

BEFORE THE COMMISSIONER OF FINANCIAL REGULATION

MARYLAND COMMISSIONER OF \*

FINANCIAL REGULATION \*

CFR FILE No: CFR-FY2012-058

v. \*

OAH NO: DLR-CFR-76A-12-14125

B. DIEGO HELLEWELL \*

And \*

THE LAW OFFICES OF \*

B. DIEGO HELLEWELL, d/b/a \*

NATIONAL FINANCIAL \*

RESCUE GROUP AND \*

AMERICAN FORENSIC LOAN \*

AUDITORS \*

RESPONDENTS \*

\* \* \* \* \*

OPINION AND FINAL ORDER

This matter came before the Commissioner for hearing for the reasons set forth in the Order and Notice of Hearing dated November 14, 2012. Pursuant to that Order the Respondents B. Diego Hellewell, and The Law Offices of B. Diego Hellewell d/b/a National Financial Rescue Group and American Forensic Loan Auditors were given the opportunity to appear at a hearing held on December 19, 2012 to respond to allegations against them set forth in a complaint filed with the Commissioner by [REDACTED]

[REDACTED] The Order and Notice of Hearing was mailed to the Respondents' last known addresses in accordance with COMAR 09.01.02.07.

The hearing was scheduled for 10:00 a.m. The Commissioner called the hearing to begin at 10:25 a.m., and the Respondents failed to appear. Jedd Bellman, Assistant

Attorney General, appeared on behalf of the Deputy Commissioner. The proceedings were recorded by a court reporter.

### EVIDENCE

The exhibits admitted at the hearing before the Administrative Law Judge at the hearing on July 19, 2012 were before the Commissioner. Additional evidence admitted for the purpose of this hearing was the Order and Notice of Hearing dated November 14, 2012 and the cover letter with certified receipt evidencing that it had been mailed to the Respondents' last known addresses.

### DISCUSSION

As noted in the Order and Notice of Hearing, the hearing notice for the hearing before the Administrative Law Judge attached the Final Order for a case against the same Respondents, but involving different complainants. The notice did not include a copy of the complaint filed by Mr. [REDACTED] although that complaint was the basis for the hearing. For this reason, a new hearing was set before the Commissioner to give the Respondents an additional opportunity to address the allegations set forth in the complaint filed by [REDACTED].

[REDACTED] Based on the Respondents' failure to appear at this hearing, the Commissioner concludes that they have waived their right to respond to the allegations, and that the ALJ's Proposed Decision and Recommended Order should be adopted with one change. In the Recommended Order, the judge included a provision that the Respondents cease and desist from engaging in any further credit services business activities with Maryland residents and from violating certain statutory provisions of the Annotated Code of Maryland. Because a similar order to cease and desist was entered in the prior case

against the same Respondents, the Commissioner has not sought such an order in this case. Therefore, that provision will not be included in the Final Order.

**FINAL ORDER**

The Commissioner of Financial Regulation hereby orders:

That the Findings of Fact in the Proposed Decision of the Administrative Law Judge are adopted; and further

That the Conclusions of Law of the Administrative Law Judge are adopted; and further

That the Respondents violated Sections 14-1902(1), (4), (5), and (6), 14-1903(b), 14-1904(a), 14-1905(a)(5) and (b), 14-1906(a) and (b), and 14-1907 of the Commercial Law Article of the Annotated Code of Maryland; and further

That the Respondents jointly and severally pay to [REDACTED] the sum of \$18,000.00, which represents the actual damages sustained by him plus three times the amount that they collected from him, all in accordance with Section 14-1912(a) of the Commercial Law Article of the Annotated Code of Maryland, and based on the Respondents' willful failure to comply with the provisions of the MCSBA; and further

That any contract entered into by [REDACTED] with the Respondents, B. Diego Hellewell, The Law Offices of B. Diego Hellewell, National Financial Rescue Group, or American Forensic Loan Auditors is void and unenforceable as contrary to the public policy of the State; and further

That the records and publications of the Office of the Commissioner of Financial Regulation reflect this decision.

3/28/13  
Date

  
\_\_\_\_\_  
Mark A. Kaufman  
Commissioner

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

B. DIEGO HELLEWELL

and

THE LAW OFFICES OF B. DIEGO  
HELLEWELL, dba NATIONAL  
FINANCIAL RESCUE GROUP AND  
AMERICAN FORENSIC LOAN  
AUDITORS,

RESPONDENTS

\* BEFORE MARLEEN B. MILLER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS

\* OAH NO.: DLR-CFR-76A-12-14125  
\* CFR FILE NO.: FY2012-058

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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

In response to complaints from at least two Maryland residents, [REDACTED]  
and [REDACTED] on April 11, 2011, the Commissioner of Financial Regulation (the  
Commission or CFR) issued to B. Diego Hellewell and The Law Offices of B. Diego Hellewell  
(the Offices), dba National Financial Rescue Group and American Forensic Loan Auditors, a  
Summary Order to Cease and Desist (the Summary Order). That Summary Order directed the  
Respondents to cease and desist from engaging in credit services business activities with

Maryland residents, homeowners and/or consumers, including directly or indirectly offering, contracting to provide or otherwise engaging in loan modification, loss mitigation or similar services related to Maryland residential real property, in violation of various provisions of the Maryland Annotated Code, including Title 14, Subtitle 19 of the Commercial Law Article (CL or the Commercial Law Article), more commonly known as the Maryland Credit Services Business Act (MCSBA),<sup>1</sup> and Title 11, Subtitles 2 and 3 of the Financial Institutions Article (FI or Financial Article).<sup>2</sup> The Respondents failed to request a hearing on the Summary Order.

In August 2011, [REDACTED] (a Maryland resident) complained to the Commission that, between approximately December 2009 and February 2010, he paid \$4,500.00 to the Respondents for a loan modification but, nevertheless, lost his home to foreclosure on or about August 5, 2011. After an investigation of [REDACTED] complaint, the Commissioner issued a September 26, 2011 Final Order to Cease and Desist (the Final Order) against the Respondents. That Final Order, among other things, ordered that the Respondents pay penalties to the Commissioner and a monetary award to [REDACTED] and [REDACTED].

Pursuant to CL § 14-911, on March 8, 2012, the Commissioner forwarded this case to the Office of Administrative Hearings (OAH), delegating to OAH the authority to conduct a hearing and to issue proposed findings of fact, conclusions of law and a recommended order to determine whether and to what extent relief is appropriate as a result of [REDACTED] complaint, under CL §§ 14-1907, 14-1911 and/or 14-1919. (CFR Ex. # 2.) On July 19, 2012, I held the requested

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<sup>1</sup> The relevant sections are contained in the 2005 Replacement Volume and, as to sections 14-1901 and 14-1902, the 2012 Supplement to the Maryland Annotated Code's Commercial Law Article.

<sup>2</sup> Although the Commission's delegation letter only asked OAH to determine whether the Respondents violated the MCSBA and whether and to what extent relief would be appropriate under CL §§ 14-1907, 14-1911 and/or 14-1919, the Commission's representative also referred to and relied upon comparable or complementary provisions contained in the Financial Article. Consequently, while I may refer to various FI sections throughout this Proposed Decision, I am not authorized and therefore will not determine whether and to what extent any additional or different relief should be awarded under them.

hearing at OAH's Administrative Law Building in Hunt Valley, Maryland.<sup>3</sup> CL § 14-1911.

Assistant Attorney General Jedd Bellman represented the Commission. Despite proper notice,<sup>4</sup> the Respondents failed to appear for the hearing, and I proceeded to hear the case in their absence. *See* Code of Maryland Regulations (COMAR) 09.01.02.09, 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation (DLLR), and OAH's Rules of Procedure govern the procedures in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); COMAR 09.01.03; 28.02.01.

### ISSUES<sup>5</sup>

1. Did the Respondents engage in unlicensed credit services business activities with [REDACTED] in violation of section 14-1903 of the Commercial Law Article?<sup>6</sup>
2. Did the Respondents receive up-front fees, money or other valuable consideration for engaging or agreeing to engage in unlicensed credit services business activities with [REDACTED], in violation of section 14-1902 of the Commercial Law Article?
3. Did the Respondents fail to provide [REDACTED] with the required information statements in connection with the sale of services of a credit services business in violation of sections 14-1904(a) and 14-1905 of the Commercial Law Article?
4. Did the Respondents fail to include required contractual terms in their agreements with [REDACTED] in violation of section 14-1906 of the Commercial Law Article?

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<sup>3</sup> OAH initially scheduled the hearing to be held on June 13, 2012 but, upon the Commission's request, rescheduled the hearing to obtain better service on the Respondents.

<sup>4</sup> OAH sent notices to various addresses provided by the Commission for the Respondents, many of which notices were returned to OAH as undeliverable. Nevertheless, Benjamin Hellewell provided the following address to the State Bar Court of California in connection with pending proceedings and was specifically required to and did not provide any new address: P. O. Box 31382, Palm Beach Gardens, FL 33420. *See* Exhibit 5A, at 5. OAH sent notice to that address and the first class mailing was not returned.

<sup>5</sup> It is likely that the Respondents also violated sections 14-1908 and 1909 of the Commercial Law Article, by failing to obtain the surety bond required for credit services businesses, but the Commission neither argued nor submitted any evidence on this point.

<sup>6</sup> *See also* FI § 11-302(b).

5. Is the retainer agreement between the Respondents and [REDACTED] void and unenforceable under section 14-1907(b) of the Commercial Law Article?

6. Did the Respondents breach their obligations arising under their contracts with [REDACTED] in violation of section 14-1907(a) of the Commercial Law Article?

7. Did the Respondents make intentional misrepresentations or misleading statements to [REDACTED] in violation of sections 14-1902(3) and (4) of the Commercial Law Article?

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

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Commission presented the following documents, which I admitted into evidence as the exhibits numbered below:

1. Notice of Hearing, dated June 26, 2012
2. The Commission's March 8, 2012 delegation letter to OAH
3. The Commission's August 31 and September 21 and 22, 2011 letters to Mr. Hellewell
4. July 18, 2012 printout on the Offices from the California Secretary of State's website
5. July 19, 2012 printout on Benjamin Diego Hellewell from the State Bar of California's website
- 5A. Documentation received by the Commission from the State Bar of California regarding Benjamin Diego Hellewell
6. September 26, 2011 Final Order to Cease and Desist
- 6A. April 14, 2011 Notice of Complaint, Order to Cease and Desist and Show Cause issued by the State of New Hampshire to the Respondents

7. The Commission's Investigation Report, submitted by Zenaida Dorsey on October 21, 2011 and approved by the Director of Enforcement on March 6, 2012
8. Documentation submitted by [REDACTED] in support of his complaint

The Respondents submitted no documents for admission into evidence.

### Testimony

CFR Investigator Zenaida Velez-Dorsey testified for the Commission and was the only witness who testified at the hearing.

### FINDINGS OF FACT

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

#### General Findings

1. On June 1, 2009, Mr. Hellewell was admitted to the State Bar of California. His license became inactive on February 3, 2011 and he became ineligible to practice law in California, effective June 21, 2011. On or about December 12, 2011, he was suspended from practicing law in that State.
2. On July 20, 2009, Mr. Hellewell registered the Offices with the State of California, but, sometime prior to July 13, 2012, that registration was cancelled.
3. From at least July 2009 to May 2010, Mr. Hellewell was associated with a loan modification company entitled National Financial Rescue Group (NFRG). Sometime during Mr. Hellewell's association with NFRG, it changed its name to American Forensic Loan Auditors (AFLA). Both NFRG and AFLA were operated, at least in part, out of the Offices and Mr. Hellewell was the majority or sole owner of those companies.<sup>7</sup>
4. The Respondents advertised and marketed to Maryland consumers that the Respondents could obtain loan modifications for homeowners on their residential mortgages.

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<sup>7</sup> It is unclear whether Mr. Hellewell was the sole owner of these companies. In the California Bar proceedings against Mr. Hellewell, he stipulated to his "association with" them and, on April 14, 2011, the Deputy Bank Commissioner of New Hampshire's Banking Department concluded that Mr. Hellewell owned 100% of AFLA.

5. At no relevant time were any of the Respondents licensed to engage in credit services business activities with Maryland consumers.

6. The Respondents were employed by numerous clients in default on their Maryland home mortgages to represent them in negotiating with their lenders to obtain modification of their mortgages, including at least three Maryland residents: [REDACTED] [REDACTED] [REDACTED] and [REDACTED] (the Maryland Consumers).

7. Between at least December 2009 and February, 2010, Maryland consumers entered into retainer agreements with the Respondents, engaging them to obtain loan modifications of the consumers' mortgages on their Maryland residences. The Respondents failed to obtain loan modifications or to provide legal services of any real value to those Maryland consumers despite obtaining unwarranted up-front fees in the amount of at least \$2,000.00 from [REDACTED] [REDACTED] \$2,000.00 in up-front fees from [REDACTED] and \$4,500.00 from [REDACTED] (\$2,000.00 of which was an up-front fee). None of the fees paid by Maryland consumers to the Respondents were ever refunded.

8. Between around December 2010 and February 2011, the Commission conducted an investigation of the Respondent's business practices.

9. As a result of the findings from the Commission's investigation, on April 11, 2011, the Commission issued and served upon the Respondents the Summary Order, requiring them to

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<sup>8</sup> At the hearing, the Commission presented detailed evidence and testimony only as to [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were the subject of an earlier investigation, which resulted in the Summary Order and Final Order, which refer only to the two of them and their payment of up front fees and failure to obtain any services as a result of such payments. The Commission also introduced into evidence as CFR Ex. # 5 a December 12, 2011 Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving the Actual Suspension of Mr. Hellewell from the State Bar Court of California. In that case, Mr. Hellewell stipulated to having been employed by a number of clients to represent them in negotiating loan modifications with their home mortgage lenders. [REDACTED] name was included in the list of clients, was designated as a Maryland resident, and was noted to have paid \$2,000.00 to Mr. Hellewell for such services. CFR Ex. # 5A, at 10-11.

cease and desist from engaging in credit services business activities with Maryland residents, homeowners and/or consumers, including directly or indirectly offering, contracting to provide or otherwise engaging in loan modification, loss mitigation or similar services related to Maryland residential real property. That Order referred specifically, by way of example, to the Respondents' MCSBA violations in dealings with [REDACTED] and [REDACTED]

10. The Respondents failed to request a hearing on the Summary Order.

11. On April 14, 2011, the Deputy Bank Commissioner of New Hampshire's Banking Department issued a Notice of Complaint, Order to Cease and Desist and Show Cause to Mr. Hellewell, the Offices and AFLA, which was similar to the Commission's April 11, 2011 Summary Order.

12. After an investigation of [REDACTED] complaint, the Commissioner issued its Final Order, requiring, among other things, that the Respondents pay penalties to the Commissioner and a monetary award to [REDACTED] and [REDACTED]

[REDACTED]

13. In or around early December 2009, [REDACTED] was approximately two months behind on the mortgage on his home, located at [REDACTED] in [REDACTED] Maryland, when he saw an advertisement for the Respondents' services.

14. On or about December 8, 2009, [REDACTED] paid B. Diego Hellewell an up-front fee of \$2,500.00 (by check dated December 16, 2009) for the Offices to represent his interests in negotiating a loan modification or obtaining another resolution, short of foreclosure, with [REDACTED] lender/servicer, Wells Fargo Bank.

15. In December 2009, [REDACTED] completed the Offices' Loan Modification Information Worksheet and signed numerous form documents provided to him by the Offices, including but not limited to the following:

- Mortgage Resolution Retainer Agreement
- Description of Services and Our Guaranty to the Customers, guaranteeing a “100% refund of the service fee” if the Offices did not obtain a loan modification or other resolution of the borrower’s mortgage, short of foreclosure
- Borrower’s Authorization Form, authorizing the Offices and their agents to communicate with the lender on behalf of the borrower
- Cease and Assist Letter, advising the borrower’s lender not to communicate with borrower, but only with the Offices, as the borrower’s representative

16. The Respondents directed [REDACTED] to have no contact with his lender because the Respondents allegedly were negotiating a loan modification on his behalf. Nevertheless, the Respondents were not communicating with [REDACTED] lender.

17. The Respondents failed to properly advise [REDACTED] as to all of the documents his lender would require, such as certified checks.

18. On or about February 3, 2010, [REDACTED] paid an additional \$2,000.00 to the Respondents.

19. After [REDACTED] made the second payment, the Respondents’ only response to [REDACTED] emails, letters or telephone calls was to ask him for additional documents or to misrepresent to him, initially, that his loan was being reviewed by his lender and, thereafter, that a loan modification had been obtained and that confirmatory documentation was forthcoming. Thereafter, the Respondents failed to respond to [REDACTED] numerous attempts to communicate with them.

20. In August 2011, [REDACTED] filed a complaint with the Commission, the facts of which were comparable to those reported by [REDACTED] and [REDACTED]

21. On August 31 and September 21 and 22, 2011, the Commission notified the Respondents at their various known addresses that it had received an additional complaint and requested them to contact Ms. Velez-Dorsey, within fifteen days of receipt, to discuss how they intended to resolve the complaint. The Respondents never responded to any of those letters.

22. The Respondents never negotiated any loan modification for [REDACTED] and, sometime after August 31, 2011, [REDACTED] lost his home to foreclosure.

23. The Respondents have failed to return all or any part of the \$4,500.00 [REDACTED] paid to Mr. Hellewell.

### DISCUSSION

The Commission bears the burden of proving that the Respondents violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996). For the reasons set forth below, I conclude that the Commission has met that burden in this case.

*The Unlicensed Respondents Engaged in Credit Services Business with [REDACTED] a Maryland Consumer, in violation of Section 14-1903 of the Commercial Law Article*

Section 14-1903 of the Commercial Law Article provides, in relevant part, as follows:

.....

(b) *Licenses – Required.* - 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.

(c) *Same – Issuance.* - A license required by this subtitle shall be issued by the Commissioner.

*See also* FI § 11-302(b).

Commercial Law Article § 14-1901(e)(2) defines a “credit services business” as follows:

(2) "Credit services business" means any person<sup>9</sup> 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:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;

(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.

CL § 14-1901(e)(1). An "extension of credit" means "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." *Id.* at (f).

In this case, ██████████ sought assistance with a past due home mortgage entered into and paid for personal, family or household purposes. He contacted the Respondents because they had advertised their ability and willingness to advise and assist Maryland consumers with loan modifications to resolve such problems. Though not every loan modification is the same, most, if not all, modifications involve obtaining an extension of credit in the form of a deferred payment of mortgage debt, either by increasing the length of the repayment period or by adding past due payments onto the end of the loan. Any modification plan offered to ██████████ would have been required to address mortgage payments he had already missed. The "right to defer debt" in the context of mortgage loan modifications understandably includes any result where the lender permits a consumer to miss or postpone a mortgage loan payment for any period of time. This brings the activities of persons charging fees for engaging in offering or providing loan

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<sup>9</sup> "Person" includes individuals as well as corporations and all forms of legal or commercial entities. CL § 14-1901(g).

modification services, such as the Respondents, within the ambit of the MCSBA.<sup>10</sup>

The Commission established that [REDACTED] (a Maryland consumer) wanted and reasonably believed that he had hired Mr. Hellewell and the Offices to obtain a loan modification for him. The Respondents agents went so far as to misrepresent to [REDACTED] that a loan modification had been agreed to by his lender and, by preventing any communication between [REDACTED] and his lender, precluded him from discovering before foreclosure that no loan modification had been obtained or even negotiated for him by the Respondents.

At no relevant time did any of the Respondents hold the license required under CL § 14-1903(b), but they, nevertheless, offered credit services to Maryland consumers, such as [REDACTED]. Although exemptions exist, CL § 14-1901(e)(3),<sup>11</sup> the Respondents bear the burden of proving entitlement to any exemption from the MCSBA's licensing requirements, CL § 14-1907(d), and none of them appeared at the hearing claiming any such exemption. Accordingly, I conclude that the Respondents engaged in credit services business with [REDACTED] without a license, in violation of Section 14-1903 of the Commercial Law Article.

***The Respondents Charged and Collected Unwarranted Fees from [REDACTED] in violation of Section 14-1902 of the Commercial Law Article***

Section 14-1902 of the Commercial Law Article 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.<sup>12</sup>

<sup>10</sup> Compare *Gomez v. Jackson Hewitt*, 198 Md. App. 87 (2011) (tax preparation business that assisted a customer in obtaining a refund anticipation loan, in the course of tax preparation services and without additional fees for such action, was not required to be licensed under the MCSBA). The Respondents here specifically contracted to negotiate deferring [REDACTED] mortgage debt. See CFR Ex. #8 and pp. 13-15 *infra*.

<sup>11</sup> The only exemption that arguably might have applied is contained in section 14-1901(e)(3)(vi) of the Commercial Law Article, which exempts certain individuals admitted to the Bar of the Court of Appeals of Maryland. Nevertheless, the record reflects that Mr. Hellewell was a member of the California rather than the Maryland Bar.

<sup>12</sup> This licensure requirement mirrors section 14-1903 of the Commercial Law Article. FI § 11-302(b).

(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. . . .

Without the required license and without performing the agreed-upon services, the

Respondents were barred from taking money for engaging in a credit services business with any Maryland consumer.. They had no license and were not exempt from the licensing requirements but, nonetheless, charged and collected \$4,500.00 from [REDACTED] including \$2,500.00 in up-front fees. In doing so, the Respondents took advantage of [REDACTED] at a time when he was financially stressed and when his money would have been better spent paying his mortgage lender. Consequently, I conclude that the Respondents violated section 14-1902 (1) and (6) of the Commercial Law Article.

**The Respondents Failed to Provide [REDACTED] an Information Statement Which Complied with Section 14-1904 and 1905 of the Commercial Law Article**

Section 14-1904(a) of the Commercial Law Article requires the following:

(a) *Duty to provide.* – Before 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 this subtitle. . . .

Section 14-1905 requires that the following information be included:

(a) . . . .

(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) . . . .

(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.

I have reviewed all the documentation provided to [REDACTED] by the Respondents, contained in CFR Ex. # 8. That documentation includes the following description of the services they supposedly were agreeing to perform for [REDACTED]:

Description of Services and  
Our Guaranteed to the Customers

We guarantee a 100% refund of the service fee. If you do not receive one [of] the following solutions from your lender using our custom financial statements and analysis:

- Loan Modification
- Forbearance Agreement
- Reinstatement
- Prepayment Plan
- Loan Restructure
- Short Sale Agreement Packaging & Monitoring
- Deed in Lieu of Foreclosure
- Negotiating the Principal Balance/Delinquent Debt
- Prolonging the Foreclosure Process
- Negotiate lease back from the bank

Other boilerplate documents provided to [REDACTED] by the Respondents contained the following additional information regarding what the Respondents represented they would provide to their customers:

**What The Law Office (sic) B. Diego Hellewell Will Do For You**

We bring our vast experience and expertise to secure you a real solution to a challenging and stressful situation. The following services will be provided by us. We will structure the following:

- Adjustment of current terms, eliminate or reduce any delinquent or missed payments.
- Reduction of current loan balance, reduced rate.
- Loan to be converted to a longer term. Fixed rate.
- Reduction of any current or future interest rate changes.
- Update status with credit agencies.
- Negotiate short sale when necessary.
- Negotiate Deed in Lieu when necessary.

....

## How Does It Work?

The Law Office (sic) B. The Diego Hellewell Specialists will review the alternatives available to allow you to keep your home. The key to avoiding foreclosure is action! Through open communication with our loss mitigation specialists, we can try to help you cure your mortgage default without foreclosure.

Although the documentation provided to [REDACTED] by the Respondents clearly required an up front fee, nowhere in that documentation did the Respondents discuss the additional fees that would be charged for their services nor did those documents make any reference to his right to file a complaint, the address of the Commissioner of Financial Regulation or the requirement that the Respondents be covered by a surety bond. Consequently, I conclude that the Respondents violated sections 14-1904(a) and 1905(a)(5) and (b) of the Commercial Law Article.

### *The Respondents Failed to Include Required Contractual Terms in their Agreement with [REDACTED] in Violation of Section 14-1906 of the Commercial Law Article*

Section 14-1906 of the Commercial Law Article requires the following:

(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.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to.....

(Name of seller)

At.....

(Address of seller)

.....

(Place of business)

Not later than midnight.....

(Date)

I hereby cancel this transaction.

.....

(Date)

(Buyer's signature)”

(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.

The previous section of this Discussion contains the only information provided to [REDACTED] regarding the services to be performed and the results purportedly to be achieved by the Respondents. None of the documentation signed by [REDACTED] contained any of the other information required by section 14-1906(a) or (b) of the Commercial Law Article. Therefore, I conclude that the Respondents violated those statutory requirements.

*The retainer agreement executed by [REDACTED] is void and unenforceable.*

This Discussion has already highlighted many of the ways that the retainer agreements between the Respondents and [REDACTED] failed to comply with the requirements of the MCSBA. "Any contract for services from a credit services business that does not comply with the applicable provisions of [that subtitle] shall be void and unenforceable as contrary to the public policy of this State," CL § 14-1907(b), as is any contract that [REDACTED] entered into with any of the Respondents.

*The Respondents breached their obligations arising under their contract with [REDACTED] in Violation of Section 14-1907(a) of the Commercial Law Article*

Section 14-1907(a), provides that 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 the MCSBA. The Respondents unquestionably breached their agreement with [REDACTED] by failing to negotiate with his mortgage lender, helping him to avoid foreclosure or refunding the fees he paid to them. Consequently, I conclude that the Respondents violated Section 14-1907(a) of the Commercial Law Article.

*The Respondents made fraudulent and misleading statements to [REDACTED], in violation of 14-1902(4) and (5) of the Commercial Law Article.*

Section 14-1902(4) and (5) provide 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:

....  
(4) Make or use false or misleading representations in the offer or sale of a credit service business; [or]

(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 a credit services business. . . .

The Respondents initially misrepresented to [REDACTED] that his loan was being reviewed by his lender and, thereafter, that a loan modification had been obtained and that confirmatory documentation was forthcoming. [REDACTED] clearly relied upon those misrepresentations by taking no independent action to avoid the foreclosure on his home. Accordingly, I conclude that the Respondents made fraudulent and misleading statements to [REDACTED] in violation of 14-1902(4) and (5) of the Commercial Law Article.

*Appropriate sanctions*

Section 14-1911 of the Commercial Law Article addresses complaints under the MCSBA, such as that filed by [REDACTED] in this case. The statute authorized the Commission to enter into cease and desist orders like the Summary and Final Order it issued against the Respondents. *See* CL § 14-1911(f). As such orders have already been issued and served and the Respondents' dealings with [REDACTED] preceded their issuance, no further cease and desist order is necessary. Nevertheless, should the Commission choose to amend its Final Order to include [REDACTED] as an additional Maryland consumer improperly dealt with by the Respondents, the findings and conclusions in this case would certainly justify such action.

Failure to comply with the MCSBA subjects the Respondents to sanctions as set forth under section 14-1912 of the Commercial Law Article, 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.

Although the extent of the sanctions for MCSBA violators is dependent on whether that violator acted willfully or negligently, the Maryland General Assembly has not defined the terms "willful" and "negligent" for purposes of the above statute.<sup>13</sup> The lack of a statute-specific definition of "willful" is particularly unfortunate, because Maryland has recognized a variety of definitions for the term "willful," as Judge Wilner's survey in *Deibler v. State*, 365 Md. 185 (2001) makes clear. In *Deibler*, the Court of Appeals was considering the meaning of the term "willful" in the context of Maryland's wiretap statute. The lengthy *Deibler* discussion was

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<sup>13</sup> Absent a definition in the statute itself, legislative history must be examined to see what light it might shed on the lawmakers' intent. The statute was new in 1987. Nothing in the available legislative history suggests how the terms "willful" and "negligent" were to be distinguished.

The section was subsequently amended in 1990. Prior to the 1990 amendments, the statute lacked what is now CL § 14-1912 (b)(2), providing that the CFR can order a respondent to pay "a monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner." Also, prior to the 1990 amendments, although it was a misdemeanor to violate any provision of the subtitle, it was fineable only. Section 14-1915 of the Commercial Law Article was amended in 1990 to add the possibility of three years incarceration in lieu of or in addition to a \$5,000.00 criminal fine and civil penalties. Contemporaneous documents explain that the amendments were necessary to assure broader compliance with the MCSBA, but do not address the willful/negligent dichotomy. Bill Analysis of 1990 Md. Laws pg. 2842, (Ch. 669) H.B. 1242. The Floor Report repeated that same reason for the necessity of the increased penalties.

subsequently summarized by the Court of Special Appeals this way:

‘[W]illful’ has received four different constructions from the courts. The first, and most restrictive, is that an act is willful only if it is done with a bad purpose or evil motive - deliberately to violate the law. A second interpretation considers an act to be willful ‘if it is done with the intent to commit the act and with a knowledge that the act is in violation of the law.’ That construction does not require that the defendant possess a sinister motivation, but, like the first interpretation, it does require knowledge that the act is unlawful. The third interpretation ‘requires only that the act be committed voluntarily and intentionally as opposed to one that is committed through inadvertence, accident, or ordinary negligence.’ Under that approach, ‘[a]s long as there is an intent to commit the act, there can be a finding of willfulness even though the actor was consciously attempting to comply with the law and was acting with the good faith belief that the action was lawful.’ What is required is ‘an objective intent to commit the act but not necessarily a knowledge that the act will bring about the illegal result.’ Finally ... some courts have gone so far as to find an act willful even though it was not committed intentionally, but through oversight, inadvertence, or negligence.”

[*Deibler*] at 192-93, 776 A.2d at 661 (quoting S. Brogan, *An Analysis of the Term “Willful” in Federal Criminal Statutes*, 51 *Notre Dame Lawyer* 786 (1976)). Judge Wilner noted that in the majority of applications, the third definition was accepted, *i.e.*, that the act be committed voluntarily and intentionally, not accidentally.

*Attorney Grievance Comm'n of Maryland v. Tayback*, 378 Md. 578, 589 (2003). *Deibler* also discussed the propriety of applying the favored definition to civil actions related to the criminal statute and found it appropriate to define willfulness as voluntary and intentional action. *Deibler*, 365 Md. at 199.

Maryland Courts have also applied this definition of willfulness in the context of administrative proceedings. In *Bereano v. State Ethics Comm'n*, 174 Md.App. 146 (2007), *judgment reversed by Bereano v. State Ethics Comm'n*, 403 Md. 716 (2008),<sup>14</sup> the Court of Special Appeals was considering the definition of willful in the context of a statute that permitted the Ethics Commission to impose certain sanctions only when there had been action or inaction that “knowingly and willfully” violated a related Subtitle of the State Government Article. Mr.

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<sup>14</sup> The Court of Appeals reversed the decision on other grounds and did not address the definition of “willful.”

Bereano argued that the inclusion of the phrase “knowingly and willfully” in the statute imposed a requirement of scienter. In other words, his position was that it was not enough that he entered into a contract that may have violated Maryland law – he argued that the Ethics Commission had to prove that in entering into the contract he deliberately intended to violate State Ethics laws before it could issue a sanction. The Court cited *Diebler* and *Tayback* on its way to holding that the conduct required to justify a sanction was the intentional and voluntary entering into a contract to provide lobbying services. It was not required that the respondent in that case intend to violate law or know that Maryland law was violated by entering into the contract. *Bereano*, 174 Md. App. at 177.

The conduct of the Respondents in this case falls within Maryland’s definition of “willful.” That is, the Respondent deliberately entered into a contract with [REDACTED]. The Commission is not required to prove that when entering into the contracts the Respondents knew or intended that Maryland law would be violated. Accordingly, the Respondents are subject to the penalties found in CL § 14-1912(a), rather than those found in § 14-1912(b).

The Commission has requested that the Respondents be required to pay a monetary award equal to four times the total amount collected by the Respondents from [REDACTED] including the \$4,500.00 he paid to them, pursuant to CL § 14-1912(a)(1), *plus* a monetary award equal to three times the total amount collected from him, pursuant to CL § 14-1912(a)(1). I agree and therefore recommend that the Commission order an \$18,000.00 monetary award (\$4500.00 x 4) to be paid by the Respondents to [REDACTED].

### **Joint Liability**

In *Consumer Protection Division v. Morgan*, 387 Md. 125 (2005), the Maryland Court of Appeals looked to Federal Trade Commission cases dealing with unfair or deceptive trade practices in deciding a case under the Consumer Protection Act (the CPA). Although not

directly on point, the reasoning is persuasive. In *Morgan*, the Court adopted a test found in *Federal Trade Commission v. Amy Travel Service, Inc.*, 875 F. 2d 564, 573-74 (7<sup>th</sup> Cir. 1989), requiring that officers of corporations who participate directly in or have the authority to control the corporation's actions be held jointly and severally liable. *Morgan*, 387 Md. at 175, citing *Amy Travel*, 875 F.2d at 573-574. This standard is satisfied if the officers "knew or should have known" of the practices. *Amy Travel*, 875 F.2d at 573 - 74. The Court further stated "the degree of participation in business affairs is probative of knowledge." *Id.* at 574. The Court therefore held that, in actions under the CPA, individuals and the companies they own may be held jointly and severally liable for restitution even though the CPA does not expressly authorize joint and several liability. Because the Office, NFRG and AFLA were clearly operated under the control and direction of Mr. Hellewell, joint and several liable between him and those companies is clearly justified in this case.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Respondents 1) engaged in credit services business activities without first obtaining a license, in violation of CL § 14-1903(b); 2) received money or other valuable consideration, including up-front fees from [REDACTED] while engaged in those activities, in violation of CL §§ 14-1902(1) and 1902(6); 3) failed to provide [REDACTED] with required information statements, in violation of 14-1904(a) and 1905(a)(5) and (b); 4) failed to include required terms in their agreements with [REDACTED], in violation of CL § 14-1906(a) and 5) (b); breached the obligations arising under their contracts with [REDACTED], in violation of CL § 14-1907(a) and 6) engaged in misrepresentations and deceptive practices in violation of sections 14-1902(4) and (5) of the Commercial Law Article. I further conclude that any contract between [REDACTED] and any of the Respondents is void and unenforceable and that the Respondents' violations support the entry

of an order against all the Respondents, jointly and severally, for a monetary award in the amount of \$18,000.00. CL § 14-1907(b) and 1912; *Deibler v. State*, 365 Md. 185 (2001); *Bereano v. State Ethics Comm'n*, 174 Md. App. 146 (2007), judgment reversed on other grounds by *Bereano v. State Ethics Comm'n*, 403 Md. 716 (2008).

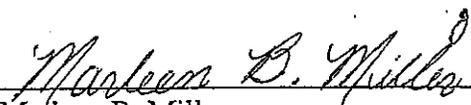
**ORDER**

I **RECOMMEND** that the Commission **ORDER** as follows:

1. The Respondents violated sections 14-1902(1),(4),(5) and (6), 14-1903(b), 14-, 14-1904(a), 14-1905(a)(5) and (b), 14-1906(a) and (b), and 14-1907(a) of the Commercial Law Article.
2. Any contract entered into by [REDACTED] with the Respondents, B. Diego Hellewell, The Law Offices of B. Diego Hellewell, National Financial Rescue Group or American Forensic Loan Auditors is void and unenforceable.
3. The Respondents shall immediately **CEASE AND DESIST** from engaging in any further credit services business activities with Maryland residents and shall immediately **CEASE AND DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland.
4. The Respondents, B. Diego Hellewell, The Law Offices of B. Diego Hellewell, National Financial Rescue Group and American Forensic Loan Auditors shall jointly and severally pay a monetary award in the amount of \$18,000.00 to the Complainant, [REDACTED].
5. The Commission's records and publications shall reflect this decision.

October 10, 2012  
Date Decision Mailed

MBM/bp  
# 137411

  
Marleen B. Miller  
Administrative Law Judge

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

B. DIEGO HELLEWELL

and

THE LAW OFFICES OF B. DIEGO  
HELLEWELL, dba NATIONAL  
FINANCIAL RESCUE GROUP AND  
AMERICAN FORENSIC LOAN  
AUDITORS

RESPONDENTS

\* \* \* \* \*

FILE EXHIBIT LIST

Exhibits

The Commission presented the following documents, which I admitted into evidence as the exhibits numbered below:

1. Notice of Hearing, dated June 26, 2012
2. The Commission's March 8, 2012 delegation letter to OAH
3. The Commission's August 31 and September 21 and 22, 2011 letters to Mr. Hellewell
4. July 18, 2012 printout on the Offices from the California Secretary of State's website
5. July 19, 2012 printout on Benjamin Diego Hellewell from the State Bar of California's website

\* BEFORE MARLEEN B. MILLER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH NO.: DLR-CFR-76A-12-14125  
\* CFR FILE NO.: FY2012-058  
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- 5A. Documentation received by the Commission from the State Bar of California regarding Benjamin Diego Hellewell
6. September 26, 2011 Final Order to Cease and Desist
- 6A April 14, 2011 Notice of Complaint, Order to Cease and Desist and Show Cause issued by the State of New Hampshire to the Respondents
7. The Commission's Investigation Report, submitted by Zenaida Dorsey on October 21, 2011 and approved by the Director of Enforcement on March 6, 2012
8. Documentation submitted by [REDACTED] in support of his complaint