

IN THE MATTER OF:

TITAN ADVICE CENTER, INC.,
TITAN ACCOUNTING CO., and
JUAN CARLOS HERNANDEZ, JR.
individual

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF
FINANCIAL REGULATION

OAH No.: DLR-CFR-76-19-02462

CFR No.: FY2018-0036

PROPOSED FINAL ORDER

The Proposed Decision of the Administrative Law Judge (“ALJ”) issued on June 7, 2019 (“Proposed Decision”), in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation (“Commissioner”) this ___ of June, 2019

ORDERED:

- A. That the Findings of Fact in the Proposed Decision be, and hereby are, **ADOPTED**;
- B. That the Conclusions of Law be, and hereby are, **ADOPTED**;
- C. Respondent shall immediately **CEASE AND DESIST** from all engaging in any conduct in the State of Maryland that violates Md. Code Ann., Real Prop. §§7-502, 12 C.F.R. §§1015.3, 1015.4, and 1015.5.;
- D. The civil penalties in the Proposed Decision be, and hereby are **ADOPTED** after having considered the factors under Md. Code Ann., Fin. Inst. §2-115(c), and determined that the violation are serious; Respondents’ conduct showed the absence of good faith; and Respondents’ actions had deleterious effect on the public and the industry. The

Commissioner does not have any information regarding Respondents' history of previous violations or assets;

- E. Respondents shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$5,000.00, in penalties, within twenty (20) days from the date of this Proposed Final Order;
- F. The restitution in the Proposed Decision be, and hereby is **ADOPTED**;
- G. Respondent shall pay restitution to Consumer A in the amount of \$2,792.97 by mailing a check via First Class Mail, postage prepaid, to the address stated in Exhibit "A", attached hereto. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making the payment. Upon making the required payment, Respondents shall furnish a copy of the front and back of the cancelled check for the payment to the Commissioner as evidence of having made payment, within sixty (60) days of the date of this Proposed Final Order;
- H. Respondent shall send all correspondence, notices, civil penalties, and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 N. Calvert Street, Suite 402, Baltimore, Maryland 21202, Attention: Proceedings Administrator; and
- I. The records and publications of the Commissioner shall reflect this decision.

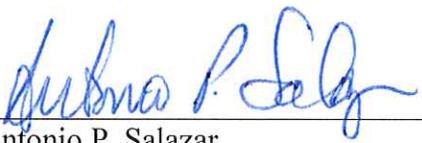
Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Pursuant to COMAR 09.01.03.09A(1), Respondent has twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Proposed Final Order shall be deemed to be the

final decision of the Commissioner, and subject to judicial review pursuant to Md. Code Ann., State Gov't § 10-222.

Respondent may have the right to file a petition for judicial review; however filing of a petition for judicial review does not automatically stay the enforcement of this Proposed Final Order.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

Date: 6/19/19

By: 
Antonio P. Salazar
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

TITAN ADVICE CENTER, INC.,
TITAN ACCOUNTING CO., and
JUAN CARLOS HERNANDEZ, JR.,
RESPONDENTS

* BEFORE WILLIAM SOMERVILLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH NO.: DLR-CFR-76-19-02462
*
* CFR NO.: FY2018-0036

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about January 14, 2019, the Office of the Commissioner of Financial Regulation (CFR) issued to the above named Respondents a statement of administrative charges. The statement of charges, which functions as a notice of action, alleges that the Respondents violated the Maryland Mortgage Assistance Services Act (MARS Act). The statement of charges also cited statutes noting that if there is a determination that a Respondent violated the MARS Act, the CFR would be authorized to issue a cease and desist order, require restitution to an aggrieved person, and issue a penalty of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation.

On January 15, 2019, the CFR referred this case to the Office of Administrative Hearings (OAH), delegating to OAH the authority to conduct a hearing and to issue proposed findings of

fact, proposed conclusions of law, and a recommended order to determine whether, and to what extent, various authorized remedies and sanctions might be appropriate.

On February 4, 2019, the OAH issued hearing notices to the parties at their respective addresses of record. I heard the matter on March 12, 2019. Sophie Asike, Assistant Attorney General, represented the CFR. Upon reviewing notice documents, I concluded that notice was properly issued to all addresses on record. The Respondents failed to appear. I proceeded in the Respondents' absence. Md. Code Ann., State Gov't §10-208(b)(6); Code of Maryland Regulations (COMAR) 28.02.01.23.

The contested case provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation (DLLR), and OAH's Rules of Procedure govern the procedures in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.01.03; 28.02.01.

ISSUES

1. Did the Respondents engage in any of the conduct set forth in the CFR's notice of action which violated any of the rules and statutes set forth in the CFR's notice of action?
2. If so, whether any of the remedies referenced in the CFR's notice of action are authorized and appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR offered the following exhibits which were admitted as evidence:

1. OAH's Notice of Hearing, 2-4-2019
2. CFR's statement of administrative charges, 1-14-2019
3. Certificate of Incorporation, 11-8-2016
4. Affidavit of accounts, 3-29-2018

5. Handwritten complaint document, 11-7-2017
6. Client Services Agreement, 9-1-2017
7. Packet of customer receipts, various dates
8. Communication authorization letter, 8-1-2017
9. Investigation Report, 6-4-2018

The Respondents did not offer exhibits.

Testimony

The CFR presented the following witness:

- Zenaida Velez-Dorsey, CFR Investigator

The Respondents presented no witnesses.

FINDINGS OF FACT

Upon consideration of demeanor evidence, testimony, and other evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant, Juan Carlos Hernandez, Jr., (Hernandez) of Santa Anna, California, was the president and the owner of Titan Advice Center, Inc., a corporation incorporated as of November 8, 2016, under the laws of Wyoming.
2. At all times relevant, Hernandez conducted business as, and traded as, Titan Advice Center, Inc., (Corporation) and also as Titan Accounting Co.
3. At all times relevant, the Corporation operated out of a mail box, box 454, in a UPS retail store in Tustin, California.
4. Sometime before August 31, 2017, a Maryland consumer received in the mail a solicitation to do business with the Corporation. The solicitation suggested that the consumer could benefit by the Corporation's mortgage loan modification assistance relief services in order to modify or restructure the consumer's residential mortgage loan.

5. On August 31, 2017, the consumer signed an authorization letter drafted and issued to the consumer by an entity calling itself "Titan Advice Center" and operating out of the mail box, box 454, in Tustin, California.

6. At that time, the consumer was not in default on her residential mortgage loan.

7. On September 1, 2017, the Corporation and the consumer entered into a written agreement by which the Corporation promised to negotiate for the consumer a modification of her then current mortgage loan from her mortgage servicer, Freedom Mortgage Corporation, and the consumer promised to pay up front fees of \$3,288.51 before the Corporation would provide any further loan modification services. The contract documents recited that the Corporation would enter into real estate negotiations, prepare documents, and attempt to restructure the consumer's mortgage loan on the consumer's behalf. (Agy Ex. 6.)

8. On September 1, 2017, the consumer also signed an authorization letter drafted by the Corporation, authorizing the loan servicer to communicate with the Corporation about the consumer's mortgage loan. (Agy Ex. 6.)

9. On September 1, 2017, the consumer paid \$500.00 cash into a bank account registered to Titan Accounting Co.

10. On September 14, 2017, the consumer paid \$596.76 cash into a bank account registered to Titan Accounting Co.

11. On October 2, 2017, the consumer paid \$596.17 cash into a bank account registered to Titan Accounting Co.

12. On October 13, 2017, the consumer paid \$500.00 cash into a bank account registered to Titan Accounting Co.

13. On November 1, 2017, the consumer paid \$600.00 cash into a bank account registered to Titan Accounting Co.

14. Sometime between September 1, 2017 and November 7, 2017, Freedom Mortgage Corporation issued to the consumer a notice of intent to foreclose on the consumer's mortgage loan.

15. At some point thereafter, the consumer telephoned someone who purported to be associated with the Corporation. He used the name "Joseph Brian." The consumer was told 1) to stop paying her mortgage loan, and 2) not to contact the mortgage loan servicer, Freedom Mortgage Corporation. The consumer was not told, "If you stop paying your mortgage, you could lose your home and damage your credit rating."

16. On or about November 7, 2017, the consumer sent a complaint letter to the CFR with copies of various documents.

17. The CFR began an investigation.

18. On January 14, 2019, the CFR issued a statement of administrative charges to the Corporation, to Titan Accounting Co., and to Hernandez. The notice was sent to three addresses.

19. At no time did the consumer pay to the Corporation the full \$3,281.51 fee.

20. At no time did the Corporation, or Hernandez, contact Freedom Mortgage Corporation to initiate a loan modification process or to negotiate one; no loan modification was obtained for the consumer.

21. At no time did the consumer receive any refund from Hernandez or the Corporation.

DISCUSSION

Burdens

The CFR bears the burden of proving by a preponderance of the evidence that the Respondent violated the regulatory and statutory sections at issue. Md. Code Ann., State Gov't § 10-217 (2014); *See Comm'r of Labor & Indus. v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

Arguments of the Parties

The CFR argues that the Respondent violated the MARS Act in five ways by violating incorporated federal regulations. It argues that the facts set forth in the notice of action were shown to be true, and that those facts satisfy the elements of proof under the several regulatory violations.

The Respondent did not appear or respond.

Incorporation of Federal Regulations

The statute on which the CFR relies, Md. Code Ann., Real Prop. § 7-502, requires mortgage assistance relief service providers to comply with enumerated federal regulations. A mortgage assistance relief service provider is an entity “that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service.” Md. Code Ann., Real Prop. §7-501(e) (2015); 12 C.F.R. §1015.2. Mortgage assistance relief service is any “service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

... [n]egotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees[.]” Md. Code Ann., Real Prop. §7-501(d); 12 C.F.R. §1015.2. In the instant case, the Respondents qualify as mortgage assistance relief service providers. (Findings of Fact 4, 7, and 8.)

Told Not to Contact Lender

A mortgage assistance relief service provider is prohibited from representing to a consumer, in the connection with any mortgage assistance relief service, that the consumer should not contact the consumer’s lender or mortgage servicer. 12 C.F.R. §1015.3(a). In the instant case, the mortgage assistance relief service provider told the consumer not to contact her

mortgage servicer. (Finding of Fact 15.) The CFR has met its burdens of production and persuasion to demonstrate a violation of this rule.

Told Not to Pay Lender

A mortgage assistance relief service provider is prohibited from representing to a consumer, in the connection with any mortgage assistance relief service, that the consumer need not comply with her obligation to make scheduled periodic payments pursuant to the terms of the mortgage loan. 12 C.F.R. §1015.3(b)(4). In the instant case, the mortgage assistance relief service provider told the consumer to stop paying her mortgage loan payments. (Finding of Fact 15.) She was not in default until the mortgage assistance relief service provider induced her to stop paying. (Finding of Fact 6.) The CFR has met its burdens of production and persuasion to demonstrate a violation of this rule.

Upfront Fees

A mortgage assistance relief service provider is prohibited from representing that it has a right to collect fees before performing all of the contracted mortgage assistance relief services. 12 C.F.R. §1015.3(b)(7). In the instant case, the mortgage assistance relief service provider told the consumer that she had to pay a flat fee before the services would be provided. (Finding of Fact 7.) The CFR has met its burdens of production and persuasion to demonstrate a violation of this rule.

In addition, a mortgage assistance relief service provider is prohibited from actually receiving payment for services before the consumer executes a written agreement with the consumer's lender or loan servicer regarding the lender or servicer's offer of relief 12 C.F.R. §1015.5(a). In the instant case, the mortgage assistance relief service provider received payments totaling \$2,792.93 and did not negotiate with the lender or servicer, much less obtain a written agreement containing mortgage assistance relief for the consumer. (Findings of Fact 9,

10, 11, 12, 13, and 20.) The CFR has met its burdens of production and persuasion to demonstrate a violation of this rule.

Commercial Communications

A mortgage assistance relief service provider is required to make certain conspicuous disclosures in its “commercial communications” with a consumer. A “commercial communication” is “any written or oral statement, illustration, or depiction . . . that is designed to effect a sale or create interest in purchasing any service, plan, or program” 12 C.F.R. §1015.2. Promotional materials and web pages are included in the term. *Id.*

A “commercial communication” can be either “general” or “consumer specific.” A “general” commercial communication is one that occurs before the consumer and the mortgage assistance relief service provider enter into any agreement and it is not directed at a certain consumer. 12 C.F.R. §1015.2. A “consumer specific” commercial communication is one that occurs before the consumer and the mortgage assistance relief service provider enter into any agreement and it is directed at a certain consumer. 12 C.F.R. §1015.2.

In the instant case, the CFR offered no advertisements, solicitations, or commercials into evidence. My review of the evidentiary record reveals no solicitation or commercial communications. The CFR has offered contract forms and boilerplate transactional documents (Agy Ex. 6 and 8) but nothing that appears to be an advertisement, a solicitation, or a commercial that is designed to effect a sale.

A regulation, 12 C.F.R. §§1015:4(a) and (b), requires that mortgage assistance relief service providers place specific statements in the communications. Not having offered a commercial communication into evidence, I cannot determine that a commercial communication violated requirements of a regulation. The CFR has not met its burdens of production and persuasion to demonstrate a violation of this rule.

Other Communications

An applicable regulation, 12 C.F.R. §1015.4(c), requires that a mortgage assistance relief service provider, in connection with performance of mortgage loan modification assistance relief services, represents to a consumer that the consumer should discontinue payments on a mortgage loan, must conspicuously disclose, “If you stop paying your mortgage, you could lose your home and damage your credit rating.” In the instant case, the consumer telephoned the mortgage assistance relief service provider and spoke to Joseph Brian. He told her not to pay her existing mortgage loan payments. He did not disclose what might happen if the consumer stopped paying. (Finding of Fact 15.) The CFR has met its burdens of production and persuasion to demonstrate a violation of this rule.

Sanctions

In its notice of action, the CFR did not notify the Respondents what specific sanction or remedy, if any, it would be seeking. Maryland’s Administrative Procedure Act requires that a State agency “state *the* sanction proposed, or *the* potential penalty” sought by the State agency. Md. Code Ann., State Gov’t, §10-207(b)(3) (emphasis added).¹ Instead, the CFR merely stated the statutory range of possible, authorized sanctions that could be imposed, if sanctions were to be deemed applicable after a hearing. (Agy Ex. 2.) The Respondents did not attend the hearing.²

In closing argument, the CFR revealed what specific sanctions it would like to see imposed. With regard to proposed penalties, the CFR offered a sanction matrix specific to this

¹ That information is to be disclosed so that the entities against whom action is taken can make an informed decision whether to challenge the action, and also so those entities can decide upon the extent of their challenge. Those important choices are driven by, among other things, complete disclosure of the specific sanctions actually intended to be imposed. See *Briggeman v. Albert*, 322 Md. 133, 138 (1990) (faced with either paying a \$30.00 fine or formally challenging an accusation in court, the fully-informed accused chose to pay the fine, for mere convenience); *Briggeman v. Albert*, 81 Md. App. 482, 487 (1990) (in light of notice of a specific sanction, an accused might choose not to muster a defense in court because “the juice might not be worth the squeezing”); Md. Code Ann., Trans. § 27-101(a) (accused in *Briggeman* could have been subject to a range of penalties up to \$500.00); see also *Bragunier Masonry Contrs. v. Md. Comm’r of Labor & Indus.*, 111 Md. App. 698, 713-14 (1996) (by analogy, a party must be afforded reasonable notice of allegations so the party can prepare a suitable defense).

² The Respondents did not challenge the notice of action.

particular case. The CFR argues that it believes that a penalty of \$1,000.00 for each of the five listed administrative charges on the matrix memorandum is appropriate.

It also argues that a final cease and desist order and some restitution money to the consumer is appropriate. Md. Code Ann., Fin. Inst. § 2-115(b) (Supp. 2018).

Under the facts and circumstances of this case, I agree with counsel for the CFR. It is clear that the statutory scheme authorizes the remedies sought by the CFR. Md. Code Ann., Fin. Inst. § 2-115(b). A final cease and desist order is authorized and appropriate. *Id.* Restitution of the amount lost by the consumer in this case, \$2,792.97, also appears to be authorized and appropriate. *Id.* Finally, to set penalties for the dishonest conduct of the Respondents, I again turn to the statute. Md. Code Ann., Fin. Inst. § 2-115(c). The statute provides:

(c) Financial penalty. -- In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Commissioner shall consider the following factors:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and the industry involved;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

The Respondents told the consumer not to contact her lender in violation of 12 C.F.R. §1015.3(a), told her not to pay her lender in violation of 12 C.F.R. §1015.3(b), and told her to pay them up front fees in violation of 12 C.F.R. §1015.3(b). In addition, the Respondents received payments for services before the statutory and regulatory schemes allowed the receipt

of fees. 12 C.F.R. §1015.5(a). The Respondents failed to make the required disclosures when communicating with the consumer in violation of 12 C.F.R. §1015.4(c). Those were serious violations. There was no showing of good faith or an honest error. There was no evidence of previous violations. The violations caused a cloud of sleaze, corruption, and foul play to hang over the mortgage assistance relief service provider industry. Assets of the violator are unknown at this time. Other factors have not been offered to influence the amount of a penalty. Md. Code Ann., Fin. Inst. §2-115(c). Under these circumstances, a \$1,000.00 penalty for each of those five violations is not unreasonable. I conclude that the relief sought is appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the CFR has met its burdens to show that the Respondents violated Md. Code Ann., Real Prop. §7-502 by violating 12 C.F.R. §1015.3, 12 C.F.R. §1015.4, and 12 C.F.R. §1015.5 as set forth above.

I further conclude that the specific sanctions and remedies requested by the CFR are authorized by law and appropriate. Md. Code Ann., Fin. Inst. § 2-115 and Md. Code Ann., Real Property § 7-506.

ORDER

I **RECOMMEND** that the Commissioner of Financial Regulation issue an order as follows:

ORDERED that the record reflect that the Respondents violated the various statutes and regulations, as further set forth above, and it is further

ORDERED that within 30 days the Respondents pay to the State of Maryland \$2,792.97 to be used as restitution for the consumer, and it is further

ORDERED that within 30 days the Respondents pay to the State of Maryland \$5,000.00 in penalties, and it is further

ORDERED that the Respondents cease and desist engaging in any conduct within the State of Maryland that violates the statutes and rules cited above, and it is further

ORDERED that the records and publications of the Maryland Commissioner of Financial Regulation reflect this decision.

June 7, 2019
Date Decision Mailed



William J.D. Somerville III
Administrative Law Judge

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#179345