

COMMISSIONER OF * BEFORE THE
FINANCIAL REGULATION * COMMISSIONER OF
v. * FINANCIAL REGULATION
LOAN MODIFICATION * CFR FILE NO.: CFR-FY2011-235
GROUP, ET AL * (CFR-FY2010-169)
RESPONDENTS * OAH FILE NO.: DLR-CFR-76A-11-24374
* * * * * * * * * * * * *

PROPOSED ORDER

The Proposed Decision (the "Proposed Decision") of the Administrative Law Judge, issued on November 22, 2011 in the above captioned case, having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 17th day of February, 2012 that the Proposed Decision shall be and hereby is adopted as a Proposed Order, except that the Findings of Act and Discussion are revised to correct factual errors. All corrections are based on documents and exhibits in the OAH file transmitted to the Office of the Commissioner in this matter.

Factual Discrepancies in the OAH Record and Decision

Findings of Fact ¶ 3 states that 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311 is the last business address in the Commissioner's records. The ALJ fails to state that OAH was notified prior to the hearing that a second address was on record at the Office of the Commissioner in Department of Labor, Licensing, and Regulation ("DLLR"): 11856 Balboa Boulevard, Suite 302, Grand Hills, CA 91344 (the "Balboa Address"). OAH was aware of the Balboa Address because the Office of the Commissioner notified and directed OAH to issue the Hearing Notice to the Balboa

Address. *See* CFR Exhibits #3 and #5. Accordingly, Finding of Fact ¶ 3 is revised to state that "The last business addresses in the Commissioner's records for the Respondents are: 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311 and 11856 Balboa Boulevard, Suite 302, Grand Hills, CA 91344."

On page 5, Section A, paragraph 2 of the Discussion, the ALJ again states that the Respondents' business address of record since at least April 2011 has been 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311. The ALJ further states that the address is currently reflected on the records of DLLR. Again, the ALJ fails to state that OAH was notified that a second address, the Balboa Address, was on record at DLLR. *See* CFR Exhibits #3 and #5. The ALJ also fails to state that DLLR, on the Transmittal Sheet for this matter, directed OAH to issue notice of the hearing to the Balboa Address and, on July 7, 2011, OAH's Notice of Hearing was sent certified mail, return receipt requested to the Balboa Address. The certified mail receipt in the OAH file indicates that the Notice of Hearing was delivered to and accepted at the Balboa Address on July 14, 2011.

On page 5, Section A, paragraph 3, the ALJ refers to an OAH Notice of Hearing sent on February 9, 2011 to a "Forbes Boulevard" address. There is no evidence of a Notice of Hearing being sent to such an address in this matter. Additionally, the ALJ refers to a 2009 Summary Order being attached to the Hearing Notice. No summary order was issued by the Commissioner in this matter in 2009. Accordingly, paragraphs two and three are stricken and the following paragraphs are substituted in lieu thereof:

First, there is no dispute that the Respondents' business addresses of record since at least April 2011 have been: 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311 and 11856 Balboa

Boulevard, Suite 302, Grand Hills, CA 91344. These addresses are currently reflected on the records of DLLR.

Second, the OAH issued a Notice of Hearing (Notice) on July 7, 2011, and mailed it, by certified mail, to the Respondents at the Balboa Boulevard address. Attached to each Notice was a copy of the May 4, 2011 Final Order to Cease and Desist. The receipt indicated that the Notice of Hearing was delivered to and accepted at the Balboa Boulevard address on July 14, 2011. No request to the OAH for a postponement of the hearing was made by or on behalf of any Respondents.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has 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.



Mark Kaufman
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

LOAN MODIFICATION GROUP, et al.,
RESPONDENTS

* BEFORE T. AUSTIN MURPHY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No: DLR-CFR-76A-11-24374
* CFR FILE No: CFR-FY2010-169

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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 May 11, 2011, the Maryland Commissioner of Financial Regulation (CFR or Commissioner), Department of Labor, Licensing and Regulation (DLLR), issued a Final Order to Cease and Desist (Order) to Loan Modification Group, a number of related entities, and two individuals. On June 14, 2011, the Commissioner referred the matter to the Office of Administrative Hearings (OAH) for a hearing and delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

I held a hearing on August 24, 2011, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (2011). Jedd Bellman, Staff Attorney, Office of the Attorney General, represented the Commissioner. Neither the Respondents, nor anyone authorized to represent any of them, appeared at the hearing.¹

¹ Notice to the Respondents, and their failure to appear, are discussed below.

Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2011), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

ISSUES

1. Did the Respondents engage in credit service business activities that subject them to the provisions of the Maryland Credit Services Business Act (MCSBA);
2. If so, did the Respondents engage in credit services business activities without first obtaining a license from the CFR in violation of Md. Code Ann., Com. Law § 14-1903(b)² and Md. Code Ann., Fin. Inst. § 11-302(b);
3. If the Respondents engaged in credit services business activities with Maryland consumers without first obtaining a license, are the Respondents exempt from complying with the licensing requirements of CL § 14-1903(b) and FI § 11-302(b);
4. If the Respondents are neither licensed nor exempt from licensure, did they, while engaged in credit services business activities, receive money or other valuable consideration in violation of CL § 14-1902(1);
5. If the Respondents are neither licensed nor exempt from licensure, did they, while engaged in credit services business activities, collect up-front fees prior to fully and completely performing all services in violation of CL § 14-1902(6);
6. Did the Respondents fail to provide Maryland consumers with the required information statements in connection with the sale of services of a credit services business in violation of CL §§ 14-1904(a) and 14-1905;
7. Did the Respondents fail to include required contractual terms in their agreements with Maryland consumers in violation of CL § 14-1906; and,

² The Commercial Law Article will be referred to as CL and the Financial Institution Article will be referred to as FI hereafter.

8. If the Respondents violated any of the sections cited above, what is/are the appropriate sanction(s)?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 July 11, 2011 Notice of Hearing
- CFR #2 June 14, 2011 Letter of delegation to the Hon. Jana Corn Burch, Executive Administrative Law Judge, from Anne Balcer Norton, Deputy Commissioner
- CFR #3 Regular and certified mail copies of April 18, 2011 Notice of additional complaints and attached Summary Order to Cease and Desist, indicated delivered by the United States Postal Service on April 23, 2011 as to Michael McConville and MBM Group, LLC-Balboa Law Group, Inc.
- CFR #4 May 11, 2011 Summary Order to Cease and Desist
- CFR #5 May 18, 2011 Investigator's Referral Memo
- CFR #6 April 1, 2010 Complaint of [REDACTED]

No exhibits were offered on behalf of the Respondents, who were not present.

Testimony

A. Thomas Koehler, CFR Investigator, testified on behalf of the CFR. No testimony was presented on behalf of the Respondents.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Background

1. At all times relevant, the Respondents was a principal in several entities (corporations and limited liability companies) engaged in the credit services activities in Maryland.

2. These entities (the corporate Respondents), operated under an array of similar-sounding names and trade names, most of which were variants of the following: The MBM Group; and Balboa Law Group. See CFR #2, #3, #4, and #6.
3. The last business address in the Commissioner's records for the Respondents is 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311.
4. Michael McConville, MBM Group, LLC-Balboa Law Group, Inc. engaged in the business of mortgage lending and/or brokering in Maryland.
5. On June 25, 2009, [REDACTED] paid \$3,750.00 to MBM to retain MBM to assist him in avoiding foreclosure by means of a loan modification on three properties, namely: 9414 Preston Place, 9417 Elrod Place and 3823 Hamilton Street, #703.
6. On August 14, 2009, [REDACTED] paid an additional \$2,500.00 to MBM to further retain MBM to assist him in avoiding foreclosure by means of a loan modification on the three properties.
7. [REDACTED] was instructed to send any and all communications from the mortgagees to the Respondents and not to worry about the foreclosures.
8. The Respondents did nothing to assist the complainant from avoiding foreclosure or to obtain a loan modification.
9. Eventually, [REDACTED] lost one of the above properties to foreclosure.
10. The Respondents obtained money from the Complainant as an individual not licensed as a credit services business as required by law.
11. The Respondents did not provide the Complainant with a credit service agreement, as required by law.
12. On April 18, 2011, Zenaida Velez-Dorsey, one of CFR's investigators, sent a letter to the Respondents, which was not answered. CFR #3.

13. During the investigation, Mr. Velez-Dorsey did contact the Respondent McConville by phone. During the phone conversation, the Respondent only asked how the CFR was going to prove any violations.

DISCUSSION

A. The Respondents' Failure to Appear

The Respondents consist of several inter-related corporations and LLCs, and an individual. As noted above, neither the Respondents nor anyone representing them appeared to represent either the entities or the natural persons, none of whom appeared. I conclude that the Respondents, and all of them, failed to appear for the hearing despite adequate notice, for the following reasons.

First, there is no dispute that the Respondents' business address of record since at least April 2011 has been 9400 Topanga Canyon Boulevard, Suite #110, Chatworth, CA 91311. This address is currently reflected on the records of DLLR.

Second, the OAH issued a Notice of Hearing (Notice) on February 9, 2011, and mailed it, by certified and regular mail, to each corporate and individual Respondent at the Forbes Boulevard address. Attached to each Notice was a copy of the June 1, 2009 Summary Order. See COMAR 09.01.02.06A. Neither the certified nor regular mail copies of the Notices were returned as "unable to deliver" by the United States Postal Service. No request to the OAH for a postponement of the hearing was made by or on behalf of any Respondents.

I conclude from these facts that the Respondents, and all of them, had constructive notice of the hearing and that it was appropriate to proceed in the Respondents' absence. COMAR 09.01.02.07 and 09.01.02.09.

B. Applicable Law

1. Burden of Proof

The Commissioner, as the moving party on the charges, has the burden to prove by a preponderance of the evidence that the Respondents violated the statutes and regulation at issue.

See Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

2. The Commissioner's Enforcement Powers—Generally

The CFR's power to issue summary cease and desist orders is found in section 2-115(a) of the Financial Institutions Article, which provides in pertinent part as follows:

(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.

Md. Code Ann., Fin. Inst. § 2-115(a).

Pursuant to § 14-1907 of the Commercial Law Article, “[a]ny breach by a credit services business of a contract under [subtitle 19]...shall constitute a violation...” The Respondents did nothing on the Complainant's behalf in spite of the fact that the Complainant paid the Respondents \$6,250.00. When the Complainant talked to the Respondents about the progress of the Respondents' efforts, he was told not to worry. It is no surprise that the Complainant lost one of his properties to foreclosure since nothing was done to avoid that result. The inaction on the

Respondents' part constitutes a breach of the contract between the Respondents and the Complainant. The evidence of the breach is substantial. The Complainant testified that he paid \$3,750.00 to the Respondents on June 25, 2009 and produced a copy of the cancelled check. The Complainant also testified that he paid \$2,500.00 to the Respondents on August 14, 2009 and also produced a copy of that cancelled check. With the above evidence, the CFR also established that the Respondents violated Md. Code Ann., Com. Law § 14-1902(1) (Supp. 2011) when it received the money without securing a license to do so from the CFR; Md. Code Ann., Com. Law § 14-1902(5) (Supp. 2011) by taking the money from the Complainant and doing nothing to assist the Complainant in obtaining a loan modification; despite their promise to do so and Md. Code Ann., Com. Law § 14-1902(6) (Supp. 2011) which prohibits receiving a fee before services have been rendered. The evidence also established that the Respondents failed to provide the Complainant with a written information statement in violation of Md. Code Ann., Com. Law § 14-1904(a) (2005). Finally, the Respondents violated Md. Code Ann., Com. Law § 14-1906 (2005) because the Respondents sent no written contract.

The CFR's power to impose sanctions, subject to notice and a right to a hearing, is contained in section 14-1912 of the Commercial Law Article, which allows an award to the Complainant of the amount of actual damage sustained by the consumer and a monetary award equal to three times the total amount collected from the consumer, as ordered by the CFR. In this case that translates to \$6,250.00, which was the amount paid by the Complainant, and three times that amount, or \$18,750.00, for a total of \$25,000.00 awarded to the Complainant. Pursuant to Cease and Desist Order, \$1,000.00 fine to the CFR for the unlicensed activity in violation of the MCBSA and \$1,000.00 for the Charging of an up-front fee is appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondents engaged in credit service business activities that subject them to the provisions of the MCSBA;

I further conclude that the Respondents engaged in credit services business activities without first obtaining a license from the CFR in violation of CL § 14-1903(b) and FI § 11-302(b);

I further conclude that the Respondents engaged in credit services business activities with Maryland consumers without first obtaining a license required by CL § 14-1903(b) and FI § 11-302(b);

I further conclude that the Respondents, while engaged in credit services business activities, received money or other valuable consideration in violation of CL § 14-1902(1);

I further conclude that the Respondents collected up-front fees prior to fully and completely performing all services in violation of CL § 14-1902(6);

I further conclude that the Respondents failed to provide Maryland consumers with the required information statements in connection with the sale of services of a credit services business in violation of CL §§ 14-1904(a) and 14-1905;

I further conclude that the Respondents failed to provide a written agreement and failed to include required contractual terms in their agreements with a Maryland consumer in violation of CL § 14-1906; and,

I further conclude that the Respondents, having violated the sections, cited above are subject to a fine of \$2,000.00 as an appropriate sanction.

RECOMMENDED ORDER

I **RECOMMEND** that the CFR:

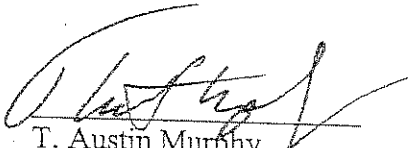
ORDER that the Respondents, and all of them, whether individuals or bodies corporate, cease and desist from engaging in the credit services business in Maryland;

ORDER that the Respondents pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$2,000.00, calculated as follows: \$1,000.00 for the unlicensed activity concerning its credit services with a Maryland consumer and \$1,000.00 for charging a up-front fee to a Maryland consumer; and that the Maryland Commissioner of Financial Regulation further

ORDER that the Respondents pay to [REDACTED] the sum of \$25,000.00;

ORDER that the Maryland Commissioner of Financial Regulation's records and publications reflect this decision.

November 22, 2011
Date Decision Issued


T. Austin Murphy
Administrative Law Judge

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Doc# 128005

MARYLAND COMMISSIONER OF
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* * * * *

FILE EXHIBIT LIST

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