

IN THE MATTER OF:

**THE LAW OFFICE OF ERIC T. SMITH,
MODIFY LAW GROUP, A
PROFESSIONAL LAW CORPORATION,
a/k/a
MODIFY LAW GROUP, INC. a/k/a
MODIFY LAW GROUP**

and

ERIC T. SMITH

Respondents.

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No.: CFR-FY2010-308

**SUMMARY ORDER TO CEASE AND DESIST
AND ORDER TO PRODUCE**

WHEREAS, in November 2009 the Office of the Commissioner of Financial Regulation (the “Agency”) undertook an investigation into the credit services business activities of the Law Office of Eric T. Smith, Modify Law Group, A Professional Law Corporation, a/k/a Modify Law Group, Inc. a/k/a Modify Law Group (“Modify Law Group”) and Eric T. Smith (collectively, the “Respondents”); and

WHEREAS as a result of that investigation, the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”) finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, including Commercial Law Article (“CL”), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter “MCSBA”), Financial Institutions Article (“FI”), Title 11, Subtitles 2 and 3, and Real Property Article (“RP”), Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act, hereinafter “PHIFA”), and that action under FI §§ 2-114 and 2-115, and RP § 7-319.1 is appropriate;

NOW, THEREFORE, the Deputy Commissioner has determined, for the reasons set forth below, that the Respondents are in violation of Maryland law, and that it is in the public interest that the Respondents immediately cease and desist from engaging in credit services business activities and/or foreclosure consulting activities with Maryland residents, homeowners, and/or consumers (hereinafter “Maryland consumers”), including directly or indirectly offering, contracting to provide, or otherwise engaging in: loan modification; loss mitigation; foreclosure consulting, or similar services related to real property (hereinafter “loan modification services”).

FACTUAL ALLEGATIONS

1. In November 2009, the Agency began an investigation into the business activities of the Respondents as a result of a consumer complaint.

2. The Agency’s investigation determined that Respondent Modify Law Group is a purported law firm operating out of offices located in Irvine, California. Further, the Deputy Commissioner’s investigation revealed that Modify Law Group engages in business activities with Maryland consumers involving Maryland residential real property, although it has not registered to conduct business in the State of Maryland with the State Department of Assessments and Taxation.

3. The Agency’s investigation determined that Respondent Eric T. Smith (“Smith”) was a California state barred attorney who engaged in business activities involving Maryland consumers. Smith was disbarred in California in 2010 for acts of misconduct with respect to loan modifications involving thirty-two other consumers nationwide. Smith had a prior record of misconduct for practicing law while suspended from law practice, which was an aggravating circumstance in the 2010 case. Smith is not

and has never been licensed to practice law in the State of Maryland. Smith is the owner, director, officer, manager, employee and/or agent of Modify Law Group.

4. The Agency's investigation revealed that, in September 2009, [REDACTED] [REDACTED] ("Consumer A"), who was more than 60 days in default on her residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer A paid approximately \$2,500 in up-front fees to Respondents, in exchange for which Respondents represented that they would be able to provide mortgage assistance relief services to Consumer A. Although Respondents collected \$2,500 in up-front fees, Respondents never obtained a loan modification for Consumer A, nor did they provide her with loan modification services. Further, Respondents ceased communications with Consumer A.

5. The Agency's investigation further revealed that, in July 2009, [REDACTED] [REDACTED] ("Consumer B"), paid approximately \$2,995 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to provide mortgage assistance relief services to Consumer B. Although Respondents collected \$2,995 in up-front fees, Respondents never obtained a loan modification, nor did they provide any loan modification services for Consumer B. Further, Respondents ceased communications with Consumer B after receiving payment.

6. Furthermore, the Deputy Commissioner's investigation revealed that in his 2010 disbarment case Smith stipulated to performing mortgage assistance relief services to two additional Maryland consumers: [REDACTED] ("Consumer C") and [REDACTED] ("Consumer D"). Smith also stipulated to the fact that he knew these Maryland consumers and their properties were located in jurisdictions in which he was not entitled to practice law.

LEGAL AUTHORITY

7. Maryland Financial Institutions Article (“FI”), Title 2, Subtitle 1 sets forth the general authority of the Commissioner of Financial Regulation (the “Commissioner”).

8. Pursuant to FI §§ 2-115(a) and (b) the Commissioner has the authority to issue summary cease and desist orders; order the production of information, documents, and records; and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction.

9. Maryland Commercial Law Article (“CL”), Title 14, Subtitle 19 (the Maryland Credit Services Businesses Act, hereinafter “MCSBA”), sets forth the restrictions and prohibitions on credit service businesses.

10. Pursuant to CL § 14-111, the Commissioner may enforce the provisions of the MCSBA, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of the MCSBA and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation.

11. Pursuant to FI § 2-115, the Commissioner may impose a civil penalty of up to \$1,000 for the first violation of the MCSBA and up to \$5,000 for each subsequent violation.

12. Pursuant to CL § 14-1901, loan modification services fall within the definition of credit service businesses. Loan modification services generally include obtaining an extension of credit for consumers, including obtaining forbearance or other deferrals of payment on consumers’ mortgage loans. This includes any offered services intended as part of the loan modification process, or which are represented to consumers to be necessary for participating in a loan modification program, such as providing loan

modification related advice to consumers. Under certain circumstances, loan modification services may involve improving a consumer's credit record, history, or rating or establishing a new credit file or record. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1901(f), persons providing loan modification services, in which they are offering (or offering to assist the consumer to obtain) forbearance services, loss mitigation services, and/or credit repair services, fall under the statutory definition of "credit services businesses."

13. By offering to provide services related to the loan modification process, Respondents are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

14. Maryland Real Property Article ("RP"), Title 7, Subtitle 3 (the Protection of Homeowners in Foreclosure Act, hereinafter "PHIFA"), sets forth the restrictions and prohibitions on foreclosure consultants. Pursuant to CL § 14-111, the Commissioner may enforce the provisions of PHIFA, by issuing an order: (i) requiring a respondent to cease and desist from any violations of the PHIFA and any further similar violations; and (ii) requiring a respondent to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation.

15. Pursuant to FI § 2-115, the Commissioner may impose a civil penalty of up to \$1,000 for the first violation of PHIFA and up to \$5,000 for each subsequent violation.

16. By offering loan modification services to Maryland consumers who were more than 60 days in default on their residential mortgages, Respondents acted as foreclosure consultants and are subject to the investigatory, enforcement, and penalty provisions of PHIFA.

17. RP Title 7, Subtitle 5 (The Maryland Mortgage Assistance Relief Services Act, hereinafter the “Maryland MARS Act”) went into effect on July 1, 2013. Pursuant to RP § 7-501(d), the loan modification activities of the Respondents constitute “mortgage assistance relief services,” and the Respondents satisfy the definition of “mortgage assistance relief service providers.” As such, pursuant to RP §§ 7-501 and 502, the Respondents and their loan modification activities are currently subject to the Maryland MARS Act.

18. Pursuant to RP § 7-506, the Commissioner has authority to enforce the Maryland MARS Act. The Commissioner may enforce the provisions of the Maryland MARS Act by exercising his general authority under FI §§ 2-113 through 2-116, by issuing an order: (i) requiring a respondent to cease and desist from any violations of the Maryland MARS Act and any further similar violations; (ii) requiring a respondent to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation; and (iii) imposing a civil penalty of up to \$1,000 for the first violation of the Maryland MARS Act and up to \$5,000 for each subsequent violation.

CHARGES

Based on the foregoing factual allegations the Deputy Commissioner hereby charges Respondents with the following violations of Maryland Law:

The Maryland Credit Services Business Act

COUNT I: Operating a credit services business without having the requisite license in violation of CL § 14-1903(b).

COUNT II: Charging and receiving money or valuable consideration prior to full and complete performance of the services that the credit services business has agree to perform on behalf of the consumer in violation of CL § 14-1902(6).

COUNT III: Making or using false or misleading representations and/or engaging, directly or indirectly in an act, practice, or course of business which operates as a fraud or deception in violation of CL §§ 14-1902(4) and 14-1902(5).

COUNT IV: Failing to provide consumers with a written information containing all of the information required under CL § 14-1905, which constitutes a violation of both CL §§ 14-1904 and 14-1905.

COUNT V: Failing to include all of the requisite contractual terms in their agreements as required under CL § 14-1906.

COUNT VI: Failing to obtain a surety bond in violation of CL §§ 14-1908 and 14-1909.

The Protection of Homeowners in Foreclosure Act

COUNT VII: Claiming, demanding, charging, collecting, or receiving compensation prior to fully performing each and every service for which Respondents contracted to perform or represented they would perform in violation of RP § 7-307(2).

COUNT VIII: Breaching the duty of reasonable care and diligence required under RP § 7-309(b), including but not limited to, the following conduct: the Respondents failed to perform those loan modification and foreclosure prevention services for Maryland consumers which the promised to provide and for which they had collected up-front fees.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland consumers, including contracting to provide, or otherwise engaging in loan modification services, foreclosure consulting, or similar services with Maryland consumers; it is further

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from directly or indirectly offering, contracting to provide, or otherwise engaging in, mortgage assistance relief services with Maryland consumers; and it is further

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the Commercial Law Article (Maryland Credit Services Businesses Act), Title 11, Subtitles 2 and 3 of the Financial Institutions Article, and Title 7, Subtitle 5 of the Real Property Article (Maryland Mortgage Assistance Relief Services Act); and that Respondents should be assessed statutory monetary penalties and directed to make restitution for such violations; and it is further

ORDERED that Respondents shall provide to the Office of the Commissioner each of the following within 15 days of the receipt of this Summary Order to Cease and Desist:

- The names, addresses, and phone numbers of all Maryland residents, homeowners and/or consumers (hereinafter "Maryland residents") who, at any time on or after January 1, 2008, retained or contracted with Respondents for the purpose (in whole

or in part) of providing mortgage loan modification, loss mitigation, foreclosure consulting, or similar services related to residential real property (hereinafter "loan modification services") for them or on their behalf.

- a. For each Maryland resident identified above, specify whether the person was current, in default, or in foreclosure on their residential mortgage loan as of the date they entered into the agreement to obtain loan modification services.
 - b. Additionally, if the person was in default, specify the number of days that they were in default as of the date that they entered into the agreement. Also indicate whether the person was directed to stop making payments on their residential mortgage loan.
- Any and all documents under Respondents' control or in their possession pertaining to their loan modification services, agreements, and activities on or after January 1, 2008 related to the Maryland residents identified above.
 - The names, addresses, and phone numbers of third-party individuals or business entities ("third parties") who, at any time on or after January 1, 2008, referred or agreed to refer consumers, potentially including Maryland residents, to Respondents for the purpose (in whole or in part) of providing loan modification services.
 - The names, addresses, and phone numbers of third-parties to whom, at any time on or after January 1, 2008, Respondents referred or agreed to refer, consumers, potentially including Maryland residents, for the purpose (in whole or in part) of providing loan modification services, or to whom Respondents referred or agreed to refer consumers, potentially including Maryland residents, for the purpose of obtaining a consumer loan in order to finance loan modification services.
 - Any and all documents under Respondents' control or in their possession pertaining to the third-parties identified above, the content of which documents relates in any way to loan modification services to be performed on or after January 1, 2008, or to any associated referral arrangements, fees, or other forms of compensation.
 - Copies of all marketing and advertising materials potentially reaching Maryland residents on or after January 1, 2008 which Respondents, or which third parties marketing directly or indirectly on Respondents' behalf, use or have used to market or advertise Respondents' loan modification services, including, but not limited to, copies of all printed marketing materials, internet advertisements, and radio and television advertisements.
 - The names, addresses, and phone numbers of all of Respondents' current and former owners, partners, members, officers, employees, associates, agents, and/or contractors who, on or after January 1, 2008 and during their period of employment or association with Respondents, agreed to provide, provided, or assisted in providing, Maryland residents with loan modification services.

- Information or documents providing following: the names of all current and former principals, owners, officers, directors, managing members, members, and partners of the Respondent business entities; the contact information for each person identified, including their business address, mailing address (if different), phone number, and email address; all positions held with Respondents; and the dates in each position.
- All organizational and governing documents for the Respondent business entities, including but not limited to the following: articles of organization; articles of incorporation; operating agreements; partnership agreements; bylaws; other governing documents; and other like documents pertaining to each company's overall structure, governance, and/or operations.
- Documents detailing financial asset information for Respondents and for all members of Respondents for the period from January 1, 2008 through the present, including audited financial statements, unaudited financial statements, tax returns, and like documents.
- Copies of any surety bonds which Respondents hold, or have held, which would cover any of the loan modification agreements referenced herein.
- If the Respondents, or if any of the principals, owners, officers, directors, managing members, members, or partners of the Respondent business entities, has ever been named as a respondent, defendant, or party in any action by a federal, state, or local regulatory or law enforcement agency (hereinafter, "governmental agency"), information or documents which provide the following: the name of the governmental agency; the date the action was commenced; the status of the action; a copy of any complaint, charging letter, summary order, or like document; and a copy of any final order, judgment, or settlement agreement.

and it is further

ORDERED that all provisions of this Summary Order, including all orders and notices set forth herein, shall also apply to all unnamed partners, employees, and/or agents of Respondent Modify Law Group; and it is further

ORDERED that Respondent Eric T. Smith shall provide a copy of this Summary Order to all unnamed owners, members, partners, directors, managers, officers, employees, and/or agents of Respondent Modify Law Group.

NOTICE OF RIGHT TO A HEARING

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, CL § 14-1911, and RP § 7-319.1, Respondents are entitled to a hearing before the Commissioner to determine whether this Summary Order should be vacated, modified, or entered as a final order of the Commissioner; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, CL § 14-1911, and RP § 7-319.1, this Summary Order will be entered as a final order of the Commissioner if Respondents do not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations (“COMAR”) § 09.01.02.08, and State Government Article (“SG”) §§ 9-1607.1, 10-206.1, and 10-207, and in accordance with SG § 10-207(b)(4), individual Respondents are only permitted to request a hearing, and to appear at such hearing, on behalf of themselves, or through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator
Enforcement Unit
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

And further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115(b) and RP § 7-319.1, as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner described above, the Commissioner may, in the Commissioner's discretion, and in addition to taking any other action authorized by law, impose any of the additional penalties described below.

POTENTIAL PENALTIES ASSESSED AS PART OF FINAL ORDER

Pursuant to FI § 2-115(b) and RP § 7-319.1, if following a hearing Respondents are deemed to have committed the foregoing violations, or if Respondents fail to timely request a hearing in the manner set forth above, the Commissioner may, in the Commissioner's discretion, and in addition to taking any other action authorized by law, take the following actions:

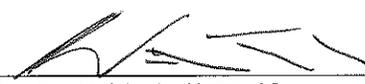
- Enter an order making this Summary Order final;
- Suspend or revoke any license issued to Respondents;
- Issue a penalty order against Respondents imposing a civil penalty up to \$1,000 for the first violation of the MCSBA and up to \$5,000 for each subsequent violation of the MCSBA;
- Enter a final order declaring, pursuant to CL §§ 14-1902 and 14-1907, that all loan modification services agreements made by Respondents with Maryland consumers are void and unenforceable;

- In the event that the Commissioner determines that Respondents have willfully failed to comply with the MCSBA, enter a final order, pursuant to CL § 14-1912(a) requiring Respondents to pay to the affected Maryland consumers the greater of: (1) any actual damages sustained by the consumer or (2) three times the total amount collected from the consumer;
- In the event that the Commissioner determines that Respondents' negligently failed to comply with the MCSBA, enter a final order, pursuant to CL § 14-1912(b), requiring Respondents to pay the affected Maryland consumers for any actual damages sustained by the consumer;
- Issue a penalty order against Respondents imposing a civil penalty up to \$1,000 for the first violation of PHIFA and up to \$5,000 for each subsequent violation of PHIFA; and/or
- Enter an order, pursuant to RP § 7-319.1(c), Respondents to take affirmative action to correct the violations of PHIFA described herein, including the restitution of money or property to any person aggrieved by the violation.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

5/21/2015

Date

By: 

Keisha Whitehall Wolfe
Acting Deputy Commissioner