FINAL ORDER
DATE 6/17/19

IN THE MATTER OF: **PRIME ASSISTANCE TEAM, INC. d/b/a PRIME ASSISTANCE TEAM,** **And** **CLARA ADELE BALTES, Individually** **Respondents.**	**BEFORE THE MARYLAND** **COMMISSIONER OF** **FINANCIAL REGULATION** **OAH No.: DLR-CFR-76-18-33390** **CFR No.: CFR-FY2017-0035**

PROPOSED FINAL ORDER

The Proposed Decision of the Administrative Law Judge ("ALJ") issued on April 2, 2019 ("Proposed Decision"), in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation ("Commissioner") this 22ND day of May, 2019, **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**; except as **AMENDED** to include in the Proposed Decision at 33:

> Pursuant to Md. Code Ann., Real Prop. ("RP") §7-309(b) "a foreclosure consultant owes the same duty to a homeowner as a licensed real estate broker owes to a client under §17-532 of the Business Occupations and Professional Article." Pursuant to Md. Code Ann., Bus. Occ. & Prof. ("BOP") §17-532(b)(1)(vi), a licensee shall "exercise reasonable care and diligence."

Pursuant to Md. Code Ann., State Gov't §10-220(d)(4), the Commissioner finds that the

above described Conclusions of Law of the ALJ had to be modified because the ALJ did not provide the cross reference to BOP §17-532 in the Proposed Decision, which prescribes the duty in RP §7-309(b).

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 $60,000.00, in penalties, within twenty (20) days from the date of this Proposed Final Order;

E. The restitution in the Proposed Decision be, and hereby is **ADOPTED**;

F. Respondents shall pay restitution to Consumer A in the amount of $3,220.00, Consumer B in the amount of $3,975.27, Consumer C in the amount of $2,050.00, Consumer D in the amount of $2,205.03, and Consumer E in the amount of $3,015.15. Respondents shall make payment by mailing to each consumer a check in the amount specified therein 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;

G. Respondents shall immediately **CEASE AND DESIST** from all engaging in any further foreclosure consultant activities in the State of Maryland;

H. 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

I. 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 Order and present arguments to the Commissioner. Respondents have twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner, and subject to judicial review pursuant to SG § 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: 5/22/19

By: _____
Antonio P. Salazar
Commissioner of Financial Regulation

IN THE MATTER OF	*	**BEFORE STEPHEN W. THIBODEAU,**
PRIME ASSISTANCE TEAM, INC.	*	**AN ADMINISTRATIVE LAW JUDGE**
d/b/a PRIME ASSISTANCE TEAM,	*	**OF THE MARYLAND OFFICE OF**
and	*	**ADMINISTRATIVE HEARINGS**
CLARA ADELE BALTES,	*	**OAH No: DLR-CFR-76-18-33390**
RESPONDENTS	*	**CFR No: CFR-FY2017-0035**

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PROPOSED DECISION

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CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 5, 2018, the Deputy Commissioner of Financial Regulation (Commissioner) issued a Charge Letter against Prime Assistance Team, Inc. d/b/a Prime Assistance Team (Respondent Prime Assistance) and Clara Adele Baltes (Respondent Baltes) (collectively, 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]

[1] Unless otherwise noted, all references to the Real Property Article are to the 2015 Replacement Volume and 2017 Supplement.

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 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 October 17, 2018, the Commissioner transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a hearing and issue proposed findings of fact and conclusions of law, as well as a recommended order, to the Office of the Commissioner of Financial Regulation (CFR).

On January 3, 2019, I convened a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(2011).[2] 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, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); 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. Improperly collecting fees before performing services;[3]

[2] Unless otherwise noted, all references to the Financial Institutions Article are to the 2011 Replacement Volume and 2018 Supplement.

[3] Md. Code Ann., Real Prop. § 7-307(2); 12 Code of Federal Regulations (C.F.R.) § 1015.3(b)(7). All references to the C.F.R. are to the 2018 volume.

b. Inducing homeowner(s) into entering foreclosure consulting contracts that were not fully compliant with PHIFA;[4]

c. Failing to disclose all required contractual terms in agreements;[5]

d. Breaching the duty of reasonable care and diligence?[6]

2. Did the Respondents engage in the following conduct, in violation of the Code of Federal Regulations (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;[7]

b. Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to that a mortgage relief service is affiliated with, endorsed or approved by, or otherwise associated with the United States government or any governmental homeowner assistance plan;[8]

c. Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to that the mortgage assistance relief provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;[9]

d. Failing to place the following statements in every general commercial communication for any mortgage relief service in a clear and prominent manner,

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[4] Md. Code Ann., Real Prop. § 7-307(10).
[5] Md. Code Ann., Real Prop. §§ 7-305 and 7-306; 12 C.F.R. § 1015.4(a) and (b).
[6] Md. Code Ann., Real Prop. § 7-309(b).
[7] 12 C.F.R. § 1015.3(a).
[8] 12 C.F.R. § 1015.3(b)(3).
[9] 12 C.F.R. § 1015.3(b)(7).

preceded by the heading "IMPORTANT NOTICE" in a bold face font that is two point-type larger the font size of the required disclosures:

- "(Name of Company) is not associated with the government, and our service is not approved by the government or your lender."; and
- "Even if you accept this offer and use our service, your lender may not agree to change your loan."[10]

e. Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service in a clear and prominent manner, preceded by the heading "IMPORTANT NOTICE" in a bold face font that is two point-type larger the font size of the required disclosures:

- "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.";
- "(Name of company) is not associated with the government, and our service is not approved by the government or your lender."; and
- "Even if you accept this offer and use our service, your lender may not agree to change your loan."[11]

f. Receiving payment before the consumer has executed a written agreement with his or her loan holder or servicer;[12]

[10] 12 C.F.R. § 1015.4(a).
[11] 12 C.F.R. § 1015.4(b).
[12] 12 C.F.R. § 1015.5(a).

g. Failing 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[.]"?[13]

3. What, if any, sanctions should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

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

CFR Ex. 1 - Notices of Hearing, with returned mail

CFR Ex. 2 - Delegation Letter to the OAH, October 5, 2018 with Charge Letter, October 5, 2018

CFR Ex. 3 - Written Statement of [redacted] January 31, 2017

CFR Ex. 4 - Executed Client Agreement by [redacted] with Respondent Prime Assistance, August 29, 2016

CFR Ex. 5 - Borrower's Authorization Form for [redacted], August 29, 2016

CFR Ex. 6 - Cease and Desist Letter from Respondent Prime Assistance to Wells Fargo Home Mortgage on behalf of [redacted], August 29, 2016

CFR Ex. 7 - Bank of America Customer Receipts for [redacted]: September 9, 2016 for $1,065.00; October 12, 2016 for $1,065.00; November 18, 2016 for $1,090.00

CFR Ex. 8 - Email from [redacted] to Sarah Wright of Prime Assistance, March 17, 2017

CFR Ex. 9 - Written Statement of [redacted] faxed on May 12, 2017

[13] 12 C.F.R. § 1015.5(b).

CFR Ex. 10 - Bank of America Customer Receipts for [redacted] July 5, 2016 for $568.51; August 6, 2016 for $500.00; September 12, 2016 for $568.51; September 26, 2016 for $568.60

CFR Ex. 11 - Email from Sarah Wright of Respondent Prime Assistance, to [redacted] January 4, 2017

CFR Ex. 12 - Letter from [redacted] to the Office of the Commissioner of Financial Regulation, April 26, 2017

CFR Ex. 13 - Bank of America Customer Receipts for [redacted] September 22, 2016 for $1,325.09; August 22, 2016 for $1,325.09; October 12, 2016 for $1,325.09

CFR Ex. 14 - Cease and Desist Letter from Respondent Prime Assistance to Citibank Mortgage on behalf of [redacted] August 19, 2016

CFR Ex. 15 - Email chain between [redacted] and Sarah Wright, Prime Assistance, September 22, 2016

CFR Ex. 16 - Email chain between [redacted] and Courtney Anderson from Respondent Prime Assistance, November 28, 2016 through December 5, 2016

CFR Ex. 17 - Email chain between [redacted] and Respondent Prime Assistance, December 20, 2016 through January 12, 2017

CFR Ex. 18 - Authorization Statement by [redacted], May 5, 2017

CFR Ex. 19 - Mailed advertisement from Respondent Prime Assistance to [redacted] undated

CFR Ex. 20 - Completed Homeowner's Hardship Application for [redacted] March 28, 2016

CFR Ex. 21 - Bank of America Customer Receipts for [redacted]: April 4, 2016 for $1,025.00; May 4, 2016 for $1,025.00

CFR Ex. 22 - Mailed advertisement from Respondent Prime Assistance to [redacted] November 23, 2016

CFR Ex. 23 - Respondent Prime Assistance Client Agreement with [redacted] December 22, 2016

CFR Ex. 24 - Money order to Respondent Prime Assistance from [redacted] for $1,000.00; Money order to Respondent Prime Assistance from [redacted] for $5.05; Store receipt from College Square for $1,000.00 money order, December 27, 2016; Store receipt from College Square for $1,000.00 money order, January 24, 2017; Money order customer's receipt for $1,000.00, January 24, 2017; Money order customer's receipt for $1,000.00, December 27, 2016; Store receipt from College Square for shipping costs, December 27, 2016; Store receipt from College Square for shipping costs and money order, May 3, 2017; Store receipt from College Square for shipping costs, January 24, 2017; United States Postal Service (USPS) Priority Mail Express receipt, January 24, 2017; USPS money order receipt for $1,000.00, February 11, 2017; USPS money order receipt for $5.05, February 11, 2017; USPS money order receipt for $5.05, December 27, 2016

CFR Ex. 25 - Cease and Desist Letter from Respondent Prime Assistance to Ocwen Mortgage on behalf of [redacted], December 22, 2016

CFR Ex. 26 - State of Delaware Corporate Filing for Respondent Prime Assistance, accessed on January 2, 2019

CFR Ex. 27 - CFR Enforcement Unit Report of Investigation, June 20, 2017

The Respondents did not submit any documents into the record.

Testimony

The Commissioner presented the following witnesses:

- [redacted]
- [redacted]
- Zenaida Velez-Dorsey, Financial Fraud Examiner.

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 Prime Assistance was established as a corporation in Delaware. The address for its designated Delaware office was 2035 Sunset Lake Road, Suite B-2, Newark, Delaware 19702.

2. Respondent Baltes was identified in the Delaware incorporation paperwork as the director of Respondent Prime Assistance. Respondent Baltes is also the owner of Respondent Prime Assistance. She listed her home address as 132 Dean Street, Tustin, California, 92780.

3. Respondent Prime Assistance listed a primary business address of 2312 Park Avenue, Tustin, California 92782. It was later discovered by Zenadia Velez-Dorsey, a Financial Fraud Investigator for the CFR, that this address was a UPS Store-Mail Boxes for Rent store, and that Respondent Baltes opened post office box #415 at the store on behalf of Respondent Prime Assistance on March 25, 2016. Respondent Prime Assistance also had

an alternate business address of 2321 E. 4th Street, Suite C-435, Santa Ana, California 92705, another UPS Store-Mail Boxes for Rent location.

4. Respondent Prime Assistance is not registered to do business in California or Maryland.

5. On February 27, 2016, Respondent Baltes opened two Bank of America bank accounts on behalf of Respondents and listed herself as President of the corporation.

6. A Bank of America account ending in account number [redacted] was owned by Respondent Baltes. Another Bank of America account ending in account number [redacted] was owned by Respondent Prime Assistance.

[redacted] ***"Consumer A"***

7. In August 2016, Respondent Prime Assistance contacted Consumer A, a resident of Fort Washington, Maryland, via mail.

8. At the time Respondent Prime Assistance contacted Consumer A, he was more than sixty days in arrears in his mortgage payments.

9. Respondent Prime Assistance promised assistance to Consumer A in obtaining a loan modification of his residential mortgage loan with Wells Fargo.

10. On or about August 29, 2016, Consumer A submitted an agreement form to Respondent Prime Assistance. This form included a contractual agreement that Consumer A would pay an upfront fee of $3,191.27 to Respondent Prime Assistance for the service of obtaining a loan modification. The fee was paid in three installments by depositing funds in Respondent Baltes' Bank of America account as follows[14]:

- September 9, 2016: $1,065.00;

[14] Consumer A actually paid $3,220.00 in upfront fees to Respondent Prime Assistance, more than the $3,191.27 reflected in the contract.

- October 12, 2016: $1,065.00; and
- November 18, 2016: $1,090.00.

11. The agreement that Consumer A signed with Respondent Prime Assistance included language allowing Consumer A to cancel the agreement without penalty within three business days from the date of execution of the agreement. The agreement did not, however, include a specific Notice of Rescission.

12. The agreement explicitly stated that Respondent Prime Assistance could not guarantee a loan modification for Consumer A. Instead, Respondent Prime Assistance promised to achieve a "positive result" for Consumer A.

13. The agreement informed Consumer A that he had a right to deal directly with his lender, Wells Fargo, to obtain a loan modification. However, the agreement also stated that by executing the agreement with Respondent Prime Assistance, Consumer A explicitly chose Respondent Prime Assistance to negotiate new terms for his consumer mortgage loan.

14. To that end, on August 29, 2016, Consumer A signed a cease and desist letter to Wells Fargo authorizing Respondent Prime Assistance as "Legal Counsel" and directing Wells Fargo to deal directly with Respondent Prime Assistance regarding his consumer mortgage loan. The letter further directed Wells Fargo to have no further communication with Consumer A regarding his consumer mortgage loan.

15. Respondent Prime Assistance further instructed Consumer A not to contact Wells Fargo regarding his mortgage.

16. After the initial contact with Respondent Prime Assistance, Consumer A communicated with Respondent Prime Assistance for approximately three months regarding his loan modification. However, communication ceased after three months.

17. The Respondents did not submit a loan modification application to Wells Fargo on behalf of Consumer A. Consumer A did not receive a loan modification through the Respondents, but later received a loan modification directly through Wells Fargo.

18. Consumer A contacted Respondent Prime Assistance on March 17, 2017 requesting a refund of the fees he paid.

19. The Respondents collected $3,220.00 from Consumer A but did nothing on his behalf to obtain a modification of his home loan.

20. The Respondents have not returned the $3,220.00 to Consumer A.

[redacted] ***collectively as "Consumers B"***

21. In August 2016, Consumers B, residents of Churchton, Maryland, were contacted by U.S. mail, telephone, and e-mail by Respondent Prime Assistance with an offer to obtain a loan modification for their mortgage with PNC Bank.

22. At the time Respondent Prime Assistance contacted Consumers B, they were more than sixty days in arrears in their mortgage payments.

23. At that time Respondent Prime Assistance required Consumers B to pay $3,975.27 in an upfront fee to begin work on a loan modification. The fee was paid in three installments by depositing funds in Respondent Baltes' Bank of America account as follows:

- August 22, 2016: $1,325.09;
- September 22, 2016: $1,325.09; and
- October 19, 2016: $1,325.09.

24. On August 19, 2016, Consumers B signed a cease and desist letter to Citibank[15] authorizing Respondent Prime Assistance as "Legal Counsel" and directing Citibank to deal directly with Respondent Prime Assistance regarding their consumer mortgage loan. The letter further directed Citibank to have no further communication with Consumers B regarding their consumer mortgage loan.

25. On September 22, 2016, Sarah Wright, a Senior Loan Processor with Respondent Prime Assistance, informed Consumers B via email that their loan modification file was complete and that the modification was being reviewed by their lender. The email did not inform Consumers B that they had the right to accept or reject any loan modification offer or that Consumers B would not have to pay Respondent Prime Assistance if they rejected a modification offer.

26. On December 5, 2016, Courtney Anderson of Respondent Prime Assistance informed Consumers B via email that they were approved for a loan modification. The email did not inform Consumers B that they had the right to accept or reject any loan modification offer or that Consumers B would not have to pay Respondent Prime Assistance if they rejected a modification offer.

27. On December 20, 2016, Respondent Prime Assistance requested that Consumers B complete loan modification packets to return to PNC Bank in order to finalize their loan modification. However, when Consumers B returned the packets, they were informed by PNC Bank that the packets had been due by December 14, 2016 and their modification was denied and their property was in foreclosure.

[15] It is unclear from the record why the cease and desist letter was directed to Citibank instead of Consumers B's lender, PNC Bank.

28. Consumers B attempted to contact Respondent Prime Assistance on January 10 and 12, 2017 regarding their modification but received no further response from Respondent Prime Assistance.

29. Consumers B did not receive a loan modification from PNC Bank through the Respondents.

30. The Respondents have not returned the $3,975.27 paid by Consumers B.

[redacted] ***collectively as "Consumers C"***

31. In January 2016, Consumers C, residents of Silver Spring, Maryland, were contacted by e-mail by Respondent Prime Assistance with an offer to obtain a loan modification for their mortgage with Dovenmuehle, their consumer mortgage lender.

32. Around the same time, Consumers C received a mail solicitation from Respondent Prime Assistance indicating Consumers C qualified for a loan modification, including through "Eligible Programs in the State of Maryland," a "Brand New Streamlined Modification Initiative," the "Making Home Affordable Program," and the "Home Affordable Modification Program (HAMP)."

33. HAMP was a U.S. government loan modification program. However, Respondent Prime Assistance's mail solicitation sent to Consumers C did not inform them that Respondent Prime Assistance was not affiliated with the U.S. government.

34. At the time Respondent Prime Assistance contacted Consumers C, they were more than sixty days in arrears in their mortgage payments.

35. On March 28, 2016, Consumers C completed a Homeowner's Hardship Application provided by Respondent Prime Assistance. The Application included an Information and Financial Worksheet, a Hardship Letter, and a Borrower's Authorization Form.

36. The Hardship Application provided by Respondent Prime Assistance prominently displayed the logos of Fannie Mae and Freddie Mac, government-sponsored enterprises that provide home mortgage solutions. The Hardship Application did not otherwise provide a disclaimer that Respondent Prime Assistance was not affiliated with Fannie Mae or Freddie Mac.

37. The Borrower's Authorization Form completed by Consumers C authorized Respondent Prime Assistance to act on Consumers C's behalf to resolve issues related to their home mortgage loan and to seek a loan modification.

38. At that time Respondent Prime Assistance required Consumers C to pay $3,075.00 in an upfront fee to begin work on a loan modification, payable in three installments of $1,025.00 each. Consumers C made two of the three installments by depositing funds in Respondent Baltes' Bank of America account as follows:

- April 4, 2016: $1,025.00; and
- May 4, 2016: $1,025.00.

39. Respondent Prime Assistance instructed Consumers C not to make any further payments on their mortgage with Dovenmuehle.

40. Consumers C did not receive a loan modification from Dovenmuehle through the Respondents.

41. The Respondents have not returned the $2,050.00 paid by Consumers C.

[redacted] ***collectively as "Consumers D"***

42. In May 2016, Consumers D, residents of Capitol Heights, Maryland, were contacted by U.S. mail by Respondent Prime Assistance to offer assistance in obtaining a loan

modification for mortgage with Carrington Mortgage (Carrington), their consumer mortgage lender.

43. At the time Respondent Prime Assistance contacted Consumers D, they were more than sixty days in arrears in their mortgage payments.

44. At that time Respondent Prime Assistance required Consumers D to pay $3,411.03 in an upfront fee to begin work on a loan modification. Consumers D made the following payments in installments by depositing funds in Respondent Baltes' Bank of America account as follows, for a total of $2,205.53:

- July 5, 2016: $568.51;
- August 16, 2016: $500.00;
- September 12, 2016: $568.51; and
- September 26, 2016: $568.51.

45. Consumers D communicated with Respondent Prime Assistance regarding their loan modification with Carrington up until the final fee payment was made. At no time did Respondent Prime Assistance inform Consumers D that they would not have to pay the fee if they received a loan modification offer from Carrington and chose to reject it, or that Respondents were not affiliated with Carrington, or that Respondents were not affiliated or approved by a governmental entity.

46. Respondent Prime Assistance informed Consumers D that they were not to have any contact with Carrington and that Respondents would deal with Carrington directly on Consumers D's behalf.

47. On January 4, 2017, Consumers D received an email from Sarah Wright of Respondent Prime Assistance indicating they had been approved for a loan modification. The email

stated that the loan had been modified to a mortgage payment of $1,729.00 per month, representing a $263.75 increase in Consumers D's mortgage payment. However, the Respondents never informed Consumers D that an increase in their mortgage payment was a possible result of the modification, or that if Consumers D rejected the loan modification offer they would not have to pay fees to the Respondents.

48. Following the offer of modification, Consumers D had no further contact with Respondents.

49. Consumers D did not receive a loan modification from Carrington through the Respondents.

50. The Respondents have not returned the $2,205.53 paid by Consumers D.

[redacted] ***"Consumer E"***

51. On November 23, 2016, Consumer E, a resident of Princess Anne, Maryland, was contacted via U.S. mail by Respondent Prime Assistance with an offer to obtain a loan modification for mortgage with Ocwen Mortgage, his consumer mortgage lender.

52. The November 23, 2016 solicitation letter to Consumer E referenced the HAMP. However, it did not include a disclaimer indicating that Respondent Prime Assistance was not affiliated with the U.S. government or any other government agency.

53. At the time Respondent Prime Assistance contacted Consumer E, he was more than sixty days in arrears in his mortgage payments.

54. On or about December 22, 2016, Consumer E submitted an agreement form to Respondent Prime Assistance. This form included a contractual agreement that Consumer E would pay an upfront fee of $3,015.15 to Respondent Prime Assistance for the service of obtaining a loan modification. The fee was paid in three installments by depositing funds in Respondent Baltes' Bank of America account as follows:

- December 27, 2017: $1,005.05;

- January 24, 2017: $1,005.05; and
- February 11, 2017: $1,005.05.

55. The agreement that Consumer E signed with Respondent Prime Assistance included language allowing Consumer E to cancel the agreement without penalty within three business days from the date of execution of the agreement. The agreement did not, however, include a specific Notice of Rescission. The agreement explicitly stated that Respondent Prime Assistance could not guarantee a loan modification for Consumer E. Instead, Respondent Prime Assistance promised to achieve a "positive result" for Consumer E.

56. The agreement informed Consumer E that he had a right to deal directly with his lender, Ocwen Mortgage, to obtain a loan modification. However, the agreement also stated that by executing the agreement with Respondent Prime Assistance, Consumer E explicitly chose Respondent Prime Assistance to negotiate new terms for his consumer mortgage loan.

57. To that end, on December 22, 2016, Consumer E signed a cease and desist letter to Ocwen Mortgage authorizing Respondent Prime Assistance as "Legal Counsel" and directing Ocwen Mortgage to deal directly with Respondent Prime Assistance regarding his consumer mortgage loan. The letter further directed Ocwen Mortgage to have no further communication with Consumer E regarding his consumer mortgage loan.

58. Consumer E did not receive a loan modification from Ocwen Mortgage through the Respondents.

59. The Respondents had not returned the $3015.15 paid by Consumer E.

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 Notice of Hearing was sent to three different addresses, as follows:

- 2035 Sunset Lake Road, Suite B-2, Newark, Delaware 19702,
- 2312 Park Avenue, Suite 415, Tustin, California 92782, and
- 132 Dean Street, Tustin, California 92780.

(CFR Ex. 1.)

Copies of the Notice were sent both to Respondent Prime Assistance and Respondent Baltes at each of these addresses. They were sent by first-class mail as well as certified mail.

The Sunset Lake Road address is the address listed on the Respondents' Articles of Incorporation for both the corporation and the agent for purposes of service of process. A certified mail receipt was returned to OAH indicating the notice of hearing was delivered to this address on November 26, 2018. Both the first-class mail and certified mail sent to the Park Avenue and Dean Street addresses in California were returned to the OAH as undeliverable.

As notice was received by Respondent Prime Assistance's resident agent at its Delaware address, and because Respondent Baltes is listed as the sole director of Respondent Prime

Assistance at that address, I am satisfied that every effort was made to provide the Respondents with notice of the hearing and they were duly served notice of the hearing through their address in Delaware. 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. 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 both penalties and restitution.

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) (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) 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) 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) 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;

(4) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;

(5) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration:
(i) Is first fully disclosed in writing to the homeowner;

(ii) Is clearly listed on any settlement documents; and
(iii) Is not in violation of any provision of this subtitle.

(6) Receive a commission, regardless of how described, for the sale of a residence in default that exceeds 8% of the sales price;

(7) Receive any money to be held in escrow or on a contingent basis on behalf of the homeowner;

(8) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in default from a homeowner with whom the foreclosure consultant has contracted;

(9) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

(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 the 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:
> . . .
>
> (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;
> . . .
>
> (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[.]
> . . .

§ 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."

(2) In cases where the mortgage assistance relief provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) and through (6) of the definition of *Mortgage Assistance Relief Service* in § 1015.2,[16] "Even if you accept this offer and use our service, your lender may not agree to change your loan."

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and –

(i) In textual communications the disclosures must appear together and be preceded by the heading "IMPORTANT NOTICE," which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications the disclosures disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement "Before using this service, consider the following information."

---

[16] 12 C.F.R. 1015.2 defines "Mortgage Assistance Relief Service" as follows: *Mortgage Assistance Relief Service* means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

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

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

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

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

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

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

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

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

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

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

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

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

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

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

(3) In cases where the mortgage assistance relief provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of *Mortgage Assistance Relief Service* in § 1015.2, "Even if you accept this offer and use our service, your lender may not agree to change your loan."

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and –

(i) In textual communications the disclosures must appear together and be preceded by the heading "IMPORTANT NOTICE," which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement "Before using this service, consider the following information" and, in telephone communications, must be made at the beginning of the call.

. . .

§ 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;

. . .

Testimony

The Commissioner offered the testimony of two Maryland consumers, [redacted] (referred to as Consumer A in the Commissioner's filing) and [redacted] (one of the consumers listed as Consumer D in the Commissioner's filing).

[redacted] testified that he was a couple of months behind on his mortgage when the Respondents contacted him to offer assistance. The Respondents indicated that [redacted] would need to pay an upfront fee of approximately $3,000.00 in order use the Respondents' services. Those payments were made through a teller at Bank of America into the Respondents' bank account. [redacted] signed an agreement with Respondent Prime Assistance on the understanding that they would help him obtain a loan modification with his lender, Wells Fargo. The agreement included a cease and desist letter to Wells Fargo sent on [redacted] behalf by Respondent Prime Assistance instructing Wells Fargo not to speak with [redacted] and to only deal with Respondent Prime Assistance. Moreover, Respondent Prime Assistance instructed Mr. [redacted] not to speak with Wells Fargo. After several months, [redacted] did not receive any

communication from the Respondents regarding a loan modification and he went directly to Wells Fargo to get a modification. [redacted] testified he asked the Respondents for a refund of his fees but never received any refund.

[redacted] testified he was approached by Respondent Prime Assistance after falling behind on his mortgage. Again, the pattern was similar to [redacted] Respondent Prime Assistance offered to help [redacted] obtain a loan modification for an upfront fee. In [redacted] case, he could not afford the fee all at once, so he worked out a biweekly payment plan with the Respondents and made the payments in a similar manner to [redacted] through a teller at a Bank of America branch. [redacted] testified that the Respondents made no disclosures as are required through PHIFA and MARS, in particular with regard to his right to reject any loan modification offer, his right to speak directly with his lender, or the fact that the Respondents were not associated with his lender or any government agency. When [redacted] was finally provided a loan modification, it had an increased monthly mortgage payment, and he was never advised through the process by the Respondents that his payment could go up or that he could reject the offer. Eventually, communication with the Respondents ceased and he was never refunded the fees he paid to the Respondents, a total of $2,205.53.

Finally, the Commissioner offered the testimony of Zenaida Velez-Dorsey, Financial Fraud Examiner. Ms. Velez-Dorsey testified that she received several complaints about the Respondents beginning in 2017 and that she began an investigation at that time. The reports of the results of her investigation were received into evidence. During the course of her investigation, Ms. Velez-Dorsey interviewed Consumers A through E, and with the information she obtained, she began an effort to identify and locate the Respondents. She detailed her online searches and explained that she sought registration, financial, and business records to identify the

owner of Respondent Prime Assistance, Respondent Baltes. Ms. Velez-Dorsey also examined the documents provided to her by all the consumers, including receipts for the money paid to the Respondents. Ms. Velez-Dorsey outlined the Respondents' conduct with respect to Consumers A through E, and in all cases it was a similar pattern: active targeting of consumers in default on their home loans to offer loan modification services, without any necessary disclosures required by law; requiring the consumers to pay upfront fees for their services; instructing the consumers not to communicate with their lenders once they hired the Respondents; and ultimately not successfully obtaining loan modifications for the consumers.

Analysis

The evidence presented by the Commissioner is uncontradicted, as the Respondents did not attend 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. First, I conclude that the Respondents are foreclosure consultants as defined by section 7-301(c). The Respondents contacted Consumers A through E by multiple means, including telephone, U.S. mail, and e-mail during a time that all consumers were at least sixty days in default on their home mortgage loans to offer loan modification services. As such, the Respondents meet the definition in 7-301(c)(2), which includes systematically contacting 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 Consumers A-E.

Having concluded that the Respondents are foreclosure consultants and thus subject to PHIFA, I consider the specific provisions cited by the Commissioner. With respect to section

7-306(a)(6), I was provided copies of the contracts Consumer A and Consumer E executed with the Respondents. Neither contract contained the Notice of Recession as required by section 7-306(a)(6). While both contracts did provide some general language allowing for the contract's cancellation, as well as language stating that the Respondents could not promise loan modifications on behalf of the consumers, neither contract provided the specific language required by PHIFA. As such, I find the Respondents violated section 7-306(a)(6) with respect to Consumers A and E. However, I decline to find such a violation as to Consumers B, C, and D, as no contracts were provided for me to review with respect to those consumers.

A failure to comply with section 7-306 is also a violation of 7-307(10), as the latter prohibits a foreclosure consultant from inducing or attempting to induce any homeowner to enter into a foreclosure consulting contract "that does not comply in all respects with this subtitle." I therefore find that the Respondents violated section 7-307(10) with regards to Consumers A and E.

I am also persuaded 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 promised to help obtain a loan modification for all the consumers but required upfront fees from every consumer prior to providing consulting services. Those fees were as follows:

- Consumer A: $3,220.00
- Consumers B: $3,975.27
- Consumers C: $2,050.00
- Consumers D: $2,205.03

- Consumer E: $3,015.15.

All told, the Respondents collected $14,465.45 from Consumers A through E before providing them any services. Most egregiously, Consumers A through E were instructed to send these fees directly to a Bank of America bank account in Respondent Baltes' name. There is no question this is a clear violation of section 7-307(2).

I am also persuaded that the Respondents' conduct was a failure to provide the duty of care required by section 7-309. The record is replete, both in the testimony provided at the hearing, as well as through the exhibits admitted at the hearing, that the Respondents were unable to provide Consumers A through E with any meaningful information regarding their pending loan modifications, and after several months of attempted communications, the Respondents ultimately ceased communicating with all the consumers. This failure to be responsive to consumers, coupled with the improper collection of upfront fees, reflects 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 section 7-502 of the MARS Act. 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 provider from representing, expressly or by implication, in connection with 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; in each instance, the Respondents instructed all the consumers to not communicate with their lender or servicer once they had retained the

Respondents' services, and in most cases, executed cease and desist letters to that effect;

- 12 C.F.R. § 1015.3(b)(3), which prohibits a mortgage assistance relief service provider from mispresenting any material aspect of any mortgage relief service, including that a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with the U.S. government or any governmental homeowner assistance plan; the Respondents represented, on multiple occasions to the consumers, that they were pursuing HAMP modifications offered by the federal government, or otherwise advertised their association with Fannie Mae or Freddie Mac, two government mortgage entities;
- 12 C.F.R. § 1015.3(b)(7), which prohibits a mortgage assistance relief service provider from misrepresenting that it has the right to collect a fee; as discussed above, the Respondents improperly charged all the consumers upfront fees;
- 12 C.F.R. § 1015.4(b), which requires all consumer-specific commercial communications[17] 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; through both testimony and the exhibits, it was established that none of these disclosures were made to the consumers at the time the Respondents contacted the consumers;

[17] "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.

- 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; with regard to the consumers, the Respondents collected fees even though the required written agreements had not been executed; and
- 12 C.F.R. § 1015.5(b), which requires a mortgage assistance relief service provider to provide disclosures to the consumers with respect to the agreements referenced in 12 C.F.R. § 1015.5(a) that inform the consumers that they have the right to accept or reject any offer of loan modification from their lender or servicer; all of the consumers indicated they were not provided those disclosures or information.

However, I do not find any violations of 12 C.F.R. § 1015.4(a)(1), which requires all general commercial communications[18] to include a specific disclosure statement disclosing that the company is not associated with the government or approved by the government or the lender. I decline to find such a violation because the Commissioner did not offer into evidence any general communications from the Respondents. All of the communications in evidence appear to be specific to the Maryland consumers, referencing their names and/or addresses.

Moreover, during closing argument, the Commissioner argued for finding a violation of 12 C.F.R. 1015.3(b)(10), which provides that a mortgage assistance relief service provider may not misrepresent, expressly or by implication, the amount or percentage of money a consumer might save by using their service. While there was evidence in the record to indicate the Respondents did indeed violate 12 C.F.R. 1015.3(b)(10), the Commissioner did not expressly

[18] A "general commercial communication" is "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 not directed at a specific consumer." 12 C.F.R. § 1015.2.

charge the Respondents with such a violation in their Statement of Charges and Order of Hearing. As such, I decline to make such a finding as the Respondents did not have notice of the alleged violation.

Sanctions

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

> (a) When the Commissioner determines 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, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:
>
> (1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and
>
> (2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.
>
> (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
>
> (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 $40,000.00 and restitution amount of $14,450.89. This proposed penalty is based on a $1,000.00 penalty for each of the eight actions that it alleges constitutes statutory and regulatory violations, multiplied by five, for Consumers A through E. The restitution amount is the total amount the Commissioner calculated Consumers A through E paid to the Respondents.

I agree with the Commissioner that the maximum penalty is appropriate in this case, based on the factors set out in section 2-115 of the Financial Institutions Article. The violations are serious – the Respondents clearly took advantage of Maryland 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 the consumers 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 homeowners, an effort that is damaged by the actions of scammers and the distrust they sow.

While I agree with the Commissioner that the Respondents' actions merit the most severe penalty, I come to a different calculation of that penalty than the Commissioner. The Commissioner miscalculated the number of consumers affected by the Respondents' conduct. Instead of five, the Commissioner's statement of charges and corresponding evidence at the hearing demonstrates seven consumers total (Consumer A: 1; Consumers B: 2; Consumers C: 2; Consumers D: 2; Consumer E: 1). Based on my analysis above, I have calculated the following recommended penalty of $1,000,00 per violation per consumer:

- Section 7-306(a)(6) violation: $2,000.00 (Consumers A and E only)
- Section 7-307(10) violation: $2,000.00 (Consumers A and E only)
- Section 7-307(2) violation: $7,000.00 (all consumers)
- Section 7-309 violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.3(a) violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.3(b)(3) violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.3(b)(7) violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.4(b) violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.5(a) violation: $7,000.00 (all consumers)
- 12 C.F.R. § 1015.5(b) violation: $7,000.00 (all consumers).

The egregiousness of the Respondents' actions merits, therefore, a total penalty of $60,000.00. 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. Finally I also agree with the Commissioner that restitution be ordered, but I have calculated the amount of restitution to be slightly more than the Commissioner's calculations, based on the findings of fact above. That amount is a total of $14,465.45.

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. Improperly collected fees before performing services, in violation of section 7-307(2) of the Real Property Article of the Maryland Annotated Code and 12 C.F.R. § 1015.3(b)(7);

   b. Induced homeowners into entering foreclosure consulting contracts that were not fully compliant with PHIFA, in violation of section 7-307(10) of the Real Property Article of the Annotated Code of Maryland;

   c. Failed to disclose all required contractual terms in agreements, in violation of section 7-306 of the Real Property Article of the Maryland Annotated Code; and

   d. Breached the duty of reasonable care and diligence, in violation of section 7-309(b) of the Real Property Article of the Maryland Annotated Code.

2. Engaged in the following conduct, in violation of the C.F.R. and MARS:

   a. Represented, expressly or by implication, that a consumer cannot or should not contact or communicate with his or her lender or servicer in violation of 12 C.F.R. § 1015.3(a);

   b. Misrepresented that they were endorsed, approved by, or otherwise affiliated with the United States government or any governmental homeowner assistance plan in violation of 12 C.F.R. § 1015.3(b)(3);

   c. Mispresented that they had a right to collect a fee in violation of 12 C.F.R. § 1015.3(b)(7);

d. Failed to make necessary disclosures to the consumers in all consumer-specific commercial communications in violation of 12 C.F.R. § 1015.4(b); and

e. Received payment before consumers had executed written agreements with their loan holders or servicers, and failing to disclose to the consumers that they may accept or reject the offer and if the offer is rejected, there is no obligation to pay, in violation of 12 C.F.R. § 1015.5(a) and (b).

3. Are therefore subject to a cease and desist order and the maximum financial penalty. Md. Code Ann., Fin. Inst. § 2-115.

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 $60,000.00;

ORDER the Respondents pay $14,465.45 in restitution to the consumers and further,

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

April 2, 2019
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
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