

COMMISSIONER OF * BEFORE THE
FINANCIAL REGULATION * COMMISSIONER OF
V. * FINANCIAL REGULATION
FEDERAL LOAN * CFR FILE NO.: CFR-FY2011-236
MODIFICATION LAW * OAH FILE NO.: DLR-CFR-76A-11-24375
CENTER, ET AL *
RESPONDENTS *
* * * * *

PROPOSED ORDER

The Proposed Decision (the "Proposed Decision") of the Administrative Law Judge, issued on December 27, 2011 in the above captioned case, having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 17th day of February, 2012 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

A handwritten signature in black ink, appearing to read 'Mark Kaufman', written over a horizontal line.

Mark Kaufman
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
v.
FEDERAL LOAN MODIFICATION LAW
CENTER et al.,
RESPONDENTS

* BEFORE T. AUSTIN MURPHY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No: DLR-CFR-76A-11-24375
* CFR FILE No: CFR-FY2011-236

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On June 27, 2011, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (DLLR), issued a Final Order to Cease and Desist (Final Order) to Federal Loan Modification Law Center, LLP; American Law Firm Management, Inc. and Anz & Associates (the Respondents). The Final Order followed a Summary Order that had been issued by the Deputy Commissioner on November 3, 2010; that Summary Order stated that it would be entered as a Final Order if the Respondents did not request a hearing within 15 days of receipt of the Summary Order. No hearing was requested, and thus on June 27, 2011, the Final Order was issued.

In April 2009, the CFR had received an additional complaint from a Maryland consumer. This complaint was not included in either the Summary Order or the Final Order. On June 14, 2011, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing

and delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

I held a hearing on August 24, 2011, and September 29, 2011, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (2011). Jedd Bellman, Assistant Attorney General, Office of the Attorney General, represented the CFR. Neither the Respondents, nor anyone authorized to represent any of them, appeared at the hearing.¹

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

ISSUES

1. Did the Respondents engage in credit services business activities with a Maryland consumer without first being licensed under the Maryland Credit Services Businesses Act (MCSBA) in violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article of the Maryland Annotated Code and sections 11-302(b) and 11-303 of the Financial Institutions Article of the Maryland Annotated Code?
2. Did the Respondents collect up-front fees prior to fully and completely performing all services in violation of section 14-1902(6) of the Commercial Law Article of the Maryland Annotated Code?
3. If the Respondents violated any of the sections cited above, what is/are the appropriate sanction(s)?

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 July 11, 2011 Notice of Hearing
- CFR #2 June 14, 2011 Letter of delegation to the Hon. Jana Corn Burch, Executive Administrative Law Judge, from Anne Balcer Norton, Deputy Commissioner
- CFR #3 Regular and certified mail copies of January 26, 2011 Notice of additional complaints and attached Final Order to Cease and Desist
- CFR #4 June 27, 2011 Final Order to Cease and Desist
- CFR #5 May 18, 2011 Investigator's Referral Memo
- CFR #6 April 1, 2010 Complaint of [REDACTED]
- CFR #7 January 20, 2011 Loan Modification Questionnaire

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

Testimony

Vernon Davis testified on behalf of the CFR. No testimony was presented on behalf of the Respondents.

FINDINGS OF FACT

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

1. In December 2008, [REDACTED] (the Complainant) paid \$3,495.00 to the Respondents to retain the Respondents to assist him in avoiding foreclosure by means of a loan modification on his home.
2. The Respondents contacted the Complainant's mortgage lender, but when told they needed power of attorney to act on the Complainant's behalf they did not further pursue a loan modification or further contact the Complainant.

3. The Complainant had provided the Respondents with written documentation of power of attorney prior to the Respondents' contact with the Complainant's mortgage lender.
4. The Respondents did nothing further to assist the Complainant in avoiding foreclosure or obtaining a loan modification.
5. The Complainant was unsuccessful in his efforts to contact the Respondents or to obtain a refund of the money he had paid to the Respondents.
6. Eventually, the Complainant lost his home to foreclosure.
7. In April 2009, the Complainant filed a complaint with the CFR.
8. The CFR conducted an investigation into the credit services business activities of Nabile John Anz, doing business as: Federal Loan Modification Law Center, LLP; FLM Law Center, LLP; FLM Law Center; Federal Loan Modification, LLP; Federal Loan Modification; American Law Firm Management, Inc.; and Anz & Associates. The investigation was based on a number of complaints by Maryland consumers.
9. On November 3, 2010, the Deputy Commissioner issued a Summary Order to Cease and Desist against the Respondents. The Summary Order notified the Respondents that they were entitled to a hearing before the CFR to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner, and that the Summary Order would be entered as a final order if the Respondents did not request a hearing within 15 days of the receipt of the Summary Order.
10. The Summary Order was properly served on the Respondents via First Class U.S. Mail and Certified U.S. Mail.
11. The Respondents failed to request a hearing on the Summary Order.
12. The CFR issued a Final Cease and Desist Order against the Respondents on July 27, 2011. That Final Order determined that, among other things, the

Respondents were subject to the Maryland Credit Services Businesses Act (MCSBA) and had violated the MCSBA by engaging in credit services business activities without first being licensed under the MCSBA. In addition, the CFR found that the Respondents had engaged in a number of activities that were prohibited under the MCSBA and imposed both fines and restitution.

13. The Complainant's complaint was not included in either the Summary Order or the Final Order.
14. On January 26, 2011, Zenaida Velez-Dorsey, one of CFR's investigators, sent a letter to the Respondents regarding the Complainant's complaint, to which the Respondents did not respond. (CFR #3.) The letter was addressed to Mr. Nabile John Anz and sent to the following mailing addresses:

Federal Loan Modification Law Center
6420 Wilshire Blvd. Suite 1700
Los Angeles, CA 90048

9460 Balboa Blvd.
Northridge, CA 91325

American Law Firm Management, Inc. &
Anz & Associates
615 Mission Ave.
Oceanside, CA 92054

American Law Firm Management, Inc.
& Anz & Associates, A Professional Law Corp.
2110 S. Coastal Hwy., Ste. K
Oceanside, CA 92054

15. Only the letter sent to the Mission Avenue address was received; the letters sent to the other addresses were all returned by the United States Postal Service as undeliverable. The receipt for the letter sent to the Mission Avenue address noted that the delivery address was P.O. Box 546, Bonsall CA 92003.

DISCUSSION

A. The Respondents' Failure to Appear

The Respondents consist of several corporations and LLCs, and an individual. This hearing was scheduled for August 24, 2011. On that date, Mr. Bellman appeared for the hearing on behalf of the CFR, but neither the Respondents nor anyone representing them appeared. Mr. Bellman noted that notice of the hearing was sent to multiple addresses for the Respondents, but that no notice had been sent to the P.O. Box in Bonsall, CA. Mr. Bellman explained that DLLR's January 2011 notice to the Respondents of the complaint had also been sent to multiple addresses, but the only one that was successfully delivered was delivered to the Bonsall, CA, P.O. Box. Accordingly, I continued the proceeding to allow notice of the hearing to be sent to the Bonsall, CA, P.O. Box, as well as an additional address.

On September 29, 2011, I reconvened the hearing on this matter. Again, neither the Respondents nor anyone representing them appeared for the hearing. I conclude that the Respondents failed to appear for the hearing despite adequate notice. The OAH mailed copies of the Notice of Hearing to numerous addresses for the Respondents, including the most current address on file with DLLR. Further, the OAH issued an additional Notice of Hearing on September 14, 2011, and mailed it via certified mail to the Bonsall, CA, P.O. Box. The green Return Receipt card was signed as received, though the signature is difficult to read. No request to the OAH for a postponement of the hearing was made by or on behalf of any Respondents.

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

B. Applicable Law

The CFR has the burden to prove by a preponderance of the evidence that the Respondents violated the statutes and regulation at issue. *See* Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

Mr. Bellman asserted on behalf of the CFR that, consistent with the findings of the CFR as set out in the Final Order, the Respondents are subject to the MCSBA and are not licensed to engage in credit services business activities or exempt from the licensing requirement. Mr. Bellman argued that the Respondents nonetheless engaged in credit services business activities with regard to the Complainant, a Maryland consumer. As evidence, Mr. Bellman presented the testimony of the Complainant, who testified that he paid the Respondents \$3,495.00 in December 2008 to obtain a loan modification for him, as he was three months behind on his mortgage payments.

The Complainant further testified that when he spoke with his lender about the loan modification, the lender explained that it had been unable to work with the Respondents because they lacked power of attorney to act on the Complainant's behalf. However, the Complainant testified that he had repeatedly provided written documentation of his granting power of attorney to the Respondents. The Respondents did not provide the lender with the documentation and in fact did not provide to the lender any of the documents which would have been required for a loan modification, and which the Complainant submitted to the Respondents, to the lender. The Complainant did not receive a loan modification and later lost his home to foreclosure.

Based on [REDACTED] testimony, Mr. Bellman argued that the Respondents were in violation of sections 14-1902(1) and (6) of the Commercial Law Article of the Maryland Annotated Code (Supp. 2011), which state that:

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;
- (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;

First, I find that the Respondents are subject to the MCSBA and its licensing requirement, as determined in the Final Order issued by the CFR. The MCSBA defines “credit services business” at section 14-1901(e) of the Commercial Law Article, which provides in part:

- (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: (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.

Providing loan modification services would include obtaining extensions of credit for consumers and may involve improving a consumer’s credit record, history, or rating. Accordingly, the Respondents have engaged in credit services business activities with regard to the Complainant. The Respondents are thus subject to the MCSBA and its licensing requirement under section 14-1902(1) of the Commercial Law Article. (See also section 14-1903(b) of the Commercial Law Article and sections 11-302(b) and 11-303 of the Financial Institutions Article.)

Second, I find that the CFR has established that the Respondents are in violation of section 14-1902(1) and (6) of the Commercial Law Article. As determined by the Final Order, the Respondents are not licensed to provide the services associated with loan modifications. The Complainant credibly testified that he paid the Respondents the sum of \$3,495.00 for a loan modification, but that the Respondents failed to submit verification of power of attorney to his lender so that a loan modification could be worked out. The Complainant had provided the Respondents more than once with written documentation of power of attorney. In receiving money from the Complainant without a license, the Respondents violated section 14-1902(1) of the Commercial Law Article. And in receiving that money upfront, prior to the full and complete performance of the services that the Respondents had agreed to perform on behalf of the Complainant, the Respondents violated 14-1902(6) of the Commercial Law Article.

The CFR's power to impose sanctions, subject to notice and a right to a hearing, is contained in part in section 14-1912 of the Commercial Law Article, which allows an award to the Complainant of the amount of actual damage sustained by the consumer and a monetary award equal to three times the total amount collected from the consumer when a credit services business has willfully failed to comply with any requirements under that subtitle. The willfulness of the noncompliance is demonstrated by the Respondents' failure to respond to the Complainant's inquiries and to his eventual request for a refund, as well as the Respondents' failure to follow through on communications with the mortgage lender despite the Complainant's repeated submission of written power of attorney. In this case, the actual damages are \$3,495.00, which was the amount paid by the Complainant, so for purposes of the award, three times that amount, or \$10,485.00, is added, for a total of \$13,980.00 awarded to the Complainant. Further, pursuant to section 2-115 of the Financial Services Article, a \$1,000.00 fine to the CFR for the

unlicensed activity in violation of the MCBSA and \$1,000.00 for the charging of an up-front fee is appropriate.

CONCLUSIONS OF LAW

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

I further conclude that the Respondents engaged in credit services business activities without first obtaining a license from the CFR in violation of section 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article;

I further conclude that the Respondents engaged in credit services business activities with regard to the Complainant without first obtaining a license required by section 14-1903(b) of the Commercial Law Article and section 11-302(b) of the Financial Institutions Article;

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

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

I further conclude that the Respondents, having violated the sections cited above, are subject to a fine of \$2,000.00 and payment to the Complainant of damages in the amount of \$13,980.00 as an appropriate sanction.

RECOMMENDED ORDER

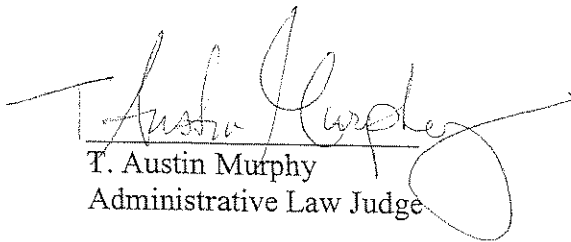
I **RECOMMEND** that the Maryland Commissioner of Financial Regulation:

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

ORDER that the Respondents pay to [REDACTED] the sum of \$13,980.00;

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

December 27, 2011
Date Decision Issued


T. Austin Murphy
Administrative Law Judge

TAM/fe
Doc# 128448

MARYLAND COMMISSIONER OF
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FILE EXHIBIT LIST

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