortgage assistance, and did not disclose that Consumer A was not required to pay the Respondents if she rejected the lender’s offer of mortgage assistance.

10. The Respondents collected \$3,277.00 from Consumer A but did nothing on her behalf to obtain a modification of her home loan.

11. The Respondents have not returned the \$3,277.00 to Consumer A.

Consumer B

12. In August 2017, Consumer B was unemployed and was more than sixty days in default on his Maryland residential mortgage loan. Consumer B contacted CAC after receiving a flyer in the mail. Consumer B called CAC and spoke to Ray Anderson who advised that CAC would act as Consumer B's agent to work out a loan modification with his mortgage lender. Consumer B was advised that CAC would need to prequalify him for assistance and requested that he send documents regarding his loans and accounts, which he did.

13. The parties executed a contract on August 15, 2017, which required that Consumer B pay a fee of \$4,500.00 to CAC for their service. Consumer B was told he needed to wire \$2,250.00 to CAC within two days to a Bank of America Account belonging to CAC, which Consumer B did.

14. CAC provided Consumer B with a "cease and desist" letter for his signature to be given to his lender, Freedom Mortgage so that Freedom Mortgage could no longer contact him. Consumer B signed the "cease and desist" letter and CAC provided it to Freedom Mortgage. As instructed by CAC, Consumer B ceased further contact with Freedom Mortgage.

15. Consumer B became concerned about how fast things were moving without being provided information. He had a phone call scheduled with CAC and sent an email to ask to reschedule and was advised that he would need to send a letter in order to reschedule

- the phone call. The parties went back and forth trying to schedule the call, but were unable to do so. Consumer B became very suspicious.
16. On August 23, 2017, Consumer B sent an email to Ray Anderson at CAC requesting to speak with someone in senior management regarding collecting the fee prior to obtaining a loan modification. Consumer B did not receive a response.
 17. On September 11, 2017, Consumer B sent a letter to CAC to terminate the contract and request a refund. Consumer B sent a follow up email on October 19, 2017. The Respondents did not refund Consumer B's payment of \$2,250.00.
 18. On September 11, 2017, Consumer B sent an email to Kelly Mack at the Commissioner's Office to seeking assistance against CAC.
 19. The agreement that Consumer B signed with CAC did not include notice of Consumer B's right to rescind the contract at any time without penalty, did not disclose that Consumer B could accept or reject any offer of mortgage assistance, and did not disclose that Consumer B was not required to pay the Respondents if he rejected the lender's offer of mortgage assistance.

DISCUSSION

Burdens of production and persuasion

The Commissioner bears the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondents violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.01.02.16A; *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

Notice

Because neither the Respondents nor anyone on their behalf attended the hearing, I first address whether they received proper notice of the hearing. The Commissioner presented evidence that the OAH sent Notice of Hearing to six different addresses by first class U.S. mail and by certified mail, as follows:

- 208 S. E. Bristol St. Suite 216, Newport Beach, California 92660
- 5129 Evergreen Way, Suite D-11, Everett, Washington 98203
- 240 N. East Promontory, Suite 200, Farmington, Utah 84025
- 111 Pendio, Irvine, California 92620-1740
- 1901 E. 1st Street, Apt. 101, Santa Ana, California 92705
- 16230 1st Place W., Bothell, Washington 98012

Ms. Velez-Dorsey described how she came to acquire each of the six addresses for the Respondents in the course of her investigation. She started with a simple Google search to see what was available on the internet, then contacted "MAGLOCLLEN," a database used by government agencies to locate addresses. She then used the information from MAGLOCLLEN to find space the Respondents had rented through Regus Corporation for virtual office space. Ms. Velez-Dorsey also subpoenaed the Respondents' bank accounts they had provided to the Consumers for transferring funds and came up with additional addresses.

All six of the certified mail notices were returned by the U.S. Post Office as unclaimed. Four of the six first class mail notices were returned by the U.S. Post Office as undeliverable for various reasons. However, two of the first class mail notices were not returned; the address in Bothell, Washington and the address in Everett, Washington. The Bothell, Washington address was confirmed to be Respondent Herrera's home address through Regus Corporation, which

included a copy of Respondent Herrera's official Washington State Identification and a notarized statement of Regus' representative Eric Sanchez that the Respondent personally appeared before him and presented official documentation of his home address. (Comm Exs. 4, 5). Because the Respondent was served at his home address and the first class mail was not returned and because notice was sent to every other potential address of the Respondents, I find that every effort was made to provide the Respondents with notice of the hearing. Because the OAH sent the Notice by U.S. mail to the Respondent's last known address, based on the Court of Appeals' holding in *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 503 – 04 (1988), I conclude that the OAH's notice to the Respondent was reasonable and adequate. Therefore, I proceeded with the hearing in the absence of the Respondents.

Legal Framework

The Commissioner alleges that the Respondents violated provisions of PHIFA and MARS. In essence, the Commissioner contends that the Respondents contacted Maryland homeowners struggling to pay their mortgages and promised to obtain loan modifications 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. Two of the Maryland residents who were contacted by the Respondents complained to the Commissioner, prompting an investigation. According to the Commissioner, that investigation revealed that the Respondents were making false representations, improperly collecting upfront fees, failing to make required disclosures, and failing to provide promised services. These violations, argued the Commissioner, subject the Respondents to a cease and desist order and financial penalties.

The Commissioner asserts that the Respondents are foreclosure consultants under PHIFA, relying on the definitions in section 7-301, which provide, in part, as follows:

- (c) Foreclosure consultant. – “Foreclosure consultant” means a person who:
- (1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:
 - (i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;
 - (ii) Obtain forbearance from any servicer, beneficiary or mortgagee;
 - (iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;
 - (iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner’s obligation or extend the deadline to object to a ratification;
 - (v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;
 - (vi) Assist the homeowner to obtain a loan or advance of funds;
 - (vii) Avoid or ameliorate the impairment of the homeowner’s credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;
 - (viii) Save the homeowner’s residence from foreclosure;
 - (ix) Purchase or obtain an option to purchase the homeowner’s residence within 20 days of an advertised or docketed foreclosure sale; or
 - (x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner’s residence after a sale or transfer; or
 - (2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

....

(j) Residence in default. – “Residence in default” means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner’s spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual’s principal place of residence, and on which the mortgage is at least 60 days in default.

(k) Residence in foreclosure. – “Residence in foreclosure” means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner’s spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of

the Family Law Article, as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed.

Because the Respondents are foreclosure consultants, alleges the Commissioner, they are subject to the requirements of section 7-305 of the Real Property Article, which provides as follows:

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

(b) Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(c) Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(d) Notice of rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract.

(e) After the rescission of a foreclosure consulting contract, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract, together with interest calculated at the rate of 8% a year.

(f) The right to rescind may not be conditioned on the repayment of any funds.

The Commissioner also relies on section 7-306 of the Real Property Article with regard to required disclosures:

- (a) A foreclosure consulting contract shall:
- (1) Be provided to the homeowner for review before signing;
 - (2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;
 - (3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any sale or tenancy that may be involved, and the total amount and terms of any compensation from any source to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) State the duty of the foreclosure consultant to provide the homeowner with written copies of any research the foreclosure consultant has regarding the value of the homeowner's residence in default, including any information on sales of comparable properties or any appraisals;

(5) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

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

"NOTICE REQUIRED BY MARYLAND LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction. The separate explanation must include: how much money you must pay; how much money you will receive, if any; and how much money the foreclosure consultant will receive from any source.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

You have the right to rescind this foreclosure consulting contract at any time by informing the foreclosure consultant that you want to rescind the contract. See the attached Notice of Rescission form for an explanation of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

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

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

- (b) The contract shall contain on the first page, in at least 12 point type size:
- (1) The name and address of the foreclosure consultant to which the notice of rescission is to be mailed; and
 - (2) The date the homeowner signed the contract.

(c) Notice of Rescission.

- (1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".
- (2) The Notice of Rescission shall:
 - (i) Be on a separate sheet of paper attached to the contract;
 - (ii) Be easily detachable; and
 - (iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

(Date of Contract)

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

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

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

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

NOTICE OF RESCISSION

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

I hereby rescind this contract.

..... (Date)

..... (Homeowner's signature)".

(d) Copy to homeowner. – The foreclosure consultant shall provide the homeowner with a signed and dated copy of the foreclosure consulting contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) Time period of rescission. – The time during which the homeowner may rescind the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Void provisions. – Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

Section 7-307 of the Real Property Article addresses upfront fees, which the Commissioner alleges were improperly collected by the Respondents in this case:

A foreclosure consultant may not:

(1) Engage in, arrange, offer, promote, promise, solicit, participate in, assist with, or carry out a foreclosure rescue transaction;

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

(3) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% a year;

....

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

The Commissioner also alleges a violation of section 7-309, which provides as follows:

(a) A foreclosure consultant has a duty to provide the homeowner with written copies of any research the foreclosure consultant has regarding the value of the homeowner's residence in default, including any information on sales of comparable properties or any appraisals.

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

In addition, the Commissioner relies on section 7-502 of MARS. This section states as follows:

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.

Accordingly, the Commissioner has cited to the following specific provisions of 12 C.F.R.:

§ 1015.3 Prohibited representations.

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

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in §1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in §1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

- (i) The United States government,
- (ii) Any governmental homeowner assistance plan,
- (iii) Any Federal, State, or local government agency, unit, or department,
- (iv) Any nonprofit housing counselor agency or program,
- (v) The maker, holder, or servicer of the consumer's dwelling loan, or
- (vi) Any other individual, entity, or program;

(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;

(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;

(6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances

in which a full or partial refund will be granted, for a mortgage assistance relief service;

(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

(9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;

(11) The total cost to purchase the mortgage assistance relief service; or

(12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer[.]

....

§ 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.

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

....

§ 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;

....

It is within this legal framework that I consider the evidence.

Testimony

The Commissioner offered the testimony of two Maryland consumers. Consumer A described how she responded to a flyer she received from CAC offering mortgage loan assistance and reduction of her monthly payment. She was told that CAC could get her lender to significantly lower her current monthly payment while retaining her house. She provided payment of \$3,277.00 to CAC and was instructed to make no payments on her existing mortgage. CAC advised her that she could have no contact with her lender and had her execute a “cease and desist” letter to them that precluded her lender from contacting her. She was never

provided any loan modification offer, but instead received a notice of foreclosure from her lender. When she attempted to contact CAC, the phone was disconnected. Her agreement with CAC provided no disclosures that she did not have to pay unless she accepted a loan modification.

Consumer B found himself in trouble with his mortgages on several properties, including his main residence, when he lost his job. He received many solicitations for mortgage assistance, but chose CAC to handle his modification. He spoke with Ray Anderson at CAC who stated that they could help him, and had him provide loan and account information. Consumer B was sent a contract that required payment within forty-eight hours. Consumer B wired \$2,250.00 to CAC at their BOA acct ending in 4874. He also executed a "cease and desist" letter to his lender as required by CAC and did not communicate with the lender at the instruction of CAC.

Consumer B had a telephone call scheduled with CAC that he needed to change and was given the runaround, being advised that he needed to send CAC a letter to reschedule. Consumer B became suspicious and began doing research and learned that he should not have paid CAC up front so he requested a refund by email and letter, but received no response. (Comm Ex. 3, 18, 20, 21).

Consumer B stated that the only thing the CAC did was "get between him and his mortgage company and break their communication, which was not a good thing."

Analysis

The evidence presented by the Commissioner is uncontradicted, as the Respondents did not participate in the hearing. Based on the evidence before me, I conclude that the Respondents violated provisions of both PHIFA and MARS and are therefore subject to penalties, and to a cease and desist order.

I begin with the PHIFA, Real Property Article Sections 7-301 – 7-325. First, I find that the Respondents are foreclosure consultants as defined by section 7-301(c). They contacted at least two persons residing in Maryland by mail and promised to obtain loan modifications for them. Consumer A testified that she was promised a loan modification with lower payments that would allow her to retain her home. Consumer B also testified that the Respondents promised quick assistance in modifying his loans, but then became impossible to contact. These actions clearly fall within section 7-301(c)(1)(viii). In addition, they also meet the definition in 7-301(c)(2), which includes “[s]ystematically contact[ing] owners of residences in default to offer foreclosure consulting services.” A residence in default is defined in section 7-301(j); it requires that the mortgage be at least sixty days in default, which was the case for Consumer A and B.

Having concluded that the Respondents are foreclosure consultants and thus subject to PHIFA, I consider the specific provisions cited by the Commissioner. It is clear that the Respondents did not provide key information required by section 7-306(a)(6), including notice of the right to rescind any foreclosure consulting contract at any time, and instructions for such rescission, as well as notification to the homeowner that the foreclosure consultant cannot guarantee that the homeowner will be able to keep the home. The required notice further instructs that the homeowner should continue making mortgage payments, which was not included by CAC. The Commissioner provided copies of the documents given to the consumers by the Respondents (Comm Exs. 10, 13); none of these documents provides information about the right to rescind or how to do so. Further, the documents do not explain that a loan modification is not guaranteed. It is thus undisputed that the Respondents failed to comply with sections 7-305 and 7-306 regarding Consumers A and B.

A failure to comply with section 7-306 is also a violation of section 7-307(10), as the latter prohibits a foreclosure consultant from “induc[ing] or attempt[ing] to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.”

It is also clear that the Respondents violated section 7-307(2) by collecting fees from the consumers before the Respondents performed “each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform.” As discussed above, the Respondents represented to Consumer A that they would obtain loan modification that would reduce her monthly payment and represented to Consumer B that they would acquire a loan modification. Consumer A paid \$3,277.00 to the Respondents, upfront, before any services were provided. Consumer B paid \$2,250.00 to the Respondents, upfront, before any services were provided and subsequently requested a refund but received none. This is a clear violation of section 7-307(2).

I also find that the evidence supports that the Respondents induced homeowners into entering foreclosure consulting contracts that were not fully compliant with PHIFA as demonstrated by Comm Exs. 10 and 13, in violation of section 7-307(10).

I am also persuaded that the Respondents’ conduct was a failure to provide the duty of care required by section 7-309. Consumers A and B both testified that the Respondents did not follow up after they made payments and were unable to provide them with meaningful information when they contacted them. This failure to be responsive to consumers, coupled with the improper collection of upfront fees as well as the failures to provide required disclosures regarding rescission, the lack of a guarantee, and correct information about the obligation to continue making payments, reflect a serious violation of the duty of care owed to the consumers, in violation of section 7-309.

I now consider whether the Respondents violated Real Property Article section 7-502 of I now consider whether the Respondents violated the MARS Act, Real Property Article sections 7-501 – 7-511. As noted above, the MARS Act incorporates provisions of the C.F.R. I agree with the Commissioner that the Respondents violated numerous regulations, including the following:

- 12 C.F.R. § 1015.3(a), which prohibits a mortgage assistance relief service provider from representing that a consumer cannot or should not contact or communicate with his or her lender or servicer by requiring that Consumers A and B execute cease and desist letters to their lenders that required that all communication go through the Respondents;
- 12 C.F.R. § 1015.3(b)(4), which prohibits a mortgage assistance relief service provider from misrepresenting any material aspect of any mortgage relief service, including the consumer's obligation to make mortgage payments; the Respondents instructed the Maryland consumers to stop making their monthly mortgage payments;
- 12 C.F.R. § 1015.3(b)(6), which prohibits a mortgage assistance relief service provider from misrepresenting the terms and conditions for obtaining a refund, and by refusing to provide a refund when requested by Consumer B;
- 12 C.F.R. § 1015.3(b)(10), which prohibits a mortgage assistance relief provider from misrepresenting the amount of money a consumer may save by using the service; Consumer A was given specific figures reflecting decreased mortgage payments, though these figures were not based on any information or offer from the consumers' lenders or servicers (Comm Ex. 3);
- 12 C.F.R. § 1015.4(a), (b), which requires all consumer-specific commercial

communications¹ to include a disclosure regarding the consumers' right to rescind the contract, 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, as well as a statement disclosing that the company is not associated with the government or approved by the government or the lender; none of these disclosures were included in the offer made to the consumers (Comm Exs. 10 and 13); and

- 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 fees from Consumer A and B even though the required written agreements had not been executed.

Sanctions

With regard to action the Commissioner may take to address the alleged violations, the Commissioner relies on section 2-115(b) of the Financial Institutions Article of the Maryland Annotated Code:

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

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or

¹ "Consumer-specific commercial communications" are defined as "a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer." 12 C.F.R. § 1015.2.

(4) Take any combination of the actions specified in this subsection.
(c) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Commissioner shall consider the following factors:

- (1) The seriousness of the violation;
 - (2) The good faith of the violator;
 - (3) The violator's history of previous violations;
 - (4) The deleterious effect of the violation on the public and the industry involved;
 - (5) The assets of the violator; and
 - (6) Any other factors relevant to the determination of the financial penalty.
- (d) Notice of any hearing under this section shall be given and the hearing shall be held in accordance with the Administrative Procedure Act.

The Commissioner proposed that I issue a cease and desist order, and that I impose a financial penalty of \$20,000.00. This proposed penalty is based on a \$1,000.00 penalty for each of the ten violations, times the number of violations based on the two consumers affected by the violations, essentially arguing there are twenty different first violations.¹ There was no evidence provided that the Respondents have been found to have violated PHIFA or MARS previously, nor any information regarding their assets. However, I do find that the violations are serious – the Respondents clearly took advantage of Maryland consumers struggling to retain their homes and not only failed to assist them, but in fact inflicted further financial harm on them. The Respondents' misleading communications and promises, without required disclosures, demonstrate that the Respondents' actions were deliberate and calculated. Further, the Respondents' unresponsiveness and essentially giving the consumers the proverbial “run around” once they had paid the fees makes clear that the Respondents were not acting in good faith, as they made no effort to communicate with the consumers or to rectify the situation. The harm to the consumers and the deleterious effect on both the public and the industry cannot be overstated; legitimate foreclosure consultants provide an important service to struggling

¹ Since this is the first time charges have been brought against these Respondents, I find that none of these violations should be considered a “subsequent” violation.

homeowners. Scammers that take advantage of vulnerable people damage trust in legitimate services and add additional stress to an already difficult situation. The egregiousness of the Respondents' actions merits the most severe penalty – \$1,000.00 for each of the twenty violations, for a total of \$20,000.00. 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 PHIFA and MARS in Maryland.

CONCLUSIONS OF LAW

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

1. Engaged in the following conduct, in violation of PHIFA:
 - a. Failed to disclose all required contractual terms in agreements, Md. Code Ann., Real Prop. §§ 7-305 and 7-306 (2015); 12 C.F.R. § 1015.4(a) and (b) (2017);
 - b. Improperly collected fees before performing services, Md. Code Ann., Real Prop. § 7-307(2); 12 C.F.R. § 1015.3(b)(7);
 - c. Induced homeowners into entering foreclosure consulting contracts that were not fully compliant with PHIFA, Md. Code Ann., Real Prop. § 7-307(10);
 - d. Breached the duty of reasonable care and diligence, Md. Code Ann., Real Prop. § 7-309(b).
2. Engaged in the following conduct, in violation of the C.F.R. and MARS:
 - a. 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 a consumer cannot or should not contact or communicate with his or her lender or servicer, 12 C.F.R. § 1015.3(a);

- b. Misrepresented a consumer's obligation to make scheduled periodic payments to their lender, 12 C.F.R. § 1015.3(b)(4);
 - c. Misrepresented the terms or conditions for obtaining a refund, 12 C.F.R. § 1015.3(b)(6);
 - d. Misrepresented the amount of money or percentage of the debt amount a consumer may save, 12 C.F.R. § 1015.3(b)(10);
 - e. Failed to disclose all requisite contractual terms in agreements, including notices of rescission in specific communications, 12 C.F.R. § 1015.4(a), (b);
 - f. Received payment before the consumer has executed a written agreement with his or her loan holder or servicer, 12 C.F.R. § 1015.5(a).
3. Are therefore subject to a cease and desist order and the maximum financial penalty. Md. Code Ann., Fin. Inst. § 2-115 (2011).

RECOMMENDED ORDER

I **RECOMMEND** that the Commissioner:

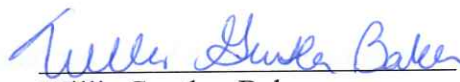
ORDER that the Respondents shall immediately **CEASE AND DESIST** from engaging in any further foreclosure consultant activities; and

ORDER that for violations of the Protection of Homeowners in Foreclosure Act and the Maryland Mortgage Assistance Relief Services Act, the Respondents pay a penalty of \$20,000.00; and further,

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

January 9, 2020
Date Decision Issued

WGB/cj
#182923


Willis Gunther Baker
Willis Gunther Baker
Administrative Law Judge

IN THE MATTER OF * BEFORE WILLIS GUNTHER BAKER,
COMMUNITY ASSISTANCE * AN ADMINISTRATIVE LAW JUDGE
CENTER AND * OF THE MARYLAND OFFICE OF
JONATHAN OBED HERRERA, * ADMINISTRATIVE HEARINGS
RESPONDENTS * OAH NO: LABOR-CFR-76-19-29591
* CFR NO: CFR-FY2018-0043

* * * * *

FILE EXHIBIT LIST

I admitted into evidence the following exhibits offered by the Commissioner:

Comm Ex. 1 - Notice of Hearing

Comm Ex. 2 - Statement of Charges and Order for Hearing (undated)

Comm Ex. 3 - Report of Investigation Enforcement Unit, CFR-FY2018-0043, December 4, 2018

Comm Ex. 4 - Regus Online Virtual Office Agreement with the Respondents, February 16, 2017

Comm Ex. 5 - Respondents' Application for Delivery of Mail through Agent, April 12, 2017

Comm Ex. 6 - Bank of America production of the Respondents' bank records

Comm Ex. 7 - Bank of America Statement of the Respondents, May 1, 2018 to May 31, 2018

Comm Ex. 8 - MAGLOCLLEN¹ records regarding the Respondents

Comm Ex. 9 - Complaint of [REDACTED] (Consumer A), April 4, 2018

Comm Ex. 10 - Consumer A's CAC Client Agreement, January 24, 2018

Comm Ex. 11 - CAC/Consumer A's Cease and Desist letter to Wells Fargo, January 24, 2018

Comm Ex. 12 - Wire Fund and Checking Transfers from Consumer A to CAC

Comm Ex. 13 - Complaint of [REDACTED] (Consumer B), November 1, 2017

Comm Ex. 14 - Consumer B's CAC Client Agreement, August 15, 2017

¹ Middle Atlantic Great Lakes Organized Crime Law Enforcement Network

Comm Ex. 15 - Consumer B's Authorization for CAC to act on his behalf, August 15, 2017

Comm Ex. 16 - CAC/Consumer B's Cease and Desist letter to Freedom Mortgage, August 15, 2017

Comm Ex. 17 - Emails between Commissioner and Consumer B with Proof of Payment from Consumer B to CAC, August 7, 2018

Comm Ex. 18 - Emails between Consumer B and CAC, August 22-23, 2017

Comm Ex. 19 - Email to Commissioner from Consumer B, September 11, 2017

Comm Ex. 20 - Email to CAC from Consumer B, September 11, 2017, attaching termination letter

Comm Ex. 21 - Emails between Consumer B and CAC, August 22, September 11, and October 19, 2017

The Respondents did not submit any documents into the record.

IN THE MATTER OF * BEFORE WILLIS GUNTHER BAKER,
COMMUNITY ASSISTANCE * AN ADMINISTRATIVE LAW JUDGE
CENTER AND * OF THE MARYLAND OFFICE OF
JONATHAN OBED HERRERA, * ADMINISTRATIVE HEARINGS
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Comm Ex. 10 - Consumer A's CAC Client Agreement, January 24, 2018

Comm Ex. 11 - CAC/Consumer A's Cease and Desist letter to Wells Fargo, January 24, 2018

Comm Ex. 12 - Wire Fund and Checking Transfers from Consumer A to CAC

Comm Ex. 13 - Complaint of [REDACTED] (Consumer B), November 1, 2017

Comm Ex. 14 - Consumer B's CAC Client Agreement, August 15, 2017

¹ Middle Atlantic Great Lakes Organized Crime Law Enforcement Network

Comm Ex. 15 - Consumer B's Authorization for CAC to act on his behalf, August 15, 2017

Comm Ex. 16 - CAC/Consumer B's Cease and Desist letter to Freedom Mortgage, August 15, 2017

Comm Ex. 17 - Emails between Commissioner and Consumer B with Proof of Payment from Consumer B to CAC, August 7, 2018

Comm Ex. 18 - Emails between Consumer B and CAC, August 22-23, 2017

Comm Ex. 19 - Email to Commissioner from Consumer B, September 11, 2017

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