

IN THE MATTER OF:

**DIRECT ONE a/k/a
SIMPLIFIED PROCESSING**

FRESH START PROCESSING

**TOBY CLAYTON a/k/a
SAMUEL P. BAIN**

and

RANDALL D. YARBROUGH

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2014-0036

FINAL ORDER TO CEASE AND DESIST

Pursuant to Md. Code Ann., Fin. Inst. Art., § 2-115, and for the reasons stated below, Gordon M. Cooley, the Commissioner of Financial Regulation of the Department of Labor, Licensing and Regulation of the State of Maryland (the “Commissioner”), issues this Final Order to Cease and Desist to Direct One, a/k/a Simplified Processing, Fresh Start Processing, Toby Clayton, a/k/a Samuel P. Bain, and Randall D. Yarbrough (collectively “Respondents”) for violations of the Maryland Credit Services Business Act.

The Summary Order to Cease and Desist (“Summary Order”) issued on December 10, 2014, is herein adopted and incorporated by reference.

BACKGROUND

1. As described more fully in the Summary Order, the Acting Deputy Commissioner of Financial Regulation in the Maryland Department of Labor, Licensing and Regulation (the “Agency”) undertook an investigation, as a result of a consumer complaint, into the credit services business activities of the Respondents.

2. The Agency's investigation determined that Respondent Direct One (a.k.a. Simplified Processing) was a business entity offering loan modification services and operating out of multiple offices in the state of California. Further, the Agency's investigation revealed that Direct One engaged in business activities with Maryland consumers involving Maryland residential real property, and was not registered to do business in the State of Maryland with the State Department of Assessments and Taxation (SDAT).

3. The Agency's investigation determined that Respondent Clayton (a.k.a. Samuel P. Bain) is an owner, director, officer, manager, employee and/or agent of Direct One.

4. The Agency's investigation determined that Respondent Fresh Start Processing is a business entity offering loan modification services and operating out of offices in the state of California. Further, the Agency's investigation revealed that Fresh Start Processing engaged in business activities with Maryland consumers involving Maryland residential real property, and was not registered to do business in the State of Maryland with SDAT.

5. The Agency's investigation revealed that Respondent Yarbrough is the owner of Fresh Start Processing.

6. The Agency's investigation revealed that, in May 2013, [REDACTED] ("Consumer A"), who had a Maryland residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer A paid \$2,050 in up-front fees to Respondents in exchange for which Respondents promised to obtain a loan modification for Consumer A. The Agency's investigation determined that although Respondents collected \$2,050 in up-front fees, Respondents never obtained a loan modification for Consumer A. Further, Respondents failed to provide Consumer A with a full refund.

7. As a result of the Agency's investigation, Acting Deputy Commissioner, Keisha Whitehall Wolfe, found reasonable grounds to believe that the Respondents had engaged in unlicensed credit services business activities with Maryland consumers in violation of Commercial Law Article ("CL"), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA") and Financial Institutions Article ("FI") Title 11, Subtitles 2 and 3, as described below.

Violations of the Maryland Credit Services Businesses Act

8. Respondents' loan modification activities are subject to the MCSBA, including the MCSBA's prohibition on engaging in credit services business activities without first being licensed pursuant to CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303. At no time relevant to the facts set forth herein were any of the Respondents licensed by the Commissioner under the MCSBA.

9. By representing that they could provide loan modification services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents engaged in credit services business activities without the requisite license. Respondents' unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303.

10. By collecting money from Maryland consumers without first obtaining the requisite license, Respondent violated CL § 14-1902(1).

11. By collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA.

12. Respondents made or used false or misleading representations in their sale of services to Maryland consumers, thereby violating CL § 14-1902(4), when Respondents

represented that they would be able to obtain beneficial loan modifications for Maryland homeowners when in fact they never obtained such beneficial modifications for Maryland consumers.

13. Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and they failed to include all of the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

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

15. By failing to obtain loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

16. The violations of the MCSBA discussed above subject Respondents to the penalty provisions and other sanctions of the MCSBA and FI § 2-115(b).

The Maryland Mortgage Assistance Relief Act

17. The Maryland Mortgage Assistance Relief Services Act (“Maryland MARS Act,” at RP § 7-501 et seq.) went into effect on July 1, 2013.¹ Pursuant to RP § 7-501(d) of the Maryland MARS Act, “mortgage assistance relief service” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that federal regulation. Further, pursuant to RP § 7-501(e), “mortgage assistance relief service provider” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that regulation, and that definition incorporates the meanings of other terms stated in 12 C.F.R. § 1015.2 to the extent those terms are used to establish the meaning of “mortgage assistance relief service provider.”

18. The loan modification activities of Respondents constitute “mortgage assistance relief services” under 12 C.F.R. § 1015.2, and Respondents satisfy the definition of “mortgage assistance relief service providers” under 12 C.F.R. § 1015.2. As such, pursuant to RP §§ 7-501 and 502, Respondents and their loan modification activities are currently subject to the Maryland MARS Act, including the investigative and enforcement authority of the Commissioner set forth in RP § 7-506.

¹ At the time of the alleged violation, in May 2013, the Credit Services Business Act applied to mortgage assistance relief services, which includes, *inter alia*, negotiating a modification of any term of a mortgage or loan on a dwelling. Effective July 1, 2013, the definition of “credit services business” under the Credit Services Business Act was amended to exclude “a mortgage assistance relief service provider regulated under Title 7, Subtitle 5 of the Real Property Article.” See 2013 Md. Laws Ch. 247 and CL § 14-1901(e)(3)(x); see also Md. Code Ann., Real Prop. Art., § 7-501 et seq. (Maryland Mortgage Assistance Relief Services Act). The 2013 amendment further provided: “This Act is not intended, and may not be construed, to have any effect on the authority of the Commissioner of Financial Regulation to regulate mortgage assistance relief service providers under Title 14, Subtitle 19 of the Commercial Law Article, or on any enforcement actions, including litigation, taken under that authority as it existed and based on actions that occurred before the effective date of this Act [July 1, 2013].” 2013 Md. Laws Ch. 247.

Summary Order

19. The Acting Deputy Commissioner issued the Summary Order against the Respondents on December 10, 2014, after determining that the Respondents were engaged in credit services business activities; that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents immediately cease and desist from engaging in credit services business activities with Maryland consumers.

20. The Summary Order notified Respondents of, among other things, the following: 1) Respondents were entitled to a hearing before the Commissioner of Financial Regulation to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; 2) the Summary Order would be entered as a final order if the Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and 3) as a result of a hearing or of Respondents' failure to request a hearing the Commissioner may, in his discretion and in addition to taking any other action allowed by law, enter an order making the Summary Order final, issue penalty orders against Respondents, and issue orders requiring Respondents to pay refunds and other monetary awards to Maryland consumers, as well as take other action related to Respondents' business activities.

21. The Summary Order was properly served on Respondents via first class mail and Certified U.S. Mail.

22. Respondents failed to request a hearing in connection with the Summary Order.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the

Summary Order, and pursuant to CL §§ 14-1907 and 14-1911 and FI § 2-115, it is by the Maryland Commissioner of Financial Regulation hereby:

ORDERED that the Summary Order is entered as a final order of the Commissioner;

FURTHER ORDERED that the Respondents shall permanently **CEASE and DESIST** from engaging in any further credit services business activities with Maryland consumers; that Respondents shall permanently **CEASE and DESIST** from engaging in any further mortgage assistance relief services with Maryland consumers; and that Respondents shall permanently **CEASE and DESIST** from further violation of the Maryland laws identified herein;

FURTHER ORDERED that all provisions of this Final Order shall also apply to all named and unnamed partners, employees, and/or agents of Respondents;

FURTHER ORDERED that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), Respondents shall pay to the Commissioner a total civil money penalty in the amount of Six Thousand Dollars (\$6,000.00). That civil money penalty is calculated as follows:

Prohibited Activity and Violation	Penalty per Violation	Number of Violations	Penalty
Unlicensed Activity in Violation of CL §§14-1902(1) and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	1	\$1,000.00
Collecting up-front fees prior to fully and completely performing all services in violation of CL §14-1902	\$1,000.00	1	\$1,000.00
Failing to obtain requisite surety bond(s) in violation of CL §14-1908 and 14-1909	\$1,000.00	1	\$1,000.00
Failing to provide requisite information statements and contractual terms in agreements with consumers of CL §§14-1904, 14-1905 & 14-1906	\$1,000.00	1	\$1,000.00
Making or using false and/or misleading representations in the sale of services to Maryland consumers in violation of CL §14-1902(4)	\$1,000.00	1	\$1,000.00
Breached contract with consumer by not obtaining loan modification in violation of CL §14-1907	\$1,000.00	1	\$1,000.00
Total		6	\$6,000.00

FURTHER ORDERED that Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of Six Thousand Dollars (\$6,000.00) within twenty (20) days from the date of this Final Order;

FURTHER ORDERED that, because Respondents are in violation of the Maryland Credit Services Business Act, any and all loan modification services agreements made by

Respondents with Maryland consumers are void and unenforceable pursuant to CL § 14-1907;

FURTHER ORDERED that, pursuant to FI § 2-115(b), Respondents shall pay Consumer A the monetary award of Two Thousand And Fifty Dollars (\$ 2,050.00);

FURTHER ORDERED that Respondents shall be and hereby are jointly and severally liable for the payment of penalties and monetary awards under this Final Order;

FURTHER ORDERED that Respondents shall pay the required monetary award to the Consumer A herein within thirty (30) days of the date of this Final Order. Respondents shall make payment by mailing to the consumer a check in the amount specified above 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, the 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 Final Order;

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

FURTHERED ORDERED that, notwithstanding the imposition of civil penalties herein, the Commissioner reserves the right to refer any and all of these violations to the State's Attorney for consideration of criminal prosecution pursuant to CL § 14-1915.

12/7/2016
Date

Gordon M. Cooley
Gordon M. Cooley
Commissioner