

IN THE MATTER OF:

EVERGREEN LEGAL SERVICES
d/b/a E.L.S. MARKETING, INC.,

And

JESSICA HARDESTY,
Individually

Respondents.

BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION

FINAL ORDER
DATE 9/11/18

CFR-FY2016-0039

PROPOSED FINAL ORDER

The Proposed Decision ("Proposed Decision") of the Administrative Law Judge, issued on June 18 2018 in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation ("Commissioner") this 17th day of August, 2018 be, and hereby are **ORDERED**,

- A. That the Findings of Fact in the Proposed Decision be, and hereby are, **ADOPTED**.
- B. That the Conclusions of Law in the Proposed Decision be, and hereby are, **ADOPTED**.
- C. Before ordering a penalty, pursuant to Md. Code Ann., Fin. Inst. § 2-115(c), the Commissioner must 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.

Considering these factors, the Commissioner finds that the violations are serious in their severity; that Respondents' actions and conduct showed the absence of good faith; that Respondents' actions had a deleterious effect on Consumer A; and that, the Commissioner is unable to consider the Respondents' assets because the Commissioner does not have any documentation regarding Respondents' assets. Having considered these factors, the Commissioner concludes civil penalties are warranted and the Commissioner adopts the penalty calculation in the Proposed Decision at 24-26.

A. It is by the Commissioner of Financial Regulation, hereby:

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

FURTHER ORDERED that Respondents shall pay a civil penalty to the Commissioner in the amount of \$18,000.00, within sixty (60) days of the date of this **PROPOSED FINAL ORDER**; and

FURTHER ORDERED that Respondents shall pay restitution to Consumer A by mailing to Consumer A a check in the amount \$2,940.00 via First Class Mail, postage prepaid, at the most recent address of the consumer known to Respondents. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making the 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 **FINAL ORDER**;

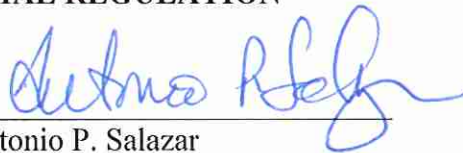
FURTHER ORDERED that Respondents shall send all correspondence, notices, civil penalties, and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 N. Calvert Street, Suite 402, Baltimore, MD 21202, Attention: Proceedings Administrator; and

FURTHER ORDERED that the records and publications of the Commissioner of Financial Regulation shall reflect this decision.

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). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2). 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.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

8/17/18
Date

By: 
Antonio P. Salazar
Commissioner
of Financial Regulation

IN THE MATTER OF	*	BEFORE JEROME WOODS, II,
EVERGREEN LEGAL SERVICES	*	AN ADMINISTRATIVE LAW JUDGE
d/b/a E.L.S. MARKETING, INC., and	*	OF THE MARYLAND OFFICE OF
JESSICA HARDESTY	*	ADMINISTRATIVE HEARINGS
RESPONDENTS	*	OAH NO: DLR-CFR-76-18-04811
	*	CFR NO: CFR-FY2016-0039

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 25, 2018, the Deputy Commissioner of Financial Regulation (Commissioner) issued a Charge Letter against Evergreen Legal Services d/b/a E.L.S. Marketing, Inc. (Respondent Evergreen) and Jessica Hardesty (Respondent Hardesty) (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 March 28, 2018, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(a) (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
 - b. Inducing homeowner(s) into entering foreclosure consulting contracts that were not fully compliant with PHIFA;⁴

² Unless otherwise noted, all references to the Financial Institutions Article are to the 2011 Replacement Volume and 2017 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 2017 volume.

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

- 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 C.F.R. and MARS:
- a. Misrepresenting a consumer's obligation to make scheduled periodic payments;⁷
 - b. Misrepresenting the amount of money or percentage of the debt amount a consumer may save;⁸
 - c. Receiving payment before the consumer has executed a written agreement with his or her loan holder or servicer;⁹
 - d. 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;¹⁰
 - e. 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;"¹¹
 - f. Failing to promptly and fully investigate consumer complaints?¹²
3. What, if any, sanctions should be imposed?

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(b)(4).

⁸ 12 C.F.R. § 1015.3(b)(10).

⁹ 12 C.F.R. § 1015.5(a).

¹⁰ 12 C.F.R. § 1015.3(a).

¹¹ 12 C.F.R. § 1015.5(b).

¹² 12 C.F.R. § 1015.9.

SUMMARY OF THE EVIDENCE

Exhibits

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

- Comm Ex. 1 - Notices of Hearing, with returned mail
- Comm Ex. 2 - Delegation to the OAH, January 25, 2018 with Charge Letter, January 25, 2018
- Comm Ex. 3 - Borrower's Authorization to Represent, October 10, 2105
- Comm Ex. 4 - Evergreen Addendum, October 10, 2105
- Comm Ex. 5 - Dodd-Frank Certification, undated
- Comm Ex. 6 - Schedule of Payments, October 10, 2015
- Comm Ex. 7 - Customer Receipts: October 13, 2015 \$1,000.00 and \$470.00; November 13, 2015 \$735.00; December 1, 2015 \$735.00; Sales Receipts: November 13, 2015 \$5.75 and December 1, 2015 \$5.75
- Comm Ex. 8 - Email chain, [REDACTED], May 7, 2016
- Comm Ex. 9 - Email chain, [REDACTED], May 7, 2016 (second)
- Comm Ex. 10 - Email chain, [REDACTED], May 7, 2016 (third)
- Comm Ex. 11 - Business Search, Evergreen, March 27, 2018
- Comm Ex. 12 - Articles of Incorporation of a General Stock Corporation, October 10, 2014
- Comm Ex. 13 - Report of Investigation, December 5, 2016

The Respondents did not submit any documents into the record.

Testimony

The Commissioner presented the following witnesses:

- [REDACTED]
- [REDACTED] and

- 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 Evergreen was established as a general stock corporation in California. The address for its designated California office was 20955 Pathfinder Road, Suite 100, Diamond Bar, California 91765.
2. Respondent Hardesty was identified as the agent for Respondent Evergreen.
3. Respondent Hardesty was the owner, director, officer, manager, and agent of the Respondent Evergreen. She directed or exercised control over the activities and finances of the Respondent Evergreen, including loan modification activities with Maryland consumers.

, *husband and wife, collectively "Consumer A"*¹³

4. In October 2015, James (no last name provided), a representative of Respondent Evergreen, contacted Consumer A, residents of Cumberland, Maryland via telephone.
5. At the time Respondent Evergreen contacted Consumer A, they were more than sixty days in arrears in their mortgage payments.
6. Respondent Evergreen promised Consumer A that it would obtain a loan modification of their residential mortgage loan with PennyMac.

¹³ For consistency with the charging letter, I have adopted the Commission's reference to both  as Consumer A.

7. On or about October 10, 2015, Consumer A submitted an agreement form to Respondent Evergreen. This form included a contractual agreement that Consumer A would pay an upfront fee of \$2,940.00 to Respondent Evergreen for the service of obtaining a loan modification. The fee was paid in four installments as follows:
 - October 13, 2015: \$1,000.00;
 - October 13, 2015: \$470.00;
 - November 13, 2015: \$735.00; and
 - December 1, 2015: \$735.00.
8. The agreement with Respondent Evergreen did not include notice of Consumer A's right to rescind the contract at any time without penalty, did not disclose that Consumer A could accept or reject any offer of mortgage assistance, and did not disclose that Consumer A was not required to pay the Respondents if they rejected the lender's offer of mortgage assistance.
9. Respondent Evergreen told Consumer A that it would obtain a loan modification from PennyMac and that Consumer A's principal payments would be reduced by \$300.00 to \$400.00.
10. Jessica Ortega, a representative of Respondent Evergreen, informed Consumer A not to contact PennyMac and reported that Respondent Evergreen would speak to PennyMac on behalf of Consumer A.
11. The Respondents did not submit a loan modification application to PennyMac on behalf of Consumer .

12. PennyMac was unaware that Consumer A was seeking a loan modification through the Respondents.
13. PennyMac representatives confirmed with Consumer A that PennyMac did not have any contact with the Respondents and did not receive any documentation from them.
14. After the initial contact with Respondent Evergreen, Consumer A did not have contact with the Respondents until approximately the second week of June 2016, after receiving foreclosure papers from PennyMac.
15. On June 13, 2016, PennyMac filed a foreclosure action against Consumer A in the Circuit Court of Maryland for Allegany County.
16. A representative from Respondent Evergreen contacted Consumer A (specifically [REDACTED] [REDACTED]) sometime after June 13, 2016 to obtain an additional \$1,470.00 in order to continue working on their modification.
17. Consumer A did not submit any additional payments to the Respondents and the Respondents stopped communicating with Consumer A.
18. The Respondents collected \$2,940.00 from Consumer A but did nothing on their behalf to obtain a modification of their home loan.
19. The Respondents have not returned the \$2,940.00 to Consumer A.

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 four different addresses, as follows:

- 20955 Pathfinder Road, Suite 100, Diamond Bar, California 91765
- 337 Vineyard Avenue, 4th Floor, Ontario, California 91764
- 1334 W. Foothill Blvd., Apt 4-A, Upland, California 91786, and
- 301 West Preston Street, #801, Baltimore, Maryland 21201.

(Comm Ex. 1.)

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

The Pathfinder 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.

As notice was sent both to the address listed in the Respondents' Articles of Incorporation and the home address for Respondent Hardesty, I am satisfied that every effort was made to provide the Respondents with notice of the hearing. Because the OAH sent the Notice by U.S. mail to the Respondent's last known address, based on the Court of Appeals' holding in *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 503 – 04 (1988), I conclude that the OAH's notice to the Respondent was reasonable and adequate. Therefore, I proceeded with the hearing in the absence of the Respondents.

Legal Framework

The Commissioner alleges that the Respondents violated provisions of PHIFA and MARS. In essence, the Commissioner contends that the Respondents contacted Maryland homeowners struggling to pay their mortgages and promised to obtain loan modifications for them – and then failed not only to provide required information and disclosures, but also to make good on the promise of a loan modification. 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 general. -- 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) When it occurs. -- 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 -- When effective. -- Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(d) Notice -- Form. -- 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) Repayment. -- 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) Conditioning right of rescission on repayment prohibited. -- 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) Basic requirements. -- 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) Additional requirements. -- The contract shall contain on the first page, in at least 12 point type size:
 - (1) The name and address of the foreclosure consultant to which the notice of rescission is to be mailed; and
 - (2) The date the homeowner signed the contract.
- (c) Notice of Rescission. --
 - (1) The contract shall be accompanied by a completed form in duplicate, captioned “NOTICE OF RESCISSION”.
 - (2) The Notice of Rescission shall:
 - (i) Be on a separate sheet of paper attached to the contract;

- (ii) Be easily detachable; and
- (iii) Contain the following statement printed in at least 15 point type:

“NOTICE OF RESCISSION

(Date of Contract)

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

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

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

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

NOTICE OF RESCISSION

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

I hereby rescind this contract.

..... (Date)

..... (Homeowner’s signature)”.

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

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

(f) Void provisions. – Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent

to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

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

A foreclosure consultant may not:

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

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

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

(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) In general. -- 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) Duty of care. -- 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:

- (1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in §1015.2;
- (2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in §1015.2;
- (3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:
 - (i) The United States government,
 - (ii) Any governmental homeowner assistance plan,

- (iii) Any Federal, State, or local government agency, unit, or department,
 - (iv) Any nonprofit housing counselor agency or program,
 - (v) The maker, holder, or servicer of the consumer's dwelling loan, or
 - (vi) Any other individual, entity, or program;
- (4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
 - (5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;
 - (6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;
 - (7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;
 - (8) That the consumer will receive legal representation;
 - (9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;
 - (10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;
 - (11) The total cost to purchase the mortgage assistance relief service; or
 - (12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer[.]

....

§ 1015.4 Disclosures required in commercial communications.

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

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

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

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

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

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

....

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

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

- (a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

- (b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to §1015.4(b)(1)] for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT NOTICE: Before buying this service, consider the following information.” The heading must be in bold face font that is two point-type larger than the font size of the required disclosure;

....

§ 1015.9 Recordkeeping and compliance requirements.

(b) A mortgage assistance relief service provider also must:

....

(2) Investigate promptly and fully each consumer complaint received;

....

Testimony

The Commissioner offered the testimony of two Maryland consumers, husband and wife, [REDACTED] (referred to as "Consumer A" in the Commissioner's documents). [REDACTED] testified that they first came in contact with Respondent Evergreen when they received a phone call from Respondent Evergreen's employee. At that time, [REDACTED] were about three months in arrears on their mortgage payments and were in foreclosure proceedings. [REDACTED] testified that the Respondent Evergreen employee promised it could obtain a modification for them, but that they needed to make total payments of \$2,940.00 to Respondent Evergreen. Once she and her husband made these payments, Respondent Evergreen would contact PennyMac and their new monthly mortgage payment would be reduced permanently, according to the Respondents. [REDACTED] explained that she and her husband made these payments, but then heard nothing from the Respondents for several months. When she called and was able to reach someone, she was assured that the process just takes several months and was pending.

[REDACTED] indicated in her testimony that the Respondents never provided her or her husband with a written agreement with her lender or servicer, and that she was never told they could rescind the foreclosure consulting contract with the Respondents at any time. In addition, [REDACTED] received no confirmation from their lender or servicer that either had received any paperwork from Respondent Evergreen on their behalf regarding a modification.

She also testified that at some point, she and her husband sought a refund from the Respondents but was not given one. Moreover, Respondent Evergreen requested more money in order to assist

[REDACTED]

Finally, the Commissioner offered the testimony of Zenaida Velez-Dorsey, Financial Fraud Examiner. Ms. Velez-Dorsey testified that she received a complaint about the Respondents in May 2016 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 [REDACTED], 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 Evergreen, Respondent Hardesty. Ms. Velez-Dorsey also examined the documents provided to her by [REDACTED], including receipts for the money paid to the Respondents.

Analysis

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

I begin with the PHIFA. First, I find that the Respondents are foreclosure consultants as defined by section 7-301(c). They contacted two persons residing in Maryland – by telephone and by email – and promised to obtain loan modifications for them. [REDACTED] testified that they were promised a loan modification with lower payments that would allow them to retain their home. These actions clearly fall within section 7-301(c)(1)(viii). In addition, they

also meet the definition in 7-301(c)(2), which includes “[s]ystematically contact[ing] owners of residences in default to offer foreclosure consulting services.” A residence in default is defined in section 7-301(j); it requires that the mortgage be at least sixty days in default, which was the case for Consumer A.

Having concluded that the Respondents are foreclosure consultants and thus subject to PHIFA, I consider the specific provisions cited by the Commissioner. It is clear that the Respondents did not provide key information required by section 7-306(a)(6), including notice of the right to rescind any foreclosure consulting contract at any time, and instructions for such rescission, as well as notification to the homeowner that the foreclosure consultant cannot guarantee that the homeowner will be able to keep the home. The required notice further instructs that the homeowner should continue making mortgage payments. The Commissioner provided copies of the documents given to all the consumers by the Respondents (Comm Exs. 3, 4, 5, and 6); none of these documents provides information about the right to rescind or how to do so. Further, the documents do not explain that a loan modification is not guaranteed. It is thus undisputed that the Respondents failed to comply with section 7-306 with regard to Consumer A.

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

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 represented to [REDACTED] that they would obtain loan modification them. [REDACTED] paid \$2,940.00 to the Respondents, upfront, before any services were provided. 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. [REDACTED] testified that the Respondents did not follow up after they made payments and were unable to provide them with meaningful information when they contacted them. This failure to be responsive to consumers, coupled with the improper collection of upfront fees as well as the failures to provide required disclosures regarding rescission, the lack of a guarantee, and correct information about the obligation to continue making payments, reflect a serious violation of the duty of care owed to the consumers, in violation of section 7-309.

However, I do not find a violation of section 7-305, which has to do with the homeowner's right to rescind, and includes no specific obligations or prohibitions with regard to the foreclosure consultants.

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(b)(4), which prohibits a mortgage assistance relief service provider from misrepresenting any material aspect of any mortgage relief service, including the consumer's obligation to make mortgage payments; the Respondents instructed the Maryland consumers to stop making their monthly mortgage payments;

- 12 C.F.R. § 1015.3(b)(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 Consumer A upfront fees;
 - 12 C.F.R. § 1015.3(b)(10), which prohibits a mortgage assistance relief provider from misrepresenting the amount of money a consumer may save by using the service; Consumer A was given specific figures reflecting decreased mortgage payments, though these figures were not based on any information or offer from the consumers' lenders or servicers (Comm Exs. 2 and 13);
 - 12 C.F.R. § 1015.4(b), which requires all consumer-specific commercial communications¹⁴ to include a disclosure regarding the consumers' right to rescind the contract, to accept or reject any offer of mortgage assistance from the lender or servicer, not to pay the mortgage assistance relief provider if the consumer rejects the offer of mortgage assistance, as well as a statement disclosing that the company is not associated with the government or approved by the government or the lender; none of these disclosures were included in the offer made to the consumers (Comm Exs. 2, 3, 4, 5, 6, and 13);
 - 12 C.F.R. § 1015.5, 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

¹⁴ "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. § 1015.9(b)(2), which requires a mortgage assistance relief provider to promptly investigate consumer complaints; [REDACTED] informed the investigator that she was unable to speak to anyone at the Respondent Evergreen for many weeks after receiving foreclosure papers from PennyMac. Upon finally speaking with a representative from Respondent Evergreen, [REDACTED] did not receive a satisfactory response from the Respondents, much less an investigation.

However, I do not find any violations of 12 C.F.R. § 1015.4(a)(1), which requires all general commercial communications¹⁵ 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 provide 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.

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) Summary cease and desist orders. -- 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

¹⁵ 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.

(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) Other authorized actions for violations. -- 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) Financial penalty. -- 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) Administrative Procedure Act. -- 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 \$18,000.00 and restitution amount of \$2,940.00. 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 two, for each of the Maryland consumers ([REDACTED] [REDACTED]). The restitution amount is the total amount [REDACTED] paid to the Respondents.

The Commissioner sets out the nine violations it proposes for the basis of the penalty as follows:

- Collecting upfront fees prior to fully and completely performing all services (in violation of section 7-307(2) and 12 C.F.R. § 1015.3(b)(7));

- Inducing any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with the Act (in violation of section 7-307(10));
- Failing to disclose all requisite contractual terms in agreements, including notices of rescission (in violation of sections 7-305, 7-306, and 12 C.F.R. § 1015.4(a) and (b));
- Breach of duty of reasonable care and diligence (in violation of section 7-309(b));
- Misrepresentation of a consumer's obligation to make scheduled payments (in violation of 12 C.F.R. § 1015.3(b)(4));
- Representing, 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);
- Misrepresenting the amount of money or percentage of the debt amount that a consumer may save using the mortgage assistance relief service (in violation of 12 C.F.R. § 1015.3(b)(10));
- Receiving payment before the consumer has executed a written agreement between the consumer and lender or servicer (in violation of 12 C.F.R. § 1015.5); and
- Failure to promptly and fully investigate each consumer complaint received (in violation of 12 C.F.R. § 1015.9).

While I did not find violations of section 7-305 or 12 C.F.R. § 1015.4(a)(1), both of these violations are coupled with others in the Commissioner's proposed basis for the \$18,000.00 penalty. Accordingly, they do not affect calculation of the penalty.

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" to the consumers once they had paid the fees makes clear that the Respondents were not acting in good faith, as they made no effort to communicate with the consumers or to rectify the situation. The harm to the consumers and the deleterious effect on both the public and the industry cannot be overstated; legitimate foreclosure consultants provide an important service to struggling homeowners, an effort that is damaged by the actions of scammers and the distrust they sow. The egregiousness of the Respondents' actions merits the most severe penalty – \$1,000.00 for each of the two Maryland consumers, for each of the nine violations, for a total of \$18,000.00. 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.

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. 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);

- c. 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;
 - d. 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 12 C.F.R. § 1015.4(b); and
 - e. 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. Misrepresented consumers' obligations to make scheduled periodic payments, in violation of 12 C.F.R. § 1015.3(b)(4);
 - b. Misrepresented the amount of money or percentage of the debt amount consumers may save, in violation of 12 C.F.R. § 1015.3(b)(10);
 - c. Received payment before consumers had executed a written agreements with their loan holders or servicers, and failing to disclose to the consumers that they may accept or reject the offer and the offer is rejected, there is no obligation to pay, in violation of 12 C.F.R. § 1015.5(a) and (b); and
 - d. Failed to promptly and fully investigate customer complaints, in violation of 12 C.F.R. § 1015.9.
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:

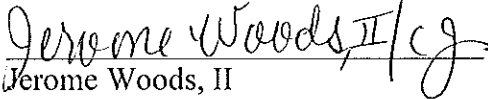
ORDER that the Respondents shall immediately **CEASE AND DESIST** from engaging in any further foreclosure consultant activities; and

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 \$18,000.00;

ORDER the Respondents pay \$2,940.00 in restitution to the consumers and further,

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

June 18, 2018
Date Decision Issued


Jerome Woods, II
Administrative Law Judge

JW/cj
#174282

IN THE MATTER OF	*	BEFORE JEROME WOODS, II,
EVERGREEN LEGAL SERVICES	*	AN ADMINISTRATIVE LAW JUDGE
d/b/a E.L.S. MARKETING, INC., and	*	OF THE MARYLAND OFFICE OF
JESSICA HARDESTY	*	ADMINISTRATIVE HEARINGS
RESPONDENTS	*	OAH NO: DLR-CFR-76-18-04811
	*	CFR NO: CFR-FY2016-0039

* * * * *

FILE EXHIBIT LIST

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

- Comm Ex. 1 - Notices of Hearing, with returned mail
- Comm Ex. 2 - Delegation to the OAH, January 25, 2018 with Charge Letter, January 25, 2018
- Comm Ex. 3 - Borrower's Authorization to Represent, October 10, 2015
- Comm Ex. 4 - Addendum, October 10, 2015
- Comm Ex. 5 - Dodd-Frank Certification, undated
- Comm Ex. 6 - Schedule of Payments, October 10, 2015
- Comm Ex. 7 - Customer Receipts: October 13, 2015 \$1,000.00 and \$470.00; November 13, 2015 \$735.00; December 1, 2015 \$735.00; Sales Receipts: November 13, 2015 \$5.75 and December 1, 2015 \$5.75
- Comm Ex. 8 - Email chain, [REDACTED], May 7, 2016
- Comm Ex. 9 - Email chain, [REDACTED], May 7, 2016 (second)
- Comm Ex. 10 - Email chain, [REDACTED], May 7, 2016 (third)
- Comm Ex. 11 - Business Search, Evergreen, March 27, 2018

Comm Ex. 12 - Articles of Incorporation of a General Stock Corporation, October 10, 2014

Comm Ex. 13 - Report of Investigation, December 5, 2016

The Respondents did not submit any documents into the record.