IN THE MATTER OF:	BEFORE THE MARYLAND
FINTECH SERVICES, INC. a/k/a FINTECH LOAN MODIFICATION SERVICES,	COMMISSIONER OF
MICHAEL C. MALI, and	FINANCIAL REGULATION
ANDREW P. CAPPELLO a/k/a ANDREW CAPELLO,	Case No.: DFR-EU-2009-170
Respondents.	

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Commissioner of Financial Regulation (the "Commissioner") conducted an investigation into the credit services business activities of Fintech Services, Inc. a/k/a Fintech Loan Modification Services ("Fintech"), Michael C. Mali, and Andrew P. Cappello a/k/a Andrew Capello, (collectively the "Respondents"); and

WHEREAS, as a result of that investigation, the Deputy Commissioner of Financial Regulation (the "Deputy Commissioner") found evidence to support that Respondents have engaged, and continued to engage, in acts or practices constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, namely that Respondents have violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"), and Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist and Order to Produce (the "Summary Order") against Respondents on July 14, 2009, after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents immediately cease and desist from engaging in credit services business activities with Maryland consumers, including offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, or similar services; and

WHEREAS, the Summary Order notified Respondents of, among other things, the following: that Respondents were entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondents' failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue penalty orders against Respondents, issue orders requiring Respondents to pay restitution and other money to consumers, as well as take other actions related to Respondents' business activities; and

WHEREAS, the Summary Order was properly served on Respondents via First Class U.S. Mail and Certified U.S. Mail; and

WHEREAS, Respondents failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI § 2-115(a)(2) and have not filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

WHEREAS, the Commissioner has based her decision in this Final Order on the following determinations:

1. The MCSBA defines "*credit services business*" at CL § 14-1901(e); this provision provides, in part, as follows:

> (1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:
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> * * *
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> (ii) Obtaining an extension of credit for a consumer; or
> (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

Additionally, CL § 14-1903(f) defines "*extension of credit*" as "the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes."

2. The activities of persons engaged in the business of offering or providing loan modification services customarily include obtaining extensions of credit for consumers, namely obtaining forbearance or other deferrals of payment on consumers' mortgage loans. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e), 14-1903(a), and 14-1903(f), persons engaged in the business of offering or providing residential loan modification services, which include offering or providing extensions of credit to consumers, fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

3. The following relevant and credible evidence, obtained pursuant to the Commissioner's investigation, was considered in the issuance of the Summary Order:

written communications between Respondents and Maryland consumers; Respondents' standard written contract and documents for providing loan modification services for Maryland consumers in default or in foreclosure on their residential mortgage loans; statements by Maryland consumers who had entered into loan modification agreements with Respondents but for whom Respondents failed to obtain or even attempted to obtain a loan modification for the consumers; and the Commissioner's licensing records. More particularly, this evidence supports the following findings:

a. Respondent Fintech is an inactive Florida corporation with offices at 2740 East Oakland Park Boulevard, Suite 302, Fort Lauderdale, Florida 33306. Further, Fintech during all times relevant to this Final Order engaged in business activities in the State of Maryland offering loan modification services to Maryland consumers, although it is not a registered business entity in the State of Maryland.

b. Michael C. Mali and Andrew P. Cappello are the owners, directors, officers, managers and/or agents of Fintech. Further, Michael C. Mali and Andrew P. Cappello during all times relevant to this Final Order engaged in business activities in the State of Maryland offering loan modification services to Maryland consumers.

c. Respondents represented to Maryland consumers that Respondents could obtain loan modifications for homeowners in default or in foreclosure on their residential mortgages. Further, Respondents entered into agreements to provide residential mortgage loan modification services, which included obtaining extensions of credit as defined by the MCSBA, for Maryland consumers who were in default or in foreclosure on their residential mortgage loans.

d. In 2009, Respondents entered into such an agreement to provide loan modification services for at least one Maryland consumer who was in default or in foreclosure on his Maryland residential mortgage loan. Pursuant to Respondents' agreement with [redacted] ("Consumer A"), Consumer A paid at least $2,000 in up-front fees to the Respondents, in exchange for which the Respondents promised to obtain a beneficial loan modification for Consumer A. However, the Commissioner's investigation supports a finding that Respondents never obtained a loan modification for Consumer A, despite collecting up-front fees from Consumer A.

e. Respondents engaged in willful conduct which was intended to deceive and defraud Maryland consumers, as referenced above, which demonstrated a complete lack of good faith and fair dealings by Respondents, and which breached any duties that Respondents owed to these consumers. Such conduct included, but was not limited to, the following:

(i). Respondents failed to perform those loan modification services for Maryland consumers that they promised to provide and for which they had collected up-front fees;

(ii). Respondents purposely concealed this information when contacted by Maryland consumers who had previously entered into loan modification agreements with Respondents by intentionally misrepresenting the progress of the consumers' loan modifications, when in fact Respondents had not even attempted to modify these residential mortgage loans;

(iii). Respondents refused to return communications from Maryland consumers once these homeowners became concerned that Respondents had done nothing to obtain loan modifications on their behalf; and

(iv). Respondents refused to provide refunds to Maryland consumers when such refunds were due for lack of service.

4. In the present matter, Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA. *See* CL § 14-1902(1) ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [r]eceive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article. . . ."); CL §14-1903(b) ("[a] credit services business is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article"); FI § 11-302 ("[u]nless the person is licensed by the Commissioner, a person may not: . . . (3) [e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article"); and FI § 11-303 ("[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions").

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of July 14, 2009, or in the present Final Order, have the Respondents been licensed by the Commissioner under the MCSBA.

6. Respondents have engaged in credit services business activities without having the requisite license by advertising that they could provide loan modification services as described above, and by entering into contractual agreements with Maryland consumers to provide such services. Respondents' unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, thereby subjecting Respondents to the penalty provisions of the MCSBA.

7. 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 ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (6) [c]harge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer").

8. Further, although Respondents made representations that they would obtain beneficial loan modifications for Maryland homeowners, the Commissioner's investigation supports a finding that Respondents never obtained the promised loan modifications for these consumers; as such, Respondents violated CL § 14-1902(4) ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (4) [m]ake or use any false or misleading representations in the offer or sale of the services of a credit services business").

9. Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§

14-1904 and 14-1905; and they failed to include the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

10. By failing even to attempt to obtain beneficial loan modifications for Maryland consumers which Respondents had agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those contracts. Such breaches constitute *per se* violations of the MCSBA pursuant to CL § 14-1907(a) ("[a]ny breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle").

11. As the contracts between Respondents and consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all loan modification contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of the State of Maryland pursuant to CL § 14-1907(b) ("[a]ny contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State").

12. The MCSBA prohibits fraud and deceptive business practices at CL § 14-1902(5), which provides as follows:

> [a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (5) [e]ngage, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with the offer or sale of the services of a credit services business.

13. CL § 14-1912 discusses liability for failing to comply with the MCSBA, providing as follows:

> (a) *Willful noncompliance.*– Any credit services business which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:
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> (1) Any actual damages sustained by the consumer as a result of the failure;
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> (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;
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> (3) Such amount of punitive damages as the court may allow; and
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> (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
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> (b) *Negligent noncompliance.*– Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:
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> (1) Any actual damages sustained by the consumer as a result of the failure; and
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> (2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

14. Respondents engaged, directly or indirectly, in acts, practices, or other activities which operated as a fraud or deception on persons in connection with the offer or sale of the services of a credit services business, and thereby violated CL § 14-1902(5); such actions also constituted willful noncompliance with the MCSBA under CL § 14-1912(a). Respondents' fraudulent, deceptive, and willful conduct included the following: they failed to perform those loan modification services for Maryland consumers which they promised to provide and for which they had collected up-front fees; Respondents purposely concealed this information when contacted by Maryland consumers who had already entered into loan modification agreements with Respondents by intentionally misrepresenting the progress of the consumers' loan modifications; Respondents failed to return communications from Maryland consumers once those consumers became concerned that Respondents had done

nothing to obtain a loan modification on their behalf; and Respondents refused to provide refunds to Maryland consumers when such refunds were due for lack of service.

15. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations). Thus, for example, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire ... a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry."

16. Pursuant to the Commissioner's authority to conduct investigations under FI § 2-114, as part of the Summary Order the Deputy Commissioner ordered Respondents to produce specific information and all documents related to their loan modification activities involving Maryland consumers within 15 days after receipt of the Summary Order. However, Respondents failed to provide the required information and documents by that date, and in fact have not provided the documents and information as of the date of this Final Order. Therefore, by failing to fully comply with the Summary Order, Respondents are in violation of FI § 2-114.

NOW, THEREFORE, having determined that 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 CL §§ 14-1902, 14-1907, 14-1912, and FI § 2-115(b), it is by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that the Summary Order to Cease and Desist issued by the Deputy Commissioner against Respondents on July 14, 2009, is entered as a Final Order of the Commissioner as modified herein, and that Respondents shall permanently **CEASE** and **DESIST** from engaging in credit services business activities with Maryland consumers, including contracting to provide, or otherwise engaging in, loan modification, loss mitigation, or similar services with Maryland consumers; and it is further

ORDERED that, pursuant to FI § 2-115(b), and upon careful consideration of (i) the seriousness of the Respondents' violations; (ii) the lack of good faith of Respondents, (iii) the history and ongoing nature of Respondents' violations; and (iv) the deleterious effect of Respondents' violations on the public and on the credit services businesses and mortgage industries, Respondents shall pay to the Commissioner a total civil penalty in the amount of **THREE THOUSAND DOLLARS ($3,000)**, which consists of the following:

Prohibited Activity and Violation	Civil Penalty per Violation	x Number of Violations	= Penalty
Unlicensed Activity in Violation of MCSBA	$1,000	1 Violations	$1,000
Charging Up-Front Fees in Violation of MCSBA	$1,000	1 Violations	$1,000
Failure to Comply with Summary Order in Violation of FI § 2-114	$1,000	1 Violations	$1,000
		TOTAL	**$ 3,000**

and it is further,

ORDERED that Respondents shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of $3,000 within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all loan modification agreements which Respondents entered into with Maryland consumers described herein, are void and unenforceable as contrary to the public policy of the State of Maryland; and it is further

ORDERED that, pursuant to CL §§ 14-1902, 14-1907, and 14-1912, Respondents shall pay restitution to each Maryland consumer with whom Respondents entered into loan modification agreements; and that as Respondents' activities constituted willful noncompliance with the MCSBA, pursuant to CL § 14-1912(a) Respondents shall pay restitution in an amount equal to three times the amount collected from these consumers; and thus Respondents shall pay restitution of $6,000 to Consumer A with whom

Respondents entered into loan modification agreements, with the total amount of restitution equaling **SIX THOUSAND DOLLARS ($6,000)** (consisting of the $2,000 up-front fee collected from Consumer A, multiplied by three); and it is further

ORDERED that Respondents shall pay the required restitution to Consumer A within 30 days of this Final Order being signed. Respondents shall make payment by mailing to Consumer A a check in the amount specified above via U.S. First Class Mail at the most recent addresses of Consumer A known to the Respondents. If the mailing of the payment is returned as undeliverable by the U.S. Postal Service, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payment, the Respondents shall furnish evidence of having made the payment to the Commissioner within fifteen (15) days, which evidence shall consist of a copy of the front and back of the cancelled check; and it is 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 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Jessica Wienner, Paralegal.

May 13, 2010
Date

Sarah Bloom Raskin
Sarah Bloom Raskin
Commissioner of Financial Regulation