

IN THE MATTER OF:

ALEX MARTINEZ & PARTNERS, INC.,

**LUIS ALEJANDRO MARTINEZ a/k/a
ALEX MARTINEZ, and**

**JAMES BOWEN THOMAS a/k/a JIM
THOMAS,**

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2011-138

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the office of the Commissioner of Financial Regulation (the "Commissioner"), under the supervision of the Deputy Commissioner of Financial Regulation (the "Deputy Commissioner"), conducted an investigation into the credit services business activities of Alex Martinez & Partners, Inc. ("Respondent Alex Martinez & Partners"), Luis Alejandro Martinez a/k/a Alex Martinez ("Respondent Martinez"), and James Bowen Thomas a/k/a Jim Thomas ("Respondent Thomas," and, together with Respondent Alex Martinez & Partners and Respondent Martinez, the "Respondents"); and

WHEREAS, as a result of that investigation, the Deputy Commissioner found evidence to support that Respondents have engaged in acts or practices constituting a violation of a law over which the Commissioner has jurisdiction, namely that Respondents have violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title 14, Subtitle 19 (the Maryland Credit Services Businesses Act,

hereinafter "MCSBA"), and Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist (the "Summary Order") against Respondents on February 7, 2011, after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents cease and desist from engaging in credit services business activities with Maryland residents, homeowners and/or consumers (hereinafter "Maryland consumers"), including directly or indirectly offering, contracting to provide, or otherwise engaging in, loan modification, loss mitigation, or similar services related to residential real property (hereinafter "loan modification services"); and

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

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

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

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

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

(1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(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.

Additionally, CL § 14-1901(f) defines "*extension of credit*" as "the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes."

2. Unless otherwise exempt, pursuant to CL §§ 14-1901(e), 14-1903(b), and 14-1901(f), persons engaged in the business of offering or providing residential loan modification services, which include offering or providing extensions of credit to consumers, fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

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

Order: Respondent Alex Martinez & Partners' documents for providing loan modification services to [REDACTED] and [REDACTED] (the "Consumers"); communications between Respondents and an investigator from the office of the Commissioner; statements by Ms. Cruz-Martinez who, with Jose A. Martinez, had entered into a loan modification agreement with Respondent Martinez but for whom Respondent Martinez failed to obtain or attempt to obtain a loan modification; and the Commissioner's licensing records. More particularly, this evidence supports the following findings:

a. Respondent Alex Martinez & Partners is an active Maryland corporation, formed in 2006 by Respondent Martinez, and operating out of Rockville, Maryland. Through Respondent Alex Martinez & Partners, Respondent Martinez has engaged in business activities with Maryland consumers involving Maryland residential real property, which included obtaining extensions of credit as defined by the MCSBA. Respondent Martinez entered into an agreement to provide loan modification services, which included obtaining extensions of credit as defined by the MCSBA, for the Consumers on their residential mortgage loan.

b. Respondent Thomas has engaged in business activities with Maryland consumers involving Maryland residential real property, which included obtaining extensions of credit as defined by the MCSBA, for Maryland consumers on their residential mortgage loans.

c. In September 2010, the Consumers entered into a loan modification agreement with Respondent Martinez. The Consumers paid \$500 in up-front fees to Respondent Martinez in exchange for which Respondent Martinez represented that he would be able to obtain a loan modification for them. Although Respondent Martinez collected

\$500 from the Consumers in up-front fees, Respondent Martinez never obtained a loan modification for them. Further, the Consumers eventually requested a refund of the up-front fees. Initially, Respondent Martinez refused to provide a refund to the Consumers. At some time after the investigation of the matter by the office of the Commissioner, Respondent paid a full refund to the Consumers.

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

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order of February 7, 2011, or in the present Final Order, have the Respondents been licensed by the Commissioner under the MCSBA.

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

7. Additionally, by collecting an up-front fee prior to fully and completely performing all services on behalf of the Consumers, Respondent Martinez violated CL § 14-1902(6) of the MCSBA ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . (6) [c]harge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer").

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

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

§§ 14-1904 and 14-1905; and he failed to include all of the requisite contractual terms in their agreement with the Consumers as required under CL § 14-1906.

10. By failing to obtain a beneficial loan modification for the Consumers, which Respondent Martinez had agreed to provide, Respondent Martinez breached his contract with the Consumers and breached the obligations arising under that contract. Such breach constitutes a *per se* violation of the MCSBA pursuant to CL § 14-1907(a) ("[a]ny breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle").

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

12. 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.

14. Respondents engaged, directly or indirectly, in acts, practices, or other activities which constituted negligent noncompliance with the MCSBA under CL § 14-1912(b). Respondent Martinez has already provided restitution to the Consumers. I do not find that Respondents conduct willful.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant CL §§ 14-1902, 14-1907, 14-1912, and FI § 2-115(b), it is by the Maryland Commissioner of Financial Regulation, hereby

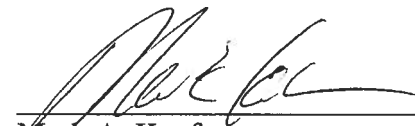
ORDERED that the Summary Order issued by the Deputy Commissioner against Respondents on February 7, 2011, is entered as a final order of the Commissioner as modified herein, and that Respondents shall permanently **CEASE** and **DESIST** from engaging in credit services business activities with Maryland consumers, including contracting to provide, or otherwise engaging in, loan modification, loss mitigation, or similar services with Maryland consumers; and it is further

ORDERED that, pursuant to FI § 2-115(b), and upon careful consideration of (i) the seriousness of the Respondents' violations; (ii) the good faith of Respondents in making

restitution to the Consumers, (iii) the isolated instance of Respondents' violations; and (iv) the deleterious effect of Respondents' violations on the public and on the credit services businesses and mortgage industries, no financial penalties shall be imposed; and it is further,

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

5/17/12
Date



Mark A. Kaufman
Commissioner of Financial Regulation