

**FINAL ORDER**  
**DATE 9/14/12**

MARYLAND  
COMMISSIONER OF  
FINANCIAL REGULATION

\* BEFORE THE  
\* COMMISSIONER OF

v.

\* FINANCIAL REGULATION

SVETLANA POPOK,  
RESPONDENT

\* CFR FILE NO.: CFR-FY2012-078

\* OAH FILE NO.: DLR-CFR-76A-12-04995

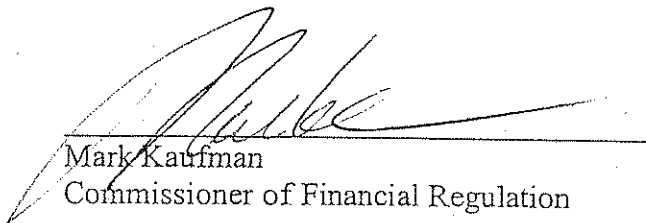
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**PROPOSED ORDER**

The Proposed Decision of the Administrative Law Judge in the captioned cases having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 10th day of August, 2012 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondents have 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.

  
Mark Kaufman  
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

SVETLANA POPOK,  
RESPONDENT

\* BEFORE EILEEN C. SWEENEY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No: DLR-CFR-76A-12-04995  
\* CFR FILE No: CFR-FY2012-078

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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

After investigation of consumer complaints from [REDACTED] and [REDACTED] [REDACTED] alleging possible violations by Svetlana Popok (Respondent) of Title 14, Subtitle 19 of the Commercial Law Article of the Annotated Code of Maryland (the Maryland Credit Services Businesses Act (MCSBA)), the Maryland Commissioner of Financial Regulation (Commissioner or CFR), Department of Labor, Licensing and Regulation (DLLR), referred the matter on January 30, 2012 to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated the matter to the OAH to determine if the Respondent violated the MCSBA<sup>2</sup> and

<sup>1</sup> In this decision, I refer to Ms. Lewis and Mr. Barabash, individually, by their proper names and collectively as the "Complainants".

<sup>2</sup> At the hearing, the CFR further specifically contended that the Respondent violated sections 11-302(b) and 11-303 of the Financial Institutions Article of the Annotated Code of Maryland relating to licensing. Although the CFR did not specifically delegate to the OAH in its January 30, 2012 letter, the determination of alleged violations of the Financial Institutions Article, as discussed below, the licensing provisions of the MCSBA encompass those provisions.

to determine whether relief is warranted under the MCBSA.<sup>3</sup> The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order. Md. Code Ann., State Gov't §§ 10-205 and 10-220(b) (2009 & Supp. 2011).

I held a hearing on May 1, 2012 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Com. Law. § 14-911 (2005). Jedd Bellman, Assistant Attorney General, Office of the Attorney General, represented the CFR. Neither the Respondent, nor anyone authorized to represent her, appeared at the hearing.<sup>4</sup>

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 the DLLR's regulations relating to hearings delegated to the OAH, COMAR 09.01.03, govern procedure in this case.

### ISSUES

1. Did the Respondent engage in credit services business activities with a Maryland consumer without first being licensed under the MCSBA, in violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article of the Maryland Annotated Code?
2. Did the Respondent make or use any false or misleading representations in the offer or sale of the services of a credit services business, in violation of section 14-1902(4) of the Commercial Law Article?
3. Did the Respondent engage, directly or indirectly, in any act, practice, or course

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<sup>3</sup> The CFR further argued at the hearing that relief is warranted under section 2-115(b) of the Financial Institutions Article, which authorizes the Commissioner to, among other things, issue a penalty order imposing a civil penalty up to the maximum amount of \$1,000.00 for a first violation and a maximum amount of \$5,000.00 for each subsequent violation. The CFR did not delegate such a determination to the OAH in its January 30, 2012 delegation letter, however. Indeed, the CFR's detailed description of the potential relief did not include the imposition of a civil penalty as set forth in that section. Thus, I have not addressed in my decision the issue of relief under section 2-115(b) of the Financial Institutions Article.

<sup>4</sup> Notice to the Respondent, and her failure to appear, are discussed below.

- of business which operated as fraud or deception on any person in connection with the offer or sale of the services of a credit services business, in violation of section 14-902(5) of the Commercial Law Article?
4. Did the Respondent collect up-front fees prior to fully and completely performing all services, in violation of section 14-1902(6) of the Commercial Law Article?
  5. Did the Respondent fail to provide consumers with a written information statement containing all of the information required under section 14-905 before either the execution of contracts or agreements with the consumers or the receipt by the Respondent of any money or other valuable consideration, in violation of section 14-904 of the Commercial Law Article?
  6. Did the Respondent fail to reduce to writing contracts with consumers for the purchase of the Respondent's services, in violation of section 14-906 of the Commercial Law Article?
  7. Did the Respondent breach a contract under Title 14, Subtitle 19 of the Commercial Law Article or breach any obligation arising under it, in violation of section 14-1907(a) of the Commercial Law Article?
  8. Did the Respondent willfully fail to comply with any requirement imposed under Title 14, Subtitle 19 of the Commercial Law Article with respect to any consumer, in violation of section 19-1912(a) of the Commercial Law Article?
  9. If the Respondent violated any of the sections cited above, what is/are the appropriate sanction(s)?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 March 12, 2012 Notice of Hearing
- CFR #2 January 30, 2012 delegation letter to the Hon. Jana Corn Burch, Executive Administrative Law Judge, from Anne Balcer Norton, Deputy Commissioner
- CFR #3 Certified mail copy of October 13, 2011 notice of additional complaints and envelope stamped "Return to Sender, Unclaimed, Unable to Forward," received by the DLLR on November 4, 2011
- CFR #4 August 2, 2011 Summary Order to Cease and Desist
- CFR #5 November 9, 2011 redacted Investigation Report
- CFR #6 July 12, 2011 Complaint of [REDACTED] with attachment
- CFR #6A July 25, 2011 letter from Rosalind Lancaster, Record Team Leader, SECU, to Investigator Julio A. Hernandez, with attachments
- CFR #6B Maryland Judiciary Case Search, printed January 23, 2012; March 30, 2010 Complaint, District Court of Maryland for Baltimore County (District Court for Baltimore County), Civil Case No.: 0804-0009212-2010; undated document entitled, "Checks Paid to Lana Popok," with attached cancelled checks; March 31, 1010 receipt, District Court for Baltimore County, Civil Case No.: 0804-009212-2010; emails between [REDACTED] and the Respondent, dated December 8, 2009, January 21, 25, and 28, 2010, March 2 and 4, 2010; March 4, 2011 - June 29, 2011 court documents, District Court for Baltimore County, Civil Case No.: 0804-0009212-2010; December 1, 2009 Fax Cover Sheet from [REDACTED] to the Respondent, with attachments; May 14, 2010 - March 31, 2011 court documents District Court for Baltimore County, Civil Case No.: 0804-0009212-2010; October 25, 2011 Fax Cover Sheet from [REDACTED] to Mr. Hernandez, with attachments; October 25, 2011 Fax Cover Sheet from [REDACTED] to Mr. Hernandez, with attachments
- CFR #6C Home Affordable Modification Trial Period Plan, signed by [REDACTED] on August 25, 2009; December 2, 2009 Notice of Intent to Foreclose; January 18, 2010 letter from Michael S. Botsaris, Esquire, to K and C Vending Svc LLC; January 21, 2010 letter from David S. Ostrow, Esquire, P.A., to [REDACTED]; [REDACTED]; January 29, 2010 letter from Michael P. Coyle, Esquire, to [REDACTED]; February 23, 2010 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED] with attachment; March 10, 2010 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED]; August 11, 2010 and October 11, 2010 letters from Peroutka & Peroutka, P.A., to [REDACTED]; [REDACTED]; March 11, 2011 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED], with attachment

CFR #7 Undated Complainant document relating to [REDACTED] with attachment

CFR #8 February 1, 2012 Final Order to Cease and Desist

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

### Testimony

The following witnesses testified on behalf of the CFR:

- [REDACTED]
- [REDACTED]
- Julio Hernandez, Investigator, Enforcement Unit, CFR

No testimony was presented on behalf of the Respondent.

### FINDINGS OF FACT

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

[REDACTED]

1. Sometime in May 2009, the Respondent told [REDACTED] that she was a mortgage broker employed by a bank, that she “did loans on the side,” and could obtain a loan modification of the mortgage on [REDACTED] home.

2. On May 21, 2009, [REDACTED] paid the Respondent an up-front fee in the amount of \$1,500.00 in exchange for which the Respondent agreed to obtain a loan modification of the mortgage on [REDACTED] home held by SunTrust Mortgage, Inc., (SunTrust) in order to make the payments on the mortgage more affordable.<sup>5</sup>

3. On August 25, 2009, the Respondent had [REDACTED] sign a document entitled “Home Affordable Modification Trial Period Plan.”<sup>6</sup>

<sup>5</sup> Ms. Lewis also testified regarding services the Respondent agreed to perform with regard to the negotiation of credit card debt on her behalf; however, the CFR indicated at the hearing that the Respondent’s conduct in that regard was not a basis for its allegations in this case, but, rather, was being offered only to show a pattern of behavior.

<sup>6</sup> The copy of the document submitted into evidence was not signed by a representative of SunTrust.

4. Sometime in August 2009, the Respondent advised [REDACTED] that the loan modification was complete. Although the loan modification was a temporary modification until SunTrust reviewed and analyzed the loan modification request, the Respondent advised [REDACTED] that if she made timely payments for ninety days of the monthly amounts due under the loan modification agreement, the loan modification would become permanent.

5. [REDACTED] made the following additional payments to the Respondent for her services relating to the loan modification:

August 6, 2009      \$1,200.00

August 28, 2009    \$1,500.00

September 25, 2009 \$2,250.00<sup>7</sup>

6. Although [REDACTED] had made timely payments as directed by the Respondent, she received a November 24, 2009 letter from SunTrust advising her that due to the default in the terms of her mortgage loan, it had referred her account to an attorney to commence foreclosure.

7. By letter dated November 29, 2009, SunTrust advised [REDACTED] that it was returning her payment in the amount of \$2,225.52 because the payment did not constitute full reinstatement of her account. The letter further stated that [REDACTED] account had been referred to an attorney for foreclosure and that SunTrust could not accept anything less than the total amount due to bring her loan current.

8. [REDACTED] subsequently called the Respondent about the letters from SunTrust and faxed her copies on December 1, 2009.

9. On or about January 21 and 29, 2010, [REDACTED] received advertisements for legal services in the mail regarding options to stop the foreclosure action on her home.

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<sup>7</sup> The CFR also submitted evidence that Ms. Lewis paid the Respondent a total of \$10,250.00 for her services relating to credit card debt negotiations.

10. Sometime in January 2010, SunTrust advised [REDACTED] that she had been permanently denied a loan modification due to her debt-to-income ratio. SunTrust demanded that she pay the amount in arrears to bring the mortgage current or face foreclosure proceedings.<sup>8</sup>

11. [REDACTED] subsequently had difficulty getting in touch with the Respondent -- the Respondent rarely answered the telephone and, when she did, she provided numerous excuses for the foreclosure activity, including that SunTrust was confused.

12. On February 23, 2010, the Respondent advised [REDACTED] that she had talked to SunTrust, the loan modification had been approved, and the coupon book for the mortgage was on its way.

13. On or about March 2, 2010, [REDACTED] received a February 23, 2010 letter from appointed Substitute Trustees advising her that her home would be sold at public auction on March 12, 2010. When she emailed the Respondent on that date that she needed to hear from her "ASAP," the Respondent responded by email, "OK, I will. In the hospital with dad." (CFR #6B.)

14. On March 4, 2010, the Respondent emailed [REDACTED] that her father was in an Intensive Care Unit and that she would call [REDACTED] that evening so that they could talk. She failed to do so.

15. The Respondent did not return [REDACTED] March 8-10, 2010 telephone calls and emails about the pending foreclosure sale.<sup>9</sup>

16. On March 10, 2010, the appointed Substitute Trustees advised [REDACTED] in writing that the amount required to reinstate her mortgage loan was \$23,684.83.

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<sup>8</sup> Ms. Lewis' testimony did not make it clear how SunTrust communicated this information to her.

I note also that Ms. Lewis testified that she began receiving collection calls in January 2010 from credit card companies relating to balances on credit cards that she believed the Respondent had negotiated and paid off on her behalf.

<sup>9</sup> Ms. Lewis' emails submitted into evidence indicated that she was expressing concern about the credit card matter; however, her testimony indicated that Ms. Lewis' concerns were broader, encompassing the mortgage matter, as well.



17. On March 18, 2010, [REDACTED] went to the Respondent's home. The Respondent advised her that she had receipts for credit card payments, would call her, and would have everything (copies of returned checks, statements) by noon the next day.<sup>10</sup>

18. On March 19, 2010, the Respondent called [REDACTED] to advise her that she could not meet on Friday but would meet on Monday, March 22, 2010, at 6:00 p.m. The Respondent failed to keep that appointment, stating that her father had had open-heart surgery.

19. On March 23, 2010, the Respondent texted [REDACTED] that she would meet her the next day. She failed to do so.

20. On March 26, 2010, the Respondent responded to [REDACTED] March 25, 2010 telephone message. She stated that she would call [REDACTED] later, but failed to do so.

21. The last contact [REDACTED] with the Respondent was on March 29, 2010, when [REDACTED] advised the Respondent that she was going to get the police involved if she did not settle their disputes with a certified check.

22. [REDACTED] paid the arrearages on her mortgage and was able to avoid foreclosure.

23. On March 31, 2010, [REDACTED] filed suit against the Respondent in the District Court of Maryland for Baltimore County for damages she sustained as a result of the Respondent's conduct with regard to the loan modification.<sup>11</sup>

24. On February 9, 2011, the Respondent appeared for a show cause hearing in the District Court and agreed at that time to make monthly payments to the Respondent in the amount of \$500.00 beginning February 14, 2011. She did not do so.

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<sup>10</sup> Again, Ms. Lewis' testimony indicates that she considered the Respondent to be talking about both the credit card and loan modification matters.

<sup>11</sup> Ms. Lewis also included in that suit her claim for damages resulting from the Respondent's conduct with regard to the credit card negotiations.

25. On July 13, 2010, [REDACTED] obtained a judgment against the Respondent in the amount of \$16,700.00.<sup>12</sup>

26. On July 19, 2011, the Respondent contacted [REDACTED] and advised her that she wanted to make everything right, that she had some money for her, and that she wanted to meet with her. [REDACTED] advised the Respondent that she just wanted her money back and to simply mail it to her. She then stated that she would consider meeting with the Respondent, but did not call the Respondent back and did not return her telephone calls as she felt it was in her best interest to have no further contact with the Respondent.

27. The Respondent never refunded [REDACTED] money.

[REDACTED]

28. In early 2010, the Respondent told [REDACTED] that, for a fee of \$2,000.00, she could help him obtain a loan modification of a mortgage on a property he was considering selling. She stated that she was a licensed mortgage broker specializing in loan modifications. She also told [REDACTED] that she guaranteed she could obtain the loan modification and that she would refund his money if she did not.

29. On April 9, 2010, [REDACTED] paid the Respondent an up-front fee in the amount of \$2,000.00 in exchange for which the Respondent represented that she would obtain the loan modification.

30. When [REDACTED] contacted the Respondent approximately a week later, she told him that she was in contact with the bank and that she was taking care of everything.

31. When [REDACTED] questioned the Respondent because he had received no documents from the bank, she told him that all communications were with her.

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<sup>12</sup> That judgment related to both the loan modification and credit card negotiations matters.

32. The Respondent did not obtain or attempt to obtain a loan modification for [REDACTED].  
[REDACTED] When he asked for a refund, she stopped taking his calls.

33. The Respondent never refunded [REDACTED] money.

### General

34. On August 2, 2011, pursuant to the complaint of another consumer against the Respondent and others (Go-Financial matter), the Deputy Commissioner issued a Summary Order to Cease and Desist against the Respondent under sections 2-114 and 2-115 of the Financial Institutions Article and section 7-319 of the Real Property Article.<sup>13</sup> Specifically, the Deputy Commissioner ordered the Respondent to immediately cease and desist from engaging in any further credit services business activities and/or foreclosure consultant activities with Maryland consumers, including contracting to provide, or otherwise engaging in loan modification services, foreclosure consulting, or similar services with Maryland consumers. The Deputy Commissioner further ordered the Respondent to immediately cease and desist from violating certain provisions of the MCSBA and of the Financial Institutions Article<sup>14</sup> (as well as provisions of the Real Property Article).

35. The Respondent was further notified by the Summary Suspension that, as a result of a hearing, or a failure to timely request a hearing, the Commissioner may enter an order making the Summary Order final, issue civil penalties under the MCSBA and section 2-114 of the Financial Institutions Article, issue a final order declaring all loan modification services

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<sup>13</sup> The Deputy Commissioner alleged the CFR's investigation revealed that the Respondent had engaged in unlicensed credit services business activities in violation of the MCSBA and the Financial Institutions Article, including sections 14-902(1), (4), (6), 14-1903(b), 14-1903.1, 14-1904, 14-1905, 14-1906, 14-1907, 14-1908 and 14-1909 of the Commercial Law Article and sections 11-302 and 11-303 of the Financial Institutions Article. The Deputy Commissioner further alleged that the investigation revealed that the Respondent violated several provisions of Title 7, Subtitle 3 (Protection of Homeowners in Foreclosure Act (PHIFA)) of the Real Property Article.

I note that alleged violations of the Real Property Article and of sections 14-1903.1 (advertisements of credit services), 14-1908 and 14-1909 (surety bonds) of the Commercial Law Article are not before me in this case.

I note also that the Complainants in this case were not the direct subjects of the Summary Order or the subsequent Final Order.

<sup>14</sup> See footnote 13.

agreements made by the Respondent void and unenforceable, and order the Respondent to refund all money and other valuable consideration paid by consumers. In addition, pursuant to the MCSBA, the Commissioner may enter an order requiring the Respondent to pay consumers a monetary award equal to any actual damages sustained by consumers, and, in instances of willful noncompliance with the MCSBA, an additional monetary award to three times the total amount collected from the consumers.<sup>15</sup>

36. After the Complainants came to the attention of the CFR during its investigation of the Go-Financial matter, it conducted investigations of those matters as well.

37. On October 13, 2011, Julio Hernandez, Investigator, CFR, sent a letter to the Respondent by regular and certified mail at 885 Caren Drive, Eldersburg, MD 21784, the Respondent's last known address on record with the CFR, government land records, and the Motor Vehicle Administration, advising her that additional complaints had been received by the CFR since the issuance of the Summary Order, in which violations of the MCSBA had been alleged. The letter gave the Respondent ten business days to contact Mr. Hernandez and further advised the Respondent that failure to address the complaint with a proper resolution within ten days of the receipt of the letter would result in a hearing being held in which the merits of the complaint would be determined and a resolution ordered. The Respondent did not contact Mr. Hernandez in response to the letter and the United States Postal Service returned the certified mailing as unclaimed.

38. After the Respondent failed to request a hearing on the Summary Order, the Commissioner issued a Final Cease and Desist Order against the Respondent in the Go-Financial matter on February 1, 2012, relating to the Respondent's mortgage lending, brokering, and originating business activities. The Deputy Commissioner found evidence

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<sup>15</sup> The order also notified the Respondent of additional action that may be taken pursuant to the Real Property Article.

to support a finding that the Respondent violated Title 11, Subtitle 6 (Maryland Mortgage Originators Law (MMOL)) of the Financial Institutions Article, Title 7, Subtitle 4 (Maryland Mortgage Fraud Protection Act (MMFPA)) of the Real Property Article, “as well as Maryland law prohibiting the commission of acts resulting in fraud and/or theft.” (CFR #8.) The Commissioner ordered the Respondent to permanently cease and desist from violating any of the aforementioned statutory provisions and Maryland law prohibiting the commission of acts resulting in fraud and/or theft.<sup>16</sup>

39. By representing that she could provide loan modification services, and by entering into agreements with the Complainants to provide such services, the Respondent engaged in credit services business activities.

40. At all times relevant to this matter, the Respondent was not licensed to provide credit services businesses.

41. The Respondent made or used false or misleading representations in her sale of services to the Complainants.

42. The Respondent engaged in acts, practices and a course of business which operated as fraud or deception on the Complainants in connection with the offer or sale of her services as a credit services business.

43. The Respondent collected up-front fees prior to fully and completely performing all services on behalf of the Complainants.

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<sup>16</sup> The Commissioner also ordered the Respondent to pay a civil penalty for violations of sections 11-602(b) and 11-615(c) of the Financial Institutions Article, COMAR 09.03.09.04A, and sections 7-401(d)(1) and (4) and 7-402 of the Real Property Article and section 2-114 (failure to comply with Summary Order) of the Financial Institutions Article, and to pay restitution to another Complainant with whom the Respondent engaged in mortgage lending, brokering, and/or originating activity in perpetration of a mortgage fraud scheme.

Interestingly, the Final Order did not appear to address violations of the MCSBA or sections 11-302(b) and 11-303 of the Financial Institutions Article.

44. The Respondent failed to provide the Complainants with requisite information statements containing all of the requisite contractual terms in her agreements with them.

45. The Respondent failed to reduce her contracts with the Complainants to writing.

46. By failing to obtain beneficial loan modifications or other forms of forbearance agreements for the Complainants, as she agreed to do, the Respondent breached her contracts with them and/or breached her obligations under those agreements.

47. The Respondent willfully engaged in the aforementioned activities.

### Service of Notice of Hearing

48. On March 12, 2012, the OAH mailed a Notice of Hearing to the Respondent by regular and certified mail to 885 Caren Drive, Eldersburg, MD 20910, which is her last address of record with the CFR and the Motor Vehicle Administration (MVA). The U.S. Postal Service returned the certified mailing as unclaimed. It did not return the regular mailing to the OAH.

## DISCUSSION

### Failure to Appear

In this case, the OAH sent the Notice of Hearing to the Respondent at 885 Caren Drive, Eldersburg, Maryland 20910, by certified and regular mail. Julio Hernandez, Investigator, Enforcement Unit, CFR, testified that this is the Respondent's last known address. He testified that he checked the local property records and Department of Assessment and Taxation records, which list the Respondent as the owner of that property. In addition, Mr. Hernandez verified that the Respondent's address of record with the MVA is the Caren Drive address.

The certified mailing was returned as unclaimed; the regular mailing was not returned as undeliverable. Thus, I find that the notice of the hearing was proper. COMAR 09.01.02.07; COMAR 09.01.03.05; COMAR 28.02.01.05. *See also Golden Sands Club Condominium v. Waller*, 313 Md. 484 (1988).

Neither the Respondent nor anyone authorized to represent her appeared at the hearing. Furthermore, the Respondent did not request a postponement. Accordingly, I conducted the hearing in the Respondent's absence pursuant to COMAR 28.02.01.23A.

### Merits

#### Legal Framework

The MCSBA, sections 14-1901 through 14-1916 of the Commercial Law Article (2005 & Supp. 2011) addresses the licensing and conduct of credit services businesses, which section 14-901 defines as follows:

14-901(e) Credit services business. --

(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.

Md. Code Ann., Com. Law § 14-901(e) (Supp. 2011).

"Extension of credit" is defined 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."

Md. Code Ann., Com. Law § 14-901(f) (Supp. 2011).

Pursuant to section 14-1911(a), any consumer who has reason to believe that the MCSBA has been violated by any credit services business or by any other person, may file a written complaint setting forth the details of the alleged violation with the Commissioner. The

Commissioner may investigate the complaint and hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article.<sup>17</sup> See Md. Code Ann., Com. Law § 14-1911(c) (2005).

The CFR has the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondent 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). The Respondent has the burden of production and persuasion to the extent that she claims an exemption from the licensing scheme or an exception from a definition. Md. Code Ann., Com. Law § 14-1907(d) (2005).

### Allegations

In this case, based on complaints of two consumers, [REDACTED] and [REDACTED] [REDACTED] the CFR alleged that the Respondent committed the following violations of the MCSBA:

- 1) Engaged in credit services business activities with a Maryland consumer without first being licensed under the MCSBA, in violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and sections 11-302(b) and 11-303 of the Financial Institutions Article;
- 2) Made or used false or misleading representations in the offer or sale of the services of a credit services business, in violation of section 14-1902(4) of the Commercial Law Article;
- 3) Engaged, directly or indirectly, in an act(s), practice(s), or course of business which operated as fraud or deception on a person in connection with the offer or sale of the services of a credit services business, in violation of section 14-902(5)

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<sup>17</sup> Section 2-115 of the Financial Institutions Article provides that the Commissioner may take action under that section when the Commissioner determines after notice and a hearing that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction. Md. Code Ann., Fin. Inst. § 2-115 (2011). *But see* footnote 3.





of the Commercial Law Article;

- 4) Collected up-front fees prior to fully and completely performing all services, in violation of section 14-1902(6) of the Commercial Law Article;
- 5) Failed to provide consumers with a written information statement containing all of the information required under section 14-905 of the Commercial Law Article before the either the execution of contracts or agreements with the consumers or the receipt by the Respondent of any money or other valuable consideration, in violation of section 14-904 of the Commercial Law Article;
- 6) Failed to reduce to writing contracts with consumers for the purchase of the Respondent's services, in violation of section 14-906 of the Commercial Law Article;
- 7) Breached a contract under Title 14, Subtitle 19 of the Commercial Law Article or breached an obligation(s) arising under it, in violation of section 14-1907(a) of the Commercial Law Article;
- 8) Willfully failed to comply with a requirement(s) imposed under Title 14, Subtitle 19 of the Commercial Law Article with respect to a consumer(s), in violation section 19-1912(a) of the Commercial Law Article;

For the following reasons, I find that the CFR proved each of the aforementioned violations by a preponderance of the evidence.

#### Testimony

  
 testified that when she was referred by a friend to the Respondent in May 2009, the Respondent held herself out as a mortgage broker employed by a bank, and showed

██████████ is a business card. The Respondent further advised ██████████ that she “did loans on the side” and that she could obtain a loan modification of ██████████ mortgage on her home.

According to ██████████ at first, the Respondent told ██████████ that she could not obtain a loan modification because she was not late on her monthly mortgage payments. She directed ██████████ and her husband to discontinue making mortgage payments to make it appear more legitimate when requesting a loan modification. ██████████ testified she and her husband did as instructed and then contracted with the Respondent for financial services on or about May 14, 2009, specifically, for the Respondent to obtain a loan modification. She paid an up-front fee of \$1,500.00 to the Respondent, and subsequently paid her an additional \$4,950.00 for her services (total: \$6,450.00).

██████████ testified that she was able to get a ninety-day trial loan modification in September 2009 and that the Respondent told her that if she made timely payments for ninety days, the loan modification would be permanent.

██████████ made the monthly modified payments in a timely manner, but began receiving correspondence indicating that her home would be sold at foreclosure. When she asked the Respondent about it, the Respondent told her not to worry and to just keep making the monthly modified payments.

In January 2010, the bank refused to accept ██████████ mortgage payment, advising her that the house would be going into foreclosure. According to ██████████ when she asked the Respondent about it, she could not get a straight answer and at one point, the Respondent advised her that the bank was confused.

According to ██████████ when she spoke to the Respondent on February 23, 2010, the Respondent told her that she had talked to the bank, her loan modification had been approved, and the coupon book for the mortgage was on the way.

On March 8, 2010, [REDACTED] spoke to an attorney who told her that foreclosure had been scheduled for March 12, 2010. The next day, SunTrust advised her that information was correct. She learned from a bank representative that after the trial period, her loan modification had been denied and that she owed several months payments on her mortgage, plus penalties and interest. [REDACTED] testified that she realized then that the Respondent had been lying to her. Panic-stricken, she called and emailed the Respondent from March 8 to 10, 2010, with no response.

With great difficulty, [REDACTED] was able to come up with the money owed on the mortgage and to avoid foreclosure.

[REDACTED] testified that she got a judgment against the Respondent in the District Court for Baltimore County in the amount of \$16,700.00 relating to the loan modification matter, as well as to other dealings she had with the Respondent with regard to credit card debt. The Respondent has not paid that judgment.

[REDACTED] presented as a credible witness, she appeared sincere and was consistent in her testimony. She appeared devastated and distraught by the Respondent's deception and testified regarding the financial difficulties resulting from the Respondent's conduct, including having to borrow to pay SunTrust, a lower credit score, and subsequent difficulties in obtaining credit.

[REDACTED] testified that he met the Respondent in early 2010, when she was helping his father refinance his mortgage. At that time, the Respondent offered her services to [REDACTED] for the purpose of obtaining a loan modification of the mortgage on a property he was considering selling, advising him that she was a licensed mortgage broker and that she specialized in financial services, including loan modifications. He testified that he gave the Respondent a deposit of \$2,000.00 on April 9, 2010 in payment of her fee for her services and

that she guaranteed that she would obtain the loan modification, but told him she would return his money if she was unable to do so. When he contacted the Respondent a week later, she told him that she had been in contact with his bank and that she was taking care of everything. When he never received any documents from the bank with regard to a loan modification, the Respondent indicated that the bank was communicating with her.

[REDACTED] testified that he never received a loan modification and to his knowledge, the Respondent never attempted to obtain one. He further testified that when he asked the Respondent for a refund, she failed to provide it and stopped answering his telephone calls and emails.<sup>18</sup>

[REDACTED] presented as a credible witness. His testimony was straight-forward and consistent.

#### *Julio Hernandez*

Mr. Hernandez testified that he was the Investigator for the Enforcement Unit of the CFR assigned to investigate the complaints against the Respondent. His testimony and report corroborated the Complainants' testimony. In addition, Mr. Hernandez testified that the Respondent was not licensed with the CFR at the time of her dealings with the Complainants.

#### Violations

##### *Licensing*

With regard to licensing requirements, Title 14 of the Commercial Law Article provides in pertinent part as follows:

##### § 14-1902. Duties

A credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business [credit services business] shall not:

---

<sup>18</sup> Mr. Barabash also testified regarding services the Respondent agreed to perform relating to the sale of the property; however, the CFR indicated at the hearing that the Respondent's conduct in that regard was not a basis for its allegations in this case, but, rather, was being offered to show a pattern of behavior.

(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 [.]

\* \* \*

§ 14-1903. Application of subtitle; licenses

\* \* \*

(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.

Md. Code Ann., Com. Law §§ 14-1902(1) and 14-903(b) (2005 & Supp. 2011).

Title 11 of the Financial Institutions Article provides in pertinent part as follows:

§ 11-302. License required

\* \* \*

(b) License required. -- Unless the person is licensed by the Commissioner, a person may not:

\* \* \*

(3) Engage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article.

\* \* \*

§ 11-303. Application of Maryland Consumer Loan Law -- Licensing Provisions

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.

Md. Code Ann., Fin. Inst. §§ 11-302(b) and 11-303 (2011).

The MCSBA defines "credit services business" as follows:

14-901(e) Credit services business. --

(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.

Md. Code Ann., Com. Law § 14-901(e) (Supp. 2011).

Based on the descriptions given by the Complainants of the services the Respondent offered to them, I find that the Respondent met the definition of a credit service business. *See* Md. Code Ann., Com. Law § 14-1901(e). Specifically, I find that a loan modification meets the definition of an “extension of credit” under section 14-1901(f) as loan modifications may 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, for example, or by adding payments past due onto the end of the loan. This brings the activities of persons engaged in offering or providing loan modification services, such as the Respondent, within the purview of the MCABA.

Accordingly, the Respondent was required to be licensed under sections 14-1902(1) and 14-1903(b) of the Commercial Law Article and sections 11-302(b) and 11-303 of the Financial Institutions Article. Mr. Hernandez’s testimony established that she was not. Thus, I find that the CFR established by a preponderance of the evidence that the Respondent engaged in credit services business activities with a Maryland consumer without first being licensed, in violation of the aforementioned sections of the MCSBA.

#### *False or Misleading Representations*

Pursuant to section 14-902(4), a credit services business “shall not . . . [m]ake or use any false or misleading representations in the offer or sale of the services of a credit services business . . . .” Md. Code Ann., Com. Law § 14-1902(4) (Supp. 2011).

██████████ testimony established that the Respondent made the following false or misleading representations to her in the offer or sale of her services:

- She was a mortgage broker employed by a bank, “did loans on the side,” and could obtain a loan modification on ██████████ behalf
- If ██████████ made timely payments for ninety days, the loan modification would be permanent
- ██████████ did not have to worry about foreclosure - she just needed to continue making her monthly modified payments
- ██████████ would receive a coupon book reflecting her lower mortgage payments pursuant to the approved loan modification
- She would make restitution to ██████████ in the amount of \$500.00 per month
- She would meet with ██████████ to discuss settling this matter
- She had some money to pay ██████████

██████████ testimony established that the Respondent made the following false or misleading representations to him in the offer or sale of her services:

- She was a licensed mortgage broker
- She specialized in financial services
- She would obtain a loan modification on his behalf
- She would return the \$2,000.00 fee he paid her if she was unable to get him a loan modification
- She had been in contact with his bank and was taking care of everything
- The bank was communicating with her with regard to documents for the loan modification

Accordingly, I find that the CFR established by a preponderance of the evidence that the Respondent used false or misleading representations in the offer or sale of the services of a credit services business in violation of section 14-1902(4) of the Commercial Law Article.

#### *Fraud or Deception*

Section 14-1902(5) provides that a credit services business “shall not . . . [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 . . .” Md. Code Ann., Com. Law § 14-1902(5) (Supp. 2011).

As discussed above with regard to the violation of section 14-1902(4), the Complainant's testimony established that the Respondent engaged in fraud and deception of them in connection with the offer or sale of loan modification services.

Accordingly, I find that the CFR proved by a preponderance of the evidence that he Respondent engaged, directly or indirectly, in an act(s), practice(s), or course of business which operated as fraud or deception on persons in connection with the offer or sale of the services of a credit services business, in violation of section 14-902(5) of the Commercial Law Article.

*Premature Collection of Up-front Fees*

Section 14-1902(6) provides that a credit services business "shall not . . . [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[.]" Md. Code Ann., Com. Law § 14-1902(6) (Supp. 2011).

Both Complainants testified that the Respondent charged them and they paid her fees for her services ( [REDACTED] : \$2,000.00; [REDACTED] : \$6,450.00) prior to the Respondent's performance of any services with regard to obtaining loan modifications. Indeed, as discussed above, the evidence showed that she performed no such services for [REDACTED]

Thus, I find that the CFR established by a preponderance of the evidence that the Respondent collected up-front fees prior to fully and completely performing all services, in violation of section 14-1902(6) of the Commercial Law Article;

*Written Information Statement*

With regard to the duty of a credit services business to provide a written information statement to a consumer, Title 14 provides in pertinent part:



§ 14-1904. Information statement

(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.

(b) Filing. -- The credit services business shall maintain on file for a period of 2 years from the date of the consumer's acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement.

\* \* \*

§ 14-1905. Information to be included in information statement

(a) In general. -- The information statement required under § 14-1904 of this subtitle shall include:

(1) An accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681g) and under § 14-1206 of this title;

(2) A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the federal Fair Credit Reporting Act (15 U.S.C. §1681j) and under § 14-1209 of this title;

(3) A statement that a nominal charge not to exceed \$ 5 may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all the information in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

(4) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item on the consumer contained in any file that is maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act (15 U.S.C. §1681i) and under § 14-1208 of this title;

(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; and

(6) A statement that accurately reported information may not be permanently removed from the file of a consumer reporting agency.

(b) Additional requirements of licenses. -- A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

- (1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;
- (2) The address of the Commissioner where such complaints should be filed; and
- (3) A statement that a bond exists and the consumer's right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

Md. Code Ann., Com. Law §§ 14-1904 and 14-1905 (2005).

The Complainants' testimony and Mr. Hernandez's investigative report clearly established that the Respondent failed to provide the Complainants with a written information statement, signed by them, containing all of the information required under section 14-1905.

Accordingly, I find that the CFR proved by a preponderance of the evidence that the Respondent failed to provide consumers with a written information statement containing all of the information required under section 14-905 of the Commercial Law Article before either the execution of contracts or agreements with the consumers or the receipt by the Respondent of any money or other valuable consideration, in violation of section 14-904 of the Commercial Law Article.

#### *Failure to Reduce to Writing*

Section 14-906 of the Commercial Law Article provides:

#### § 14-1906. Contract with consumer

(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.

Md. Code Ann., Com. Law § 14-1906 (2005).

The Complainants' testimony and Mr. Hernandez's investigative report clearly established that the Respondent failed to provide the Complainants with a written contract, dated, signed by them, and containing the required information.

Accordingly, I find that the CFR proved by a preponderance of the evidence that the

Respondent failed to reduce to writing contracts with consumers for the purchase of the Respondent's services, in violation of section 14-906 of the Commercial Law Article.

*Breach of Contract*

Section 14-907 of the Commercial Law Article provides in pertinent part:

§ 14-907. Violations; void contracts; waivers; burden of proof

(a) Breach of contract. -- Any breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle.

Md. Code Ann., Com. Law § 14-907(a) (2005).

The Complainants both testified that the Respondent contracted with them to provide loan modification services which she failed to provide. In addition, [REDACTED] presented evidence that she obtained a judgment against the Respondent in the District Court for Baltimore County based, at least in part, on the Respondent's failure to provide those services.

Thus, I find that the CFR proved by a preponderance of the evidence that the Respondent breached a contract under Title 14, Subtitle 19 of the Commercial Law Article or breached an obligation(s) arising under it, in violation of section 14-907(a) of the Commercial Law Article.

*Willful Failure to Comply*

Pursuant to section 14-912 of the Commercial Law Article, the CFR may impose certain sanctions when a credit services business "willfully fails to comply with any requirement imposed under [subtitle 19] with respect to any consumer . . ." Md. Code Ann., Com. Law § 14-912(a) (2005). Certainly, as evidenced by her numerous fraudulent and deceptive words and actions, including but not limited to the following, the Respondent willfully failed to comply with the aforementioned requirements with respect to the Complainants:

- Failing to perform loan modification services that she promised to provide and for which she collected up-front fees

- Purposely concealing information when contacted by the Complainants by intentionally concealing the status of their loan modifications
- Refusing to return telephone calls and emails when the Complainants became concerned about the status of their loan modifications
- Refusing to provide full refunds to the Complainants.

Thus, I find that the CFR proved by a preponderance of the evidence that the Respondent willfully failed to comply with a requirement(s) imposed under Title 14, Subtitle 19 of the Commercial Law Article with respect to a consumer(s), in violation of section 19-1912(a) of the Commercial Law Article.

Remedies

The CFR requested remedies pursuant to sections 14-1907(b), 14-1911, 1 and 4-1912(a)(1) and (2) of the Commercial Law Article.<sup>19</sup>

The Commercial Law Article provides in pertinent part as follows:

§ 14-1907. Violations; void contracts; waivers; burden of proof

\* \* \*

(b) Void contracts. -- Any contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State.

\* \* \*

§ 14-1911. Complaints

(d) Powers of Commissioner. -- The Commissioner may:

\* \* \*

(f) Cease and desist order.<sup>20</sup> --

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<sup>19</sup> As noted in footnote 3 above, the CFR's delegation letter did not direct the OAH to make a determination as to whether relief is warranted under section 2-115(b) and (c) of the Financial Institutions Article.

<sup>20</sup> In its opening and closing statements, the CFR indicated that it was not requesting that I recommend the issuance of a Cease and Desist Order.

(1) If, after the hearing, the Commissioner finds that the credit services business, or the salesperson, agent, representative, or independent contractor acting on behalf of the credit services business, has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the credit services business or the person or both to cease and desist from the act or practice and may order that restitution be paid to an aggrieved consumer.

\* \* \*

§ 14-1912. Failure to comply with requirements

(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 [.]

Md. Code Ann., Com. Law §§ 14-1907(b), 14-1911(d)(6), (f)(1) and 14-1912(a) (2005).

(Emphasis supplied.)

As the contracts between the Respondent and the Complainants failed to comply with the specific requirements of the MCSBA, as discussed above, they are void and unenforceable as against the public policy of the State of Maryland pursuant to section 14-1907(b) of the Commercial Law Article.

In addition, as discussed above, I have found that the Respondent willfully failed to comply with requirements imposed under the MCBSA. Thus, I find that under sections 14-1911(f)(1) and 14-1912(a)(1) and (2) of the Commercial Law Article, the Respondent is liable to the Complainants for actual damages sustained by the Complainant as a result of the failure and a monetary award in an amount equal to three times the amount collected from the Complainants. I agree with the CFR's contention, however, that an order by the CFR of restitution to [REDACTED] would not be appropriate in this case with regard to her actual damages (\$6,450.00) since that amount was encompassed in the judgment from the District Court for Baltimore County. Thus, I find that the Respondent is liable to [REDACTED] in the amount of \$19,350.00 (3 X \$6,450.00

collected by the Respondent)). I find that the Respondent is liable to [REDACTED] in the amount of \$8,000.00 (\$2,000.00 (actual damages) + \$6,000.00 (3 X \$2,000.00 collected by the Respondent)).

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law as follows:

- (1) The Respondent engaged in credit services business activities with a Maryland consumer without first being licensed under the MCSBA, in violation of sections 14-1902(1) and 14-1903(b) of the Commercial Law Article of the Maryland Annotated Code;
- (2) The Respondent made or used false or misleading representations in the offer or sale of the services of a credit services business, in violation of section 14-1902(4) of the Commercial Law Article;
- (3) The Respondent engaged, directly or indirectly, in an act, practice, or course of business which operated as fraud or deception on a person in connection with the offer or sale of the services of a credit services business, in violation of section 14-902(5) of the Commercial Law Article;
- (4) The Respondent collected up-front fees prior to fully and completely performing all services, in violation of section 14-1902(6) of the Commercial Law Article;
- (5) The Respondent failed to provide consumers with a written information statement containing all of the information required under section 14-905 before either the execution of contracts or agreements with the consumers or the receipt by the Respondent of any money or other valuable consideration, in violation of section 14-904 of the Commercial Law Article;

- (6) The Respondent failed to reduce to writing contracts with consumers for the purchase of the Respondent's services, in violation of section 14-906 of the Commercial Law Article;
- (7) The Respondent breached a contract under Title 14, Subtitle 19 of the Commercial Law Article and breached obligations arising under it, in violation of section 14-1907(a) of the Commercial Law Article; and
- (8) The Respondent willfully failed to comply with any requirement imposed under Title 14, Subtitle 19 of the Commercial Law Article with respect to any consumer, in violation of section 19-1912(a) of the Commercial Law Article.

I further conclude as a matter of law that the appropriate sanctions in this case are a determination by the Commissioner that the contracts between the Respondent and the Complainants are void and unenforceable pursuant to section 14-1907(a) of the Commercial Law Article, an award to [REDACTED] of an amount equal to three times the amount collected from her (\$19,350.00) and the restitution to [REDACTED] of his actual damages (\$2,000.00) plus an award equal to three times the amount collected from him (\$6,000.00) (total: \$8,000.00) pursuant to section 14-1912(a)(1) and (2) of the Commercial Law Article.

#### RECOMMENDED ORDER

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

**ORDER** that the contract between the Respondent and [REDACTED] is void and unenforceable; and further

**ORDER** that the Respondent pay to [REDACTED] the sum of \$19,350.00; and further

**ORDER** that the contract between the Respondent and [REDACTED] is void and unenforceable; and further



**ORDER** that the Respondent pay to [REDACTED] the sum of \$8,000.00; and further

**ORDER** that the Respondent shall pay the required monetary award to the Complainants by mailing to each of them a certified check in the amount specified above via U.S. First Class Mail at the most recent address of that Complainant known to the Respondent; and further


**ORDER** that if the mailing of a payment is returned as undeliverable by the U.S. Postal Service, the Respondent shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment; and further

**ORDER** that upon making of the required payments, the Respondent shall furnish evidence of having made the payments to the Commissioner within sixty days of the Final Order being signed, which evidence shall consist of a copy of the front and back of the cancelled check for each payment; and further

**ORDER** that the Respondent 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, Att'n: Proceedings Administrator; and further

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

July 3, 2012  
Date Decision Issued

  
Eileen C. Sweeney  
Administrative Law Judge

ECS/ecs  
DOC # 135772

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

v.

SVETLANA POPOK,  
RESPONDENT

\* BEFORE EILEEN C. SWEENEY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No: DLR-CFR-76A-12-04995  
\* CFR FILE No: CFR-FY2012-078

\* \* \* \* \*

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the CFR:

- CFR #1 March 12, 2012 Notice of Hearing
- CFR #2 January 30, 2012 delegation letter to the Hon. Jana Corn Burch, Executive Administrative Law Judge, from Anne Balcer Norton, Deputy Commissioner
- CFR #3 Certified mail copy of October 13, 2011 notice of additional complaints and enveloped stamped "Return to Sender, Unclaimed, Unable to Forward," received by the DLLR on November 4, 2011
- CFR #4 August 2, 2011 Summary Order to Cease and Desist
- CFR #5 November 9, 2011 redacted Investigation Report
- CFR #6 July 12, 2011 Complaint of [REDACTED] with attachment
- CFR #6A July 25, 2011 letter from Rosalind Lancaster, Record Team Leader, SECU, to Investigator Julio A. Hernandez, with attachments
- CFR #6B Maryland Judiciary Case Search, printed January 23, 2012; March 30, 2010 Complaint, District Court of Maryland for Baltimore County (District Court for Baltimore County), Civil Case No.: 0804-0009212-2010; undated document entitled, "Checks Paid to Lana Popok," with attached cancelled checks; March 31, 1010 receipt, District Court for Baltimore County, Civil Case No.: 0804-009212-2010; emails between [REDACTED] and the Respondent, dated December 8, 2009, January 21, 25, and 28, 2010, March 2 and 4, 2010; March 4, 2011 - June 29, 2011 court documents, District Court for Baltimore County, Civil Case No.: 0804-0009212-2010; December 1, 2009 Fax Cover Sheet from [REDACTED] to the Respondent, with

attachments; May 14, 2010 - March 31, 2011 court documents District Court for Baltimore County, Civil Case No.: 0804-0009212-2010; October 25, 2011 Fax Cover Sheet from [REDACTED] to Mr. Hernandez, with attachments; October 25, 2011 Fax Cover Sheet from [REDACTED] to Mr. Hernandez, with attachments

CFR #6C Home Affordable Modification Trial Period Plan, signed [REDACTED] on August 25, 2009; December 2, 2009 Notice of Intent to Foreclose; January 18, 2010 letter from Michael S. Botsaris, Esquire, to K and C Vending Svc LLC; January 21, 2010 letter from David S. Ostrow, Esquire, P.A., to [REDACTED] [REDACTED] January 29, 2010 letter from Michael P. Coyle, Esquire, to [REDACTED] February 23, 2010 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED], with attachment; March 10, 2010 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED] August 11, 2010 and October 11, 2010 letters from Peroutka & Peroutka, P.A., to [REDACTED] [REDACTED] March 11, 2011 letter from Bierman, Geesing, Ward & Wood, LLC, to [REDACTED] with attachment

CFR #7 Undated Complainant document relating to [REDACTED] with attachment

CFR #8 February 1, 2012 Final Order to Cease and Desist

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