IN THE MATTER OF:	BEFORE THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION
U.S. MITIGATORS, LLC, JAROD F. GROB, KENNETH A. O'CONNOR, and TOM J. PALARINO, Respondents.	Case No.: CFR-FY2010-057

SUMMARY ORDER TO CEASE AND DESIST

WHEREAS, the Commissioner of Financial Regulation (the "Commissioner") undertook an investigation into the credit services business activities of U.S. Mitigators, LLC ("U.S. Mitigators"), Jarod F. Grob, Kenneth A. O'Connor, and Tom J. Palarino (collectively the "Respondents"); and

WHEREAS, as a result of that investigation, the Commissioner finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"), and Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3, and the Commissioner finds that action under FI §§ 2-114 and 2-115 is appropriate.

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that the Respondents are in violation of Maryland law, and that it is in the public interest that the Respondents immediately 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").

1. FI §§ 2-115(a) and (b) set forth the Commissioner's authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing), providing as follows:

> (a) *Summary cease and desist orders.-* When the Commissioner determines 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, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:
> (1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and
> (2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.
> (b) *Other authorized actions for violations.-* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, 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, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:
> (1) Issue a final cease and desist order against the person;
> (2) Suspend or revoke the license of the person;
> (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of $1,000 for a first

violation and a maximum amount of $5,000 for each subsequent violation; or
(4) Take any combination of the actions specified in this subsection.

2. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations). Thus, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire ... a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents."

3 In the present matter, in October 2009, the Commissioner began an investigation into the business activities of the Respondents as a result of a consumer complaint. Pursuant to the Commissioner's inquiry into Respondents' business activities, the Commissioner developed reasonable grounds to believe that Respondents have engaged in unlicensed credit services business activities with Maryland consumers in violation of various provisions of Maryland Law, including, but not limited to, the MCSBA and FI Title 11, Subtitles 2 and 3, and that the Respondents' business activities constituted other violations of the MCSBA. The legal and factual bases for these determinations are described below.

4. The MCSBA provides, pursuant to CL § 14-1902, that "[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [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. . . ."

5. Pursuant to 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."

6. Pursuant to FI § 11-302, "[u]nless the person is licensed by the Commissioner, a person may not: . . . (3) [e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article."

7. Pursuant to 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."

8. 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.

9. 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."

10. CL § 14-1902 further provides, in pertinent part, 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:
> (4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;
> (5) Engage, 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;
> (6) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer;
> * * *

11. CL § 14-1903(a) addresses the scope of credit services contracts covered under 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.

12. 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.

13. 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."

14. CL § 14-1905 indicates 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 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.

15. CL § 14-1906 discusses requirements for contracts between credit services businesses and consumers, providing as follows:

> (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.

* * *

(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.

16. CL § 14-1907 provides, in part, as follows:

(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.
(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.
(c) *Waivers.*–

* * *

(2) Any attempt by a credit services business to have a consumer waive rights given by this subtitle shall constitute a violation of this subtitle.

17. CL § 14-1908 provides that, "[a] credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of the Financial Institutions Article." Further, CL § 14-1909 provides that, "[t]he surety bond shall be issued by a surety company authorized to do business in this State."

18. CL § 14-1912 discusses liability for failure 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.

19. Loan modification services generally include obtaining an extension of credit for consumers, namely obtaining forbearance or other deferrals of payment on consumers' mortgage loans. This includes any offered services intended as part of the loan modification process, or which are represented to consumers to be necessary for participating in a loan modification program. Under certain circumstances, loan modification services may involve improving a consumer's credit record, history, or rating or establishing a new credit file or record. Therefore, unless otherwise exempt, pursuant to CL §§ 14-1901(e) and 14-1901(f) persons providing loan modification services, in which they are offering forbearance services, 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.

20. The Commissioner's investigation determined that Respondent U.S. Mitigators is an inactive Florida limited liability company operating out of Boca Raton, Florida. Further, the Commissioner's investigation revealed that U.S. Mitigators engages in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered business entity in the State of Maryland.

21. The Commissioner's investigation determined that Respondents Jarod F. Grob, Kenneth A. O'Connor, and Tom J. Palarino engage in business activities with Maryland consumers involving Maryland residential real property. Jarod F. Grob, Kenneth A. O'Connor, and Tom J. Palarino are the owners, directors, officers, managers, employees and/or agents of U.S. Mitigators.

22. The Commissioner's investigation revealed that, in early 2009, [redacted] ("Consumer A") entered into a loan modification agreement with Respondents. Consumer A paid approximately $1,750 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A. Respondents also directed Consumer A to stop making payments on her residential mortgage loan. Although Respondents collected $1,750 in up-front fees, Respondents never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, to which the Respondents have yet to provide a refund.

23. Pursuant to the Commissioner's authority to conduct investigations under FI § 2-114, the Commissioner issued subpoenas to Respondents on October 2, 2009, ordering them to produce by October 20, 2009 all documents in their control in any way related to their loan modification services provided to Maryland consumers. Respondents have yet to produce the documents required by the subpoena, and thus are in violation of FI § 2-114.

24. In the present matter, the Respondents are subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA pursuant to CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303. However, at no time relevant to the facts set forth in this Summary Order to Cease and

Desist (the "Summary Order") have Respondents been licensed by the Commissioner under the MCSBA.

25. By representing that they could provide loan modification services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents have engaged in credit services business activities without having the requisite license. 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.

26. Additionally, by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA.

27. Further, Respondents made or used false or misleading representations in their sale of services to Maryland consumers, thereby violating CL § 14-1902(4), for example, when Respondents' advertisements and other marketing materials claimed that they would obtain beneficial loan modifications for Maryland homeowners or return any fees that the consumers had paid, when in fact Respondents never obtained such beneficial modifications for Maryland consumers and never returned the up-front fees collected.

28. Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and Respondents failed to include all of the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

29. Further, as the agreements between Respondents and the consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above), pursuant to CL § 14-1907(b) all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of State of Maryland.

30. Additionally, by failing to obtain beneficial loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents had agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), such breaches constitute *per se* violations of the MCSBA.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that Respondents shall immediately **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

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from violating the aforementioned statutory provisions of the Annotated Code of Maryland, including, but not limited to, Title 14, Subtitle 19 of the Commercial Law Article (the Maryland Credit Services Businesses Act), and Title 11, Subtitles 2 and 3 of the Financial Institutions Article; and that Respondents should be assessed statutory monetary penalties and directed to make restitution for such violations; and it is further

ORDERED that all provisions of this Summary Order, including all orders and notices set forth herein, shall also apply to all unnamed partners, employees, and/or agents of Respondents; and it is further

ORDERED that Respondents shall provide a copy of this Summary Order to all unnamed partners, employees and/or agents of the Respondents; furthermore,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115 and CL § 14-1911, Respondents are entitled to a hearing before the Commissioner to determine whether this Summary Order should be vacated, modified, or entered as a final order of the Commissioner; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115 and CL § 14-1911, this Summary Order will be entered as a final order of the Commissioner if Respondents do not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations ("COMAR") § 09.01.02.08, and State Government Article ("SG") §§ 9-1607.1, 10-206.1, and 10-207, and in accordance with SG § 10-207(b)(4), individual Respondents are only permitted to request a hearing, and to appear at such hearing, on behalf of themselves, or through an attorney authorized to practice law in Maryland at Respondents' own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at Respondents' own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Jessica Wienner, Administrator
Enforcement Unit
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner described above, the Commissioner may, in the Commissioner's discretion, and in addition to taking any other action authorized by law, take the following actions: enter an order making this Summary Order final; issue a penalty order against Respondents imposing a civil penalty up to $1,000 for each violation of the MCSBA, up to $1,000 for each violation of the FI §§ 2-114, and up to $1,000 for each additional violation cited above; issue a penalty order against Respondents imposing a civil penalty up to $5,000 for each subsequent violation of these laws; or may take any combination of the aforementioned actions against Respondents. The Commissioner may also enter a final order declaring, pursuant to CL §§ 14-1902 and 14-1907, that all loan modification services agreements made by Respondents with Maryland consumers are void and unenforceable, and that Respondents must refund to Maryland consumers all money and other valuable consideration that consumers paid to Respondents, and if applicable to his partners, employees, and/or agents, that is in any way related to these agreements. In addition, pursuant to CL § 14-1912, as a result of Respondents' failure to comply with requirements imposed under the MCSBA, the

Commissioner may also enter an order requiring Respondents to pay consumers a monetary award equal to any actual damages sustained by the consumers as a result of that failure, and, in instances of willful noncompliance under the MCSBA, an additional monetary award equal to 3 times the total amount collected from the consumers.

MARYLAND COMMISSIONER OF FINANCIAL REGULATION

9/24/00
Date

By: Mark Kaufman
Deputy Commissioner