IN THE MATTER OF:	*	**BEFORE THE MARYLAND**
AMERIMOD, INC.	*	**COMMISSIONER OF**
a/k/a AMERICAN MODIFICATION AGENCY;	*	**FINANCIAL REGULATION**
SALVATORE PANE, JR.;	*	
ADNREW P. DANIELS;	*	
EFRAIN ROMAN;	*	**DFR-EU-2009-082**
MATTHEW CROSTA;	*	
Respondents	*	

* * * * * * * * * * * * *

SUMMARY ORDER TO CEASE AND DESIST
AND ORDER TO PRODUCE

WHEREAS, the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the "Division") undertook an investigation into the credit services business activities of the following: AmeriMod, Inc. a/k/a American Modification Agency; Salvatore Pane, Jr.; Andrew P. Daniels, CPA, P.C.; Efrain Roman; and Matthew Crosta (collectively "Respondents"); and

WHEREAS, as a result of that investigation, the Commissioner of Financial Regulation (the "Commissioner") finds grounds to allege that Respondents 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"), Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3, and Real Property Article ("RP"), Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act,

hereinafter "PHIFA"), and the Commissioner finds that action under FI §§ 2-114 and 2-115 is appropriate.

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that Respondents are in violation of Maryland law, and that it is in the public interest that Respondents immediately Cease and Desist from engaging in credit services business activities or foreclosure consulting activities with Maryland residents, including offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services.

1. FI §§ 2-115(a) and (b) set forth the Commissioner's authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction [in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing], providing as follows:

> (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
> (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.

2. 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."

3. In the present matter, on or about March 24, 2009, the Division began an investigation into the business activities of Respondents as a result of a consumer

complaint. Pursuant to the Division's preliminary inquiry into that complaint, the Division developed reasonable grounds to believe that Respondents engaged in unlicensed credit services business activities with Maryland residents in violation of various provisions of Maryland Law, including, but not limited to, the MCSBA and FI Title 11, Subtitles 2 and 3, and that Respondents' business activities constituted other violations of the MCSBA and PHIFA. The legal and factual bases for these determinations are described below.

Maryland Credit Services Businesses Act

4. Pursuant to CL § 14-1902, "[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. . . ."

5. Pursuant to 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."

6. Pursuant to 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."

7. Pursuant to 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."

8. The MCSBA defines "*credit service businesses*" 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:
>
> * * *
>
> (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.

9. 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."

10. Further, CL § 14-1902 provides, in pertinent part, 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:
> (1) Receive 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;
>
> * * *
>
> (4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;
> (5) Engage, 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;
>
> * * *
>
> (6) Charge 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;
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> * * *

11. CL § 14-1903(a) addresses the scope of credit services contracts covered under MCSBA, providing as follows:

> (a) *In general.* – Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:
> (1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;
> (2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or
> (3) The credit services business makes any verbal or written solicitation or communication that originates either inside or outside of this State but is received in the State by a resident of this State.

12. Pursuant to CL § 14-1903.1,

> A person who advertises a service described in § 14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:
> (1) The license issued under § 14-1903 of this subtitle.; or
> (2) If not required to be licensed, the exemption provided by the Commissioner.

13. CL § 14-1904(a) provides that, "[b]efore either the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under § 14-1905 of [the MCSBA]." CL § 14-1905(b) further requires a credit services business "to maintain on file for a period of 2 years from the date of the consumer's acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement."

14. CL § 14-1905 indicates the specific terms which must be provided in the information statement, stating, in part, as follows:

> (a) *In general.* – The information statement required under § 14-1904 of this subtitle shall include:
>
> * * *
>
> (5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services.
>
> * * *
>
> (b) *Additional requirements of licenses.*– A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:
>
> (1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;
>
> (2) The address of the Commissioner where such complaints should be filed; and
>
> (3) A statement that a bond exists and the consumer's right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

15. CL § 14-1906 discusses requirements for contracts between credit services businesses and consumers, providing as follows:

> (a) *Requirements.*– Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include:
>
> (1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:
> "You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";
>
> (2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;
>
> (3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including

all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) *Notice of cancellation form.*- The contract shall be accompanied by a form completed in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

* * *

(c) *Copies of completed contract and other documents to be given to consumer.*– A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

16. CL § 14-1907 provides, in part, as follows:

(a) *Breach of contract.*– Any 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.

(b) *Void contracts.*– Any 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.

(c) *Waivers.*–

* * *

(2) Any attempt by a credit services business to have a consumer waive rights given by this subtitle shall constitute a violation of this subtitle.

17. CL § 14-1908 provides that, "[a] credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of the Financial Institutions Article."

Further, CL § 14-1909 provides that, "[t]he surety bond shall be issued by a surety company authorized to do business in this State."

18. 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:
> (1) Any actual damages sustained by the consumer as a result of the failure;
> (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;
> (3) Such amount of punitive damages as the court may allow; and
> (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.
> (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:
> (1) Any actual damages sustained by the consumer as a result of the failure; and
> (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.

19. Residential mortgage loan modification services generally include obtaining an extension 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) and 14-1903(f) persons providing residential loan modification services fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

20. The Division's investigation revealed that, on or about August 16, 2008, Consumer A, who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer A paid approximately $3,720 in up-front fees to Respondents, in exchange for which Respondents promised to obtain a loan modification for Consumer A. Respondents also directed Consumer A to stop making payments on his residential mortgage loan, and they directed him to not contact his lender.

21. The Division's investigation determined that although Respondents collected $3,720 in up-front fees, Respondents never obtained the promised loan modification for Consumer A.

22. The Division's investigation revealed that, on or about September 23, 2008, Consumer B, who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer B paid approximately $5,666 in up-front fees to Respondents, in exchange for which Respondents promised to obtain a loan modification for Consumer B. Respondents also directed Consumer B to stop making payments on his residential mortgage loan, and they directed him to not contact his lender.

23. The Division's investigation determined that although Respondents collected $5,666 in up-front fees, Respondents never obtained the promised loan modification for Consumer B.

24. The Division's investigation revealed that, on or about October 1, 2008, Consumer C, who was in default on her Maryland residential mortgage loan, entered into a loan modification agreement with Respondents. Consumer C paid approximately $2,453 in up-front fees to Respondents, in exchange for which Respondents promised to obtain a

loan modification for Consumer C. Respondents also directed Consumer C to stop making payments on her residential mortgage loan, and they directed her to not contact her lender.

25. The Division's investigation determined that although Respondents collected $2,453 in up-front fees, Respondents never obtained the promised loan modification for Consumer C.

26. The Division's investigation also revealed that Respondents, both directly and through third-party referral agents, advertised and marketed to Maryland residents, including but not limited to using radio advertisements, internet-based advertising, and e-mail solicitations, that Respondents could obtain loan modifications for homeowners in default or in foreclosure on their residential mortgages. The Division's investigation further revealed that Respondents regularly and continually entered into agreements to provide residential mortgage loan modification services for Maryland residents. Moreover, these agreements expressly stated as follows: "In the event we are not able to successfully modify your mortgage we will return 100% of the Fee."

27. 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 pursuant to CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303. However, at no time relevant to the facts set forth in this Summary Order to Cease and Desist have any of Respondents been licensed by the Commissioner under the MCSBA.

28. By advertising that they could provide loan modification services, and by entering into contractual agreements with Maryland residents to provide such services, Respondents have engaged in credit services business activities without having the

requisite license. 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 penalty provisions of the MCSBA.

29. 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.

30. Further, Respondents' made or used false or misleading representations in their sale of services to Maryland consumers, thereby violating CL § 14-1902(4), when Respondents' advertisements and other marketing materials claimed that they would obtain beneficial loan modifications for Maryland homeowners or return any up-front fees that the consumers had paid, when in fact Respondents never obtained such beneficial modifications for Maryland homeowners and never returned the up-front fees.

31. Respondents further violated the MCSBA through the following: in their loan modification advertisements, they failed to clearly and conspicuously state their license number under the MCSBA or their exemption, in violation of CL § 14-1903.1; 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 Respondents failed to include the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

32. Further, as the contracts between Respondents and 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 as against the public policy of State of Maryland.

33. Additionally, by failing to obtain beneficial 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. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

34. Pursuant to the Commissioner's authority to conduct investigations under FI § 2-114, the Commissioner issued subpoenas to Respondents on March 24, 2009, ordering them to provide specific information and all documents related to their loan modification activities by April 7, 2009. Respondents have never produced the information or documents required by these subpoenas, and thus are in violation of FI § 2-114. Further, although Division investigators repeatedly called Respondents' business number and left messages on Respondents' voice mail asking them to contact the investigators, Respondents have never returned those telephone calls.

35. The Division's investigation further revealed that 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), and that such actions by Respondents constituted willful noncompliance with the MCSBA under CL § 14-1912. Among other fraudulent, deceptive, and willful conduct, Respondents engaged in 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 refused to return telephone calls and e-mail 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 requested by consumers for lack of service, despite the fact that Respondents were contractually obligated to provide such refunds.

Protection of Homeowners in Foreclosure Act

36. Under PHIFA, (specifically RP § 7-301(i)), the term "*homeowner*" is defined as "the record owner of a residence in default or a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article." In turn, pursuant to RP § 7-301(j), the term "*residence in default*" refers to homeowner-occupied Maryland residential real property "on which the mortgage is at least 60 days in default," while pursuant to RP § 7-301(k), "*residence in foreclosure*" refers to homeowner-occupied Maryland residential real property "against which an order to docket or a petition to foreclose has been filed."

37. Pursuant to RP § 7-301(c), a "*foreclosure consultant*" is defined as 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.

38. Pursuant to RP § 7-301(d), a "*foreclosure consulting contract*" is defined as "a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service."

39. Pursuant to RP § 7-301(e), a "*foreclosure consulting service*" includes:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in default;

(5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title;

(6) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another

> party as an alternative to foreclosure; or
> (7) Arranging for or facilitating a homeowner remaining in the homeowner's residence after a sale or transfer as a tenant, renter, or lessee under terms provided in a written lease.

40. PHIFA provides that, "a homeowner has the right to rescind a foreclosure consulting contract at any time" (RP § 7-305), and that a foreclosure consulting contract must include, *inter alia*, appropriate notices of rescission and related information (*see* RP §§ 7-306(a)(6), (b), and (c)).

41. RP § 7-307(2) provides that a foreclosure consultant may not "[c]laim, 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." Further, RP § 7-307(7) states that a foreclosure consultant may not "[r]eceive any money to be held in escrow or on a contingent basis on behalf of the homeowner."

42. RP § 7-307(10) provides that a foreclosure consultant may not "[i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle."

43. Pursuant to RP § 7-309(b), "[a] foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article" ("BOPA"). The pertinent duty of care in the referenced statute is stated to be "[the duty to] exercise reasonable care and diligence" (BOPA § 17-532(c)(vi)).

44. Unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which a person or business entity solicits, offers, sells, provides, or enters into

an agreement to provide, residential mortgage loan modification services (a/k/a loss mitigation, foreclosure consulting, and similar services) pertaining to homeowner-occupied Maryland residential real property which is in default or in foreclosure.

45. The Division's investigation revealed that the business activities of Respondents are subject to PHIFA. By entering into agreements with Maryland homeowners in default or in foreclosure to provide residential mortgage loan modification services pertaining to homeowner-occupied Maryland residential real property, Respondents acted as "foreclosure consultants" under PHIFA (as that term is defined at RP § 7-301(c)), as they had entered into "foreclosure consulting contracts" with homeowners for the provision of "foreclosure consulting services" (as those terms are defined under RP §§ 7-301(d) and (e), respectively). As such, Respondents are required to comply with all provisions of PHIFA applicable to foreclosure consultants.

46. However, the Division's investigation revealed that Respondents failed to comply with the requirements of PHIFA. First, Respondents violated RP § 7-307(2) by requiring Maryland homeowners to pay up-front fees prior to successfully obtaining a loan modification for the Maryland consumers (a foreclosure consult may not "[c]laim, 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").

47. Respondents also violated PHIFA by inducing Maryland homeowners to enter into foreclosure consulting contracts which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c), and thus Respondents violated RP § 7-307(10) ("[a] foreclosure consultant may not . . . [i]nduce or

attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA])."

48. Respondents further violated PHIFA when they breached the duty of reasonable care and diligence required under RP § 7-309(b) and BOPA § 17-532(c)(vi)), including, but not limited to, the following conduct: Respondents 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 refused to return telephone calls and e-mail 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 requested by consumers for lack of service, despite the fact that Respondents were contractually obligated to provide such refunds.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by the Maryland Commissioner of Financial Regulation, HEREBY

ORDERED that Respondents shall immediately CEASE AND DESIST from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland residents, including contracting to provide, or otherwise engaging in, loan modification, loss mitigation, foreclosure consulting, or similar services with Maryland residents; and it is

ORDERED that Respondents shall immediately CEASE AND DESIST from violating the aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the Commercial Law Article (the Maryland Credit Services Businesses Act), Title 11, Subtitles 2 and 3 of the Financial Institutions Article, and Title 7, Subtitle 3 of the Real Property Article (Protection of Homeowners in Foreclosure Act); and that Respondents should be assessed statutory monetary penalties and directed to make restitution for such violations; and it is further

ORDERED that Respondents shall provide to the Office of the Commissioner each of the following within 15 days of the receipt of this Summary Order to Cease and Desist:

- **The names, addresses, and phone numbers of all Maryland residents, homeowners and/or consumers** (hereinafter "Maryland residents") who, at any time on or after January 1, 2007, retained or contracted with Respondents for the purpose (in whole or in part) of providing mortgage loan modification, loss mitigation, foreclosure consulting, or similar services related to residential real property (hereinafter "loan modification services") for them or on their behalf.
  - For each Maryland resident identified above, specify whether the person was current, in default, or in foreclosure on their residential mortgage loan as of the date they entered into the agreement to obtain loan modification services.
  - Additionally, if the person was in default, specify the number of days that they were in default as of the date that they entered into the agreement. Also indicate whether the person was directed to stop making payments on their residential mortgage loan.
- **Any and all documents under Respondents' control or in their possession** pertaining to their loan modification services, agreements, and activities on or after January 1, 2007 related to the Maryland residents identified above.
- **The names, addresses, and phone numbers of third-party individuals or business entities** ("third parties") who, at any time on or after January 1, 2007, referred or agreed to refer consumers, potentially including Maryland residents, to Respondents for the purpose (in whole or in part) of providing loan modification services.
- **The names, addresses, and phone numbers of third-parties** to whom, at any time on or after January 1, 2007, Respondents referred or agreed to refer, consumers, potentially including Maryland residents, for the purpose (in whole or in part) of providing loan modification services, or to whom Respondents referred

or agreed to refer consumers, potentially including Maryland residents, for the purpose of obtaining a consumer loan in order to finance loan modification services.

- **Any and all documents under Respondents' control or in their possession pertaining to the third-parties** identified above, the content of which documents relates in any way to loan modification services to be performed on or after January 1, 2007, or to any associated referral arrangements, fees, or other forms of compensation.
- **Copies of all marketing and advertising materials** potentially reaching Maryland residents on or after January 1, 2007 which Respondents, or which third parties marketing directly or indirectly on Respondents' behalf, use or have used to market or advertise Respondents' loan modification services, including, but not limited to, copies of all printed marketing materials, internet advertisements, and radio and television advertisements.
- **The names, addresses, and phone numbers** of all of Respondents' current and former owners, partners, members, officers, employees, associates, agents, and/or contractors who, on or after January 1, 2007 and during their period of employment or association with Respondents, agreed to provide, provided, or assisted in providing, Maryland residents with loan modification services.

And it is further

ORDERED that all provisions of this Summary Order to Cease and Desist, including all Orders and Notices set forth herein, also apply to all unnamed owners, partners, members, officers, and agents of all Respondent business entities named above; and it is further

ORDERED that the Resident Agents for all Respondent business entities named above shall provide a copy of this Summary Order to Cease and Desist to all unnamed owners, partners, members, officers, and agents of those Respondent business entities.

Furthermore,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115 and CL § 14-1911, Respondents are entitled to a hearing before the Commissioner to determine

whether this Summary Order to Cease and Desist should be vacated, modified, or entered as a final Order of the Commissioner; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115 and CL § 14-1911, this Summary Order to Cease and Desist will be entered as a final Order of the Commissioner if Respondents do not request a hearing within 15 days of the receipt of this Summary Order to Cease and Desist; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations ("COMAR") § 09.01.02.08, and State Government Article ("SG") §§ 9-1607.1, 10-206.1, and 10-207, and in accordance with SG § 10-207(b)(4), each individual Respondent in this matter is only permitted to request a hearing, and to appear at such hearing, on behalf of himself, or through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Enforcement Unit, Administrator
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondents' failure to correctly request a hearing in the manner described above, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, take the following actions: enter an Order making this Cease and Desist Order final; issue a penalty order against Respondents imposing a civil penalty up to $1,000 for each violation of the Maryland Credit Services Businesses Act, up to $1,000 for each violation of the Protection of Homeowners in Foreclosure Act, and up to $1,000 for each additional violation cited above; issue a penalty order against Respondents imposing a civil penalty up to $5,000 for each subsequent violation of these laws; or may take any combination of the aforementioned actions against Respondents. Further, pursuant to CL § 14-1902 and 14-1907, the Commissioner may also enter a final order declaring that all loan modification agreements made by Respondents with Maryland consumers are void and unenforceable, and requiring that Respondents refund to Maryland consumers all money and other valuable consideration that consumers paid to Respondents, their employees, or independent contractors that is in any way related to these agreements, plus interest. In addition, pursuant to CL § 14-1912, as a result of Respondents' failure to comply with requirements imposed under the Maryland Credit Services Businesses Act, the Commissioner may also enter an Order requiring Respondents to pay consumers a monetary award equal to any actual damages sustained by the consumers as a result of that failure, and, in instances of willful noncompliance under the Act, an additional monetary award equal to 3 times the total amount collected from the consumers. Additionally, pursuant to RP § 7-319, as a result of Respondents' failure to comply with requirements imposed under the Protection

of Homeowners in Foreclosure Act, the Commissioner may seek an injunction against Respondents in Maryland Circuit Court, and may recover from Respondents the costs of bringing such an action.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

6/5/09
Date

By: Mark Kaufman
Deputy Commissioner