

IN THE MATTER OF:
NATIONAL FREEDOM GROUP
and
PHILLIP WOODS,
Respondents.

BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION
Case No.: CFR-FY2013-058

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”), undertook an investigation into the credit services business activities of National Freedom Group (“National”) and Phillip Woods (“Woods”), (together, “Respondents”); and

WHEREAS, as a result of that investigation, the Deputy Commissioner finds grounds to allege that Respondents 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”), Financial Institutions Article (“FI”), Title 11, Subtitles 2 and 3, and the Commissioner finds that action under FI §2-115 is appropriate.

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist (the “Summary Order”) against Respondents on August 22, 2013, 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 CL § 14-1911, 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. CL § 14-1903(a) addresses the scope of credit services covered under the 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.

3. 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.

4. 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,”

5. CL § 14-1905 sets forth 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 the 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.

6. CL § 14-1906 sets forth the following requirements for contracts between credit services businesses and consumers:

(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 from 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 place of business address of the credit services business and the name and address of its agent in the 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.

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

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

8. 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.

9. Unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1903(b), persons engaged in the business of offering or providing short sale, foreclosure mitigation, forbearance or loss mitigation services and/or credit repair 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.

10. The following relevant and credible evidence, obtained pursuant to the Deputy Commissioner’s investigation, was considered in the issuance of the Summary Order: Communications between Respondents and the Commissioner; communications between Respondents and Maryland consumers; statements by Maryland consumers who had entered into loan modification agreements with Respondents; online and web information; and the Commissioner’s licensing records. More particularly, at all times prior to the issuance of the Summary Order, the evidence adduced supports the following findings:

a. National is a purported business entity operating out of offices located in Irvine, California engaged in business activities with Maryland Consumers, involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

b. Woods engaged in business activities with Maryland Consumers, involving Maryland residential real property and is the owner, director, officer, manager, employee and/or agent of National.

c. Respondents offered, contacted to provide, or otherwise engaged in direct or indirect loan modification services with Maryland Consumers. More specifically, Respondents either directly or indirectly entered into contracts or agreements with Maryland Consumers to provide such services, and/or acted as third party vendors/subcontractors directly involved in the loan modification process.

11. In October 2011, [REDACTED] (“Consumer A”), entered into a loan modification agreement with Respondents. Respondents represented that they would be able to obtain a loan modification for Consumer A. Respondents collected personal information from Consumer A, including information regarding Consumer A’s mortgage, bank accounts, income, social security number and other personal financial information. Respondents demanded Consumer A pay them \$1,700 in up-front fees prior to negotiating the loan modification on Consumer A’s behalf. Consumer A refused to pay this up-front fee, at which point Respondents informed Consumer A that this would result in her file being closed out, and her account being “red flagged” by her loan servicer. Respondents claimed that this “red flag” could prevent Consumer A from getting a loan modification or additional help for another year. Consumer A still refused to pay the up-front fee, and demanded that Respondents either return or destroy the personal and financial information she had provided them. Consumer A received no response from Respondents.

12. On or about July 25, 2012, Financial Regulation Examiner L.M. Moragne El faxed a letter to Respondents explaining that a Maryland Credit Services Business License was required in order to conduct a loan modification business in Maryland. There has been no response to, or acknowledgment of, Examiner Moragne El's letter.

13. On June 28, 2013, Financial Regulation Investigator David Schickner sent a letter to Respondents via certified mail, return receipt requested. The letter again informed Respondents that it was illegal to offer loan modifications to Maryland residents without a license, and required a response from Respondents by July 15, 2013. The letter was signed for on July 5, 2013, but Respondents have not contacted Investigator Schickner, or responded to the certified letter in anyway.

14. 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(b) (“[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”).

15. According to the Commissioner’s records, at no time relevant to the facts set forth in the Summary Order of August 22, 2013 have the Respondents been licensed by the Commissioner under the MCSBA.

16. Respondents have engaged in credit services business activities without having the requisite license by representing that they could provide loan modification services as described above. 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.

17. Respondents made or used false or misleading representations in their sale of services of Maryland consumers in violation of CL § 14-1902(4). For example, Respondents represented that they would be able to obtain a beneficial loan modification for a Maryland homeowner when in fact Respondents failed to obtain such beneficial modification for the Maryland homeowner. Respondents also violated CL 14-1902(5) when they claimed that Consumer A’s refusal to pay up-front fees would result in Consumer A’s account being “red-flagged”, telling her that this might mean she could not “get any help for another year.”

18. Respondents further violated the MSCBA by failing to obtain the requisite surety bonds, in violation of CL §§14-1908 and 14-1909; and they failed to include all of the requisite contractual terms in their agreements with Consumer A as required under CL §14-1906.

19. Respondents also violated the MCSBA by: the failure to clearly and conspicuously state their license number as required by the MCSBA (or their exemption) in their loan modification advertisements, as required by CL § 14-1903.1; failure to provide consumers

with the requisite information statements required by CL §§ 14-1904 and 14-1905; and failure to include all of the requisite contractual terms in the agreement with consumers required by CL § 14-1906.

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

21. Additionally, by failing to obtain a beneficial loan modification or other form of forbearance agreement for Consumer A which Respondents had agreed to provide, Respondents breached their contract with Consumer A and/or breached the obligations arising under those contractual agreements. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

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 to CL §§ 14-1911, 14-1907, 14-1912, and FI § 2-115 it is by the Maryland Commissioner of Financial Regulation, hereby:

ORDERED that the Summary Order issued by the Deputy Commissioner against Respondents on August 22, 2013, is entered as a final order of the Commissioner and that Respondents shall permanently **CEASE** and **DESIST** from engaging in any further credit services business activities with Maryland consumers, including contracting to provide, or

otherwise engaging in loan modification services or similar services with Maryland consumers; and it is further

ORDERED that all provisions of this Final Order shall also apply to all unnamed partners, employees, and/or agents of Respondents; and

ORDERED that, pursuant to FI §2-115(b) and upon careful consideration of (i) the seriousness of the Respondents’ violations; (ii) the lack of good faith of Respondents, (iii) the history and nature of Respondents’ violations; and (iv) the deleterious effect of Respondents’ violations on the public and on the credit services businesses and mortgage industries, Respondents shall pay to the Commissioner a total civil money penalty in the amount of **\$4,000**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	1 Md. Consumer	\$1,000
<i>Failure to Respond to Subpoena</i>	\$1,000	1 Md. Consumer	\$1,000
<i>Failure to Obtain a Surety Bond in Violation of MCSBA</i>	\$1,000	1 Md. Consumer	\$1,000
<i>Breach of Contract in violation of MCSBA</i>	\$1,000	1 Md. Consumers	\$1,000

And it is further,

ORDERED that Respondents shall pay to the Commissioner, by cashier’s or certified check made payable to the “Commissioner of Financial Regulation,” the amount of **\$4,000** within fifteen (15) days from the date of this Final Order; and it is further

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

ORDERED that Respondents shall send all correspondence, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator.

6/2/14
Date



Mark A. Kaufman
Commissioner of Financial Regulation