

IN THE MATTER OF:

**JOSEPH A. GEMBALA, III &
ASSOCIATES,
SECURE PROPERTY SOLUTIONS, LLC,
JOSEPH A. GEMBALA, III,
MICHAEL J. MALONE
and
ERNESTO RANIERO,
Respondents.**

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No. CFR-FY2010-234

FINAL ORDER TO CEASE AND DESIST

Pursuant to Md. Code Ann., Fin. Inst. Art. (FI), § 2-115, and for the reasons stated below, Keisha Whitehall Wolfe, the Acting Deputy Commissioner of Financial Regulation of the Department of Labor, Licensing and Regulation of the State of Maryland, issues this Final Order to Cease and Desist to Joseph A. Gembala, III & Associates, Secure Property Solutions, LLC, Joseph A. Gembala, III, Michael J. Malone, and Ernesto Raniero.

The Summary Order to Cease and Desist (“Summary Order”) issued on July 23, 2014 is herein adopted and incorporated by reference.

BACKGROUND

1. As described more fully in the Summary Order, the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the “Agency”), in December, 2009, began an investigation, as a result of a consumer complaint, into the business activities of Joseph A. Gembala, III & Associates, Secure Property Solutions, LLC, Joseph A. Gembala, III, Michael J. Malone, Christopher D. Firsch, and Ernesto Raniero (collectively, “Respondents”).

2. The then Deputy Commissioner of Financial Regulation, Gordon M. Cooley, determined, through the Agency’s investigation, that Respondent Joseph A. Gembala, III & Associates is a law firm operating out of offices located in Barrington, New Jersey and

Philadelphia, Pennsylvania. Further, the Deputy Commissioner's investigation revealed that Joseph A. Gembala, III & Associates engaged in business activities with Maryland consumers involving Maryland residential real property, although the company is not a registered business entity in the State of Maryland.

3. The Deputy Commissioner determined that Respondent Secure Property Solutions, LLC is a purported mortgage modification firm operating out of offices located in Barrington, New Jersey. Further, the Agency's investigation revealed that Secure Property Solutions engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

4. The Deputy Commissioner determined that Respondent Joseph A. Gembala, III is an attorney barred in New Jersey and Pennsylvania who engaged in business activities involving Maryland consumers. The Agency's investigation revealed that Joseph A. Gembala, III is not licensed to practice law in Maryland. Joseph A. Gembala, III is the owner, director, officer, manager, employee and/or agent of Joseph A. Gembala, III & Associates.

5. The Deputy Commissioner determined that Respondents Michael J. Malone, Christopher D. Frisch, and Ernesto Raniero are New Jersey residents who engaged in business activities involving Maryland consumers. Michael J. Malone, Christopher D. Frisch, and Ernesto Raniero are the owners, directors, officers, managers, employees and/or agents of Secure Property Solutions, LLC.

6. The Agency's investigation revealed that, on or about September 18, 2009, [REDACTED] ("Consumer A"), contacted the Respondents after seeing their advertisement on the internet. Consumer A expressed her interest in hiring Respondents to help her modify her residential mortgage. Consumer A made an initial payment of \$595 by credit card and Respondents agreed to send her a contract and other paperwork to complete. On October 2, 2009, without obtaining authorization from Consumer A, Respondents charged an additional \$300 to Consumer A's credit card. Upon receiving the promised paperwork in the mail, Consumer A concluded that Respondent's business was not legitimate and requested a refund both by phone and in writing. Despite repeated phone calls from Consumer A requesting a refund, Respondents have failed to refund any

money. Consumer A paid \$895 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A, securing for her lower monthly mortgage payments and a lower interest rate. Although Respondents collected \$895 in fees, Respondents never obtained a loan modification for Consumer A and have failed to provide Consumer A with a refund.

7. The Agency's investigation further revealed that, in August or September of 2009, [REDACTED] ("Consumer B"), who was more than sixty (60) days in default on his residential mortgage, entered into a loan modification agreement with Respondents. Consumer B paid \$1,895 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to secure a loan modification for Consumer B. Although Respondents collected \$1,895 in fees, Respondents never obtained a loan modification for Consumer B. Respondents have failed to provide a refund to Consumer B.

8. The Agency's investigation revealed that Respondents entered into substantially similar agreements with Consumers C-W, as identified on Attachment A to the Summary Order and also attached hereto.

9. Deputy Commissioner Gordon M. Cooley, as a result of the Agency's investigation, found reasonable grounds to believe that Respondents engaged in unlicensed credit services business activities and loan modification activities, including mortgage assistance relief services,¹ with Maryland consumers in violation of Maryland

¹ At the time of the alleged violations, in 2009, the Credit Services Business Act applied to mortgage assistance relief services, which includes, *inter alia*, negotiating a modification of any term of a mortgage or loan on a dwelling. Effective July 1, 2013, the definition of "credit services business" under the Credit Services Business Act was amended to exclude "a mortgage assistance relief service provider regulated under Title 7, Subtitle 5 of the Real Property Article." *See* 2013 Md. Laws Ch. 247; *see also* Md. Code Ann., Real Prop. Art., § 7-501 *et seq.* (Maryland Mortgage Assistance Relief Services Act). The 2013 amendment further provided: "This Act is not intended, and may not be construed, to have any effect on the authority of the Commissioner of Financial Regulation to regulate mortgage assistance relief service providers under Title

law, including but not limited to Maryland Annotated Code, Commercial Law Article (“CL”), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter “MCSBA”), and Financial Institutions Article (“FI”), Title 11, Subtitles 2 and 3 (Licensing, Consumer Loans and Installment Loans). He also determined that Respondents’ business activities constituted other violations of the MCSBA.

10. In particular, the Deputy Commissioner found that, at no time relevant, were Respondents licensed as required by the MCSBA. By representing that they could provide loan modification services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents engaged in credit services business activities without having the requisite license, in violation of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303.

11. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA. Respondents also violated the MCSBA by failing to obtain the requisite surety bonds, in violation of CL §§ 14-1908 and 14-1909; by failing to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and by failing to include all of the requisite contractual terms in their agreements with consumers, as required under CL § 14-1906.

12. The Deputy Commissioner also found that Respondents made or used false or misleading representations in their sale of services to Maryland consumers and therefore violated CL § 14-1902(4).

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

14. The Deputy Commissioner found that, by failing to obtain beneficial loan modifications or other forms of forbearance agreements for Maryland consumers which

14, Subtitle 19 of the Commercial Law Article, or on any enforcement actions, including litigation, taken under that authority as it existed and based on actions that occurred before the effective date of this Act [July 1, 2013].” 2013 Md. Laws Ch. 247.

Respondents had agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), those breaches constitute per se violations of the MCSBA.

15. The Deputy Commissioner also determined that, by entering into agreements to provide loan modification services with Maryland homeowners in default or foreclosure, Respondents were required to comply with the provisions of the Protection of Homeowners in Foreclosure Act (“PHIFA”), Md. Code Ann., Real Prop. Art. (“RP”), Title 7, Subtitle 3, and that Respondents’ business activities failed to comply with the requirements of PHIFA.

16. In particular, Respondents violated RP § 7-307(2) by requiring Maryland homeowners to pay up-front fees to obtain a loan modification. Respondents, in violation of RP § 7-307(10), also induced Maryland homeowners to enter into foreclosure consulting agreements which lacked notices of rescission and related information required by RP §§ 7-305 and 7-306(a)(6), (b), and (c). Respondents also violated PHIFA when they breached the duty of reasonable care and diligence as required by RP § 7-309(b) and Md. Code Ann., Business Occupations & Professions Art. (“BOP”), § 17-532(c)(vi).

17. The Deputy Commissioner determined that immediate enforcement action was in the public interest and therefore that summary action under FI §§ 2-114 and 2-115 was appropriate and issued the Summary Order against Respondents.

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

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

20. On August 1, 2014, Barry Frost, Esq., on behalf of Respondents Christopher Firsch and Secure Property Solutions, LLC, notified the Commissioner of Financial Regulation about certain bankruptcy proceedings and claimed that these two respondents should be deleted from the Summary Cease and Desist so as not to violate the automatic stay. Counsel to the Commissioner responded that the Commissioner's administrative authority in this regard was exempt from the automatic stay of the bankruptcy proceeding. The Commissioner granted Respondents Firsch and Secure Property Solutions, LLC, additional time in which to request a hearing.

21. Respondent Christopher D. Firsch timely requested a hearing. On March 9, 2015, the Commissioner of Financial Regulation entered into a binding settlement agreement with Respondent Firsch and imposed a civil monetary penalty and order of restitution to be paid to Consumer A.

22. Respondent Joseph A. Gembala, III, requested a hearing but, as the request was not timely made, it was denied.

FINAL ORDER

NOW, THEREFORE, having determined that Respondents Joseph A. Gembala, III & Associates, Secure Property Solutions, LLC, Joseph A. Gembala, III, Michael J. Malone, and Ernesto Raniero, (hereinafter the "Remaining Respondents"), waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§ 14-1907, 14-1911, 14-1912, and FI § 2-115, it is by the Maryland Acting Deputy Commissioner of Financial Regulation hereby:

ORDERED that the Summary Order is entered as A FINAL ORDER of the Commissioner against the Remaining Respondents;

FURTHER ORDERED that the Remaining Respondents shall permanently CEASE and DESIST from engaging in any further credit services business activities with Maryland consumers; that Remaining Respondents shall permanently CEASE and DESIST from engaging in any further foreclosure consultant activities and/or mortgage assistance relief services or similar services with Maryland consumers; and that

Remaining Respondents shall permanently CEASE and DESIST from further violation of the Maryland laws identified herein;

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

FURTHER ORDERED that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), the Remaining Respondents shall pay to the Commissioner a total civil money penalty in the amount of One Hundred Seventy-three Thousand Dollars (\$173,000.00). *See also* RP § 7-319.1 (authorizing \$1,000 penalty for each violation of PHIFA). That civil money penalty is calculated as follows:

Prohibited Activity and Violation	Penalty per Violation	Number of Violations	Penalty
Unlicensed Activity in Violation of CL §§14-1902(1) and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	23 (consumers)	\$ 23,000.00
Violation of CL §14-1902 (collecting up-front fees prior to performing all services)	\$1,000.00	23	\$ 23,000.00
Violation of CL §14-1902(4) (making false or misleading representations in their sale of services)	\$1,000.00	23	\$ 23,000.00
Violation of CL §14-1908 and 14-1909 (failing to obtain surety bonds)	\$1,000.00	23	\$ 23,000.00
Violation of CL §§14-1904 and 14-1905 (failing to provide information statements)	\$1,000.00	23	\$ 23,000.00
Violation of CL §14-1906 (failing to include all requisite contractual terms in agreements)	\$1,000.00	23	\$ 23,000.00
Violation of CL §14-1907(b) (breach of contract by failing to obtain beneficial loan modifications)	\$1,000.00	23	\$ 23,000.00

Violation of RP § 7-307(2) (collecting up-front fees prior to performing all services)	\$1,000.00	4	\$ 4,000.00
Violation of RP §§ 7-305, and 7-306(a)(6), (b), and (c), and 7-307(10) (failing to include all requisite contractual terms in agreements, including notices of rescission, and thereby inducing homeowner to enter into agreements)	\$1,000.00	4	\$ 4,000.00
Violation of RP § 7-309(b) and BOP § 17-532(c)(vi) (breach of duty of reasonable care and diligence)	\$1,000.00	4	\$ 4,000.00
Total			\$173,000.00

FURTHER ORDERED that Remaining Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$ 173,000.00 within twenty (20) days from the date of this Final Order;

FURTHER ORDERED that, because there was a violation of the Maryland Credit Services Business Act, any and all loan modification services agreements made by Respondents (including the initial and remaining respondents) with Maryland consumers are void and unenforceable pursuant to CL § 14-1907;

FURTHER ORDERED that, pursuant to CL § 14-1912, as the Remaining Respondents' activities constituted willful noncompliance with MSCBA, the Remaining Respondents shall pay each consumer a monetary award equal to three times the amount illegally collected from the consumer; and therefore the Remaining Respondents shall pay the following amounts to the Consumers identified below:

Consumer Identifier	Consumer Names	Actual Damages	Monetary Award
A		\$ 895.00	\$ 1790.00 ²
B		\$ 1,895.00	\$ 5685.00
C		\$ 1,495.00	\$ 4485.00
D		\$ 1,895.00	\$ 5685.00
E		\$ 1,995.00	\$ 5985.00
F		\$ 1,995.00	\$ 5985.00
G		\$ 2,495.00	\$ 7485.00
H		\$ 1,895.00	\$ 5685.00
I		\$ 2,200.00	\$ 6600.00
J		\$ 1,395.00	\$ 4185.00
K		\$ 2,695.00	\$ 8085.00
L		\$ 1,495.00	\$ 4485.00
M		\$ 1,895.00	\$ 5685.00
N		\$ 1,895.00	\$ 5685.00
O		\$ 2,995.00	\$ 8985.00
P		\$ 2,995.00	\$ 8985.00
Q		\$ 3,500.00	\$ 10500.00
R		\$ 1,995.00	\$ 5985.00
S		\$ 1,895.00	\$ 5685.00
T		\$ 1,895.00	\$ 5685.00
U		\$ 1,895.00	\$ 5685.00
V		\$ 1,300.00	\$ 3900.00
W		\$ 2,695.00	\$ 8085.00

See also RP § 7-319.1 (authorizing the Commissioner to order restitution of money to any person aggrieved);

² For all consumers but Consumer A, the monetary or restitution award is three times the actual damages. For Consumer A, partial restitution was already awarded to Consumer A in the amount of \$895.00, and therefore only two times the actual damages is awarded as restitution to Consumer A.

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

FURTHER ORDERED that Remaining Respondents shall pay the required monetary award to the consumers identified above within thirty (30) days of the date of this Final Order. The Remaining Respondents shall make payment by mailing to the consumer a check in the amount specified above via First Class Mail, postage prepaid, at the most recent address of the consumer known to the Remaining Respondents. If mailing is returned as nondeliverable, the Remaining Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Upon make the required payment, the Remaining 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 Remaining 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;

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

1/7/2015
Date



Keisha Whitehall Wolfe
Acting Deputy Commissioner
of Financial Regulation

Attachment A

ATTACHMENT A

Number	Name	Amount Paid	MCSBA Violation	PHIFA Violation
Consumer A		\$895.00	X	
Consumer B		\$1,895.00	X	X
Consumer C		\$1,495.00	X	X
Consumers D		\$1,895.00	X	
Consumer E		\$1,995.00	X	
Consumer F		\$1,995.00	X	
Consumers G		\$2,495.00	X	
Consumer H		\$1,895.00	X	
Consumer I		\$2,200.00	X	
Consumer J		\$1,395.00	X	
Consumer K		\$2,695.00	X	
Consumer L		\$1,495.00	X	
Consumers M		\$1,895.00	X	X
Consumers N		\$1,895.00	X	
Consumers O		\$2,995.00	X	
Consumer P		\$2,995.00	X	
Consumers Q		\$3,500.00	X	
Consumer R		\$1,995.00	X	
Consumer S		\$1,895.00	X	
Consumer T		\$1,895.00	X	
Consumer U		\$1,895.00	X	
Consumer V		\$1,300.00	X	
Consumer W		\$2,695.00	X	X