

IN THE MATTER OF:

ROXANA E. SALGADO

Respondent.

BEFORE THE MARYLAND  
COMMISSIONER OF  
FINANCIAL REGULATION

Case No.: CFR-FY2011-209

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**FINAL ORDER TO CEASE AND DESIST**

**WHEREAS**, the investigators in the office of the Commissioner of Financial Regulation (the "Commissioner"), under the supervision of the Deputy Commissioner, conducted an investigation into the credit services business activities of Roxana E. Salgado (the "Respondent"); and

**WHEREAS**, as a result of that investigation, the Deputy Commissioner of Financial Regulation (the "Deputy Commissioner") found evidence to support that Respondent engaged in acts or practices constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, namely that Respondent has violated various provisions of the Annotated Code of Maryland, including Commercial Law Article ("CL"), Title 14, Subtitle 19 (the Maryland Credit Services Businesses Act, hereinafter "MCSBA"); Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3; and Real Property Article ("RP"), Title 7, Subtitle 3 (the Protection of Homeowners in Foreclosure Act, hereinafter "PHIFA"); and

**WHEREAS**, the Deputy Commissioner issued a Summary Order to Cease and Desist (the "Summary Order") against Respondent on July 6, 2011, after determining that

Respondent was in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondent cease and desist from engaging in credit services business activities and/or foreclosure consulting 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, foreclosure consulting, or similar services related to residential real property (hereinafter "loan modification services"); and

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

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

**WHEREAS**, Respondent failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI § 2-115(a)(2) and RP § 7-319.1, and has not filed a

request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

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

Maryland Credit Services Businesses Act

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

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

- (i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;
- (ii) Obtaining an extension of credit for a consumer; or
- (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

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

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

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

Order: communications between Respondent's attorney and an investigator in the Office of the Commissioner of Financial Regulation; statements and documents submitted by Consumer A and Consumer B (defined below) who had entered into loan modification agreements with Respondent but for whom Respondent failed to obtain or, the case of Consumer B, even attempt to obtain a loan modification (it is unknown whether Respondent submitted loan modification documents on behalf of Consumer A); and the Commissioner's licensing records. More particularly, this evidence supports the following findings:

a. Respondent Roxana Salgado engaged in business activities with Consumer A and Consumer B, each involving Maryland residential real property.

b. Respondent entered into agreements to provide loan modification services, which included obtaining extensions of credit as defined by the MCSBA, for Consumer A and Consumer B on their respective residential mortgage loans.

c. In October 2010, [REDACTED] ("Consumer A"), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer A paid \$1,500 in up-front fees to Respondent in exchange for which Respondent represented that she would be able to obtain a loan modification for Consumer A. Although Respondent collected \$1,500 in up-front fees, Respondent never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, to which the Respondent has yet to provide a refund.

d. In September 2010, [REDACTED] ("Consumer B" and, together with Consumer A, the "Consumers"), who was in default on his Maryland residential mortgage loan, entered into a loan modification agreement with Respondent. Consumer B paid \$1,100 in up-front fees to Respondent in exchange for which Respondent represented

that she would be able to obtain a loan modification for Consumer B. Although Respondent collected \$1,100 in up-front fees, Respondent never sought or obtained a loan modification for Consumer B. Further, Consumer B requested a refund of the up-front fees, to which the Respondent has yet to provide a refund.

e. Respondent engaged in willful conduct which was intended to deceive and defraud Consumer A and Consumer B, as referenced above, which demonstrated a complete lack of good faith and fair dealing by Respondent, and which breached the duties that Respondent owed to the Consumers. Such conduct included the following:

(i). Respondent failed to perform those loan modification services for Consumer A and Consumer B that she promised to provide to each of them and for which she had collected up-front fees from each of them;

(ii). Respondent did not attempt to modify Consumer B's residential mortgage loan; and

(iii). Respondent refused to provide full refunds to Consumer A and Consumer B when refunds were due for lack of service.

4. In the present matter, Respondent is subject to the MCSBA, including its prohibition on engaging in credit services business activities without first being licensed under the MCSBA. *See* CL § 14-1902(1) ("[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [r]eceive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article. . . ."); CL §14-1903(b) ("[a] credit services business is required to be licensed under this subtitle and is subject to the licensing,

investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article"); FI § 11-302 ("[u]nless the person is licensed by the Commissioner, a person may not: . . . (3) [e]ngage in the business of a credit services business as defined under Title 14, Subtitle 19 of the Commercial Law Article"); and FI § 11-303 ("[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions").

5. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order, or in the present Final Order, has the Respondent been licensed by the Commissioner under the MCSBA.

6. Respondent has engaged in credit services business activities without having the requisite license by entering into contractual agreements with Consumer A and Consumer B to provide such services. Respondent's 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 Respondent to the penalty provisions of the MCSBA.

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

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

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

10. By failing to obtain beneficial loan modifications for Consumer A and Consumer B, which Respondent had agreed to provide to each of them, Respondent breached her respective contractual agreements with Consumer A and Consumer B. Such breaches constitute *per se* violations of the MCSBA pursuant to CL § 14-1907(a) ("[a]ny breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle").

11. Because the contract between Respondent and Consumer A and the contract between Respondent and Consumer B failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all loan modification contractual agreements between Respondent and Consumer A and Consumer B are void and unenforceable as against the public policy of the State of Maryland pursuant to CL § 14-1907(b) ("[a]ny

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

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

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

13. CL § 14-1912 discusses liability for failing to comply with the MCSBA, providing as follows:

(a) *Willful noncompliance.*— Any credit services business which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure;

(2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;

(3) Such amount of punitive damages as the court may allow; and

(4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) *Negligent noncompliance.*— Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.



14. Respondent engaged in acts, practices, or other activities which operated as a fraud or deception on persons in connection with the offer or sale of the services of a credit services business, and thereby violated CL § 14-1902(5); such actions also constituted willful noncompliance with the MCSBA under CL § 14-1912(a). Respondent's fraudulent, deceptive, and willful conduct included the following: she failed to perform those loan modification services for Consumer A and Consumer B which she promised to secure for each of them and for which she had collected up-front fees from each of them; and Respondent refused to provide full refunds to Consumer A and Consumer B when such refunds were due for lack of service.

#### **Protection of Homeowners in Foreclosure Act**

15. Under PHIFA, (specifically RP § 7-301(i)), the term "*homeowner*" is defined as "the record owner of a residence in default or a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article." In turn, pursuant to RP § 7-301(j), the term "*residence in default*" refers to homeowner-occupied Maryland residential real property "on which the mortgage is at least 60 days in default," while pursuant to RP § 7-301(k), "*residence in foreclosure*" refers to homeowner-occupied Maryland residential real property "against which an order to docket or a petition to foreclose has been filed."

16. Pursuant to RP § 7-301(c), a "*foreclosure consultant*" is defined as a person who:

(1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or

postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner's residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or

(2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

17. Unless otherwise exempt, the provisions of PHIFA apply to, *inter alia*, activities in which a person or business entity solicits, offers, sells, provides, or enters into an agreement to provide, residential mortgage loan modification services (a/k/a loss mitigation, foreclosure consulting, and similar services) pertaining to homeowner-occupied Maryland residential real property which is in default or in foreclosure.

18. The Deputy Commissioner's investigation revealed that the business activities of the Respondent are subject to PHIFA. Consumer A and Consumer B were each in default on their residential mortgages for more than sixty days. Thus, by entering into

agreements with Consumer A and Consumer B to provide residential mortgage loan modification services, the Respondent acted as a "foreclosure consultant" under RP § 7-301(c). Moreover, because each of the Consumers were over sixty days in default on their respective residential mortgage loans, the promised services constituted "foreclosure consulting services" under RP § 7-301(e) and each of the loan modification agreements constituted a "foreclosure consulting contract" under RP § 7-301(d). As such, the Respondent was required to comply with all provisions of PHIFA applicable to foreclosure consultants.

19. Respondent failed to comply with the requirements of PHIFA. First, the Respondent violated RP § 7-307(2) by requiring Consumer A and Consumer B to pay up-front fees to Respondent prior to Respondent successfully obtaining loan modifications for them.

20. The Respondent also violated PHIFA by inducing each of Consumer A and Consumer B to enter into a foreclosure consulting contract which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c). Moreover, Respondent violated RP § 7-307(10) which provides that "[a] foreclosure consultant may not . . . [i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA]."

21. The Respondent further violated PHIFA when she breached the duty of reasonable care and diligence required under RP § 7-309(b) and Business Occupations & Professions Article § 17-532(c)(vi), including, but not limited to, the following conduct: She failed to perform loan modification services for Consumer A and Consumer B which she promised to provide and for which she had collected up-front fees. Respondent failed to

submit loan documents for Consumer B or contact his creditors. It is unknown whether Respondent submitted loan documents for Consumer A.

**The Commissioner's General Investigative Authority**

22. 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).

23. Pursuant to the Commissioner's authority to conduct investigations under FI § 2-114, the Deputy Commissioner issued a subpoena to Respondent on April 8, 2011, ordering her to provide specific information and all documents related to her loan modification activities involving Maryland consumers no later than April 26, 2011. However, Respondent failed to provide the required information and documents by that date, and in fact has not provided the documents and information as of the date of this Final Order. By failing to fully comply with the Deputy Commissioner's subpoena, Respondent is in violation of FI § 2-114.

**NOW, THEREFORE,** having determined that Respondent waived her right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to CL §§ 14-1902, 14-1907, 14-1912, RP § 7-307, RP § 7-309, RP § 7-319.1, and FI § 2-115(b), it is by the Maryland Commissioner of Financial Regulation, hereby:

**ORDERED** that the Summary Order issued by the Deputy Commissioner against Respondents on July 6, 2011, is entered as a final order of the Commissioner as modified

herein, and that Respondent shall permanently **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; and it is further

**ORDERED** that, pursuant to FI § 2-115(b) and RP § 7-319.1, and upon careful consideration of, among other things, (i) the seriousness of the Respondents' violations; (ii) the lack of good faith of Respondent, and (iii) the deleterious effect of Respondent's violations on the public and on the credit services businesses and mortgage industries, Respondent shall pay to the Commissioner a total civil money penalty in the amount of **NINE THOUSAND DOLLARS (\$9,000)**, which consists of the following:

<i>Prohibited Activity and Violation</i>	<b>Penalty per Violation</b>	<b>x Number of Violations</b>	<b>= Penalty</b>
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	2 Md. Consumers	\$2,000
<i>Charging Up-Front Fees in Violation of MCSBA</i>	\$1,000	2 Md. Consumers	\$2,000
<i>Charging Up-Front Fees in Violation of PHIFA</i>	\$1,000	2 Md. Consumers	\$2,000
<i>Breaching the Duty of Reasonable Care and Diligence in Violation of PHIFA</i>	\$1,000	2 Md. Consumers	\$2,000
<i>Failure to Comply with Summary Order in Violation of FI § 2-114</i>	\$1,000	1 Violation	\$1,000
		<b>TOTAL</b>	<b>\$9,000</b>

and it is further,

**ORDERED** that Respondent shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **NINE THOUSAND DOLLARS (\$9,000)** within fifteen (15) days from the date of this Final Order; and it is further

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

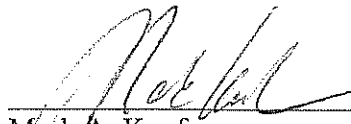
**ORDERED** that, pursuant to CL §§ 14-1902, 14-1907, and 14-1912, and RP § 7-319.1(c), Respondent shall pay restitution to Consumer A and Consumer B with whom Respondent entered into loan modification agreements; and that as Respondent's activities constituted willful noncompliance with the MCSBA, pursuant to CL § 14-1912(a) Respondent shall pay a monetary award in an amount equal to three times the amount collected from these consumers; and thus Respondent shall pay a monetary award of **FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00)** to Consumer A and **THREE THOUSAND THREE HUNDRED DOLLARS (\$3,300.00)** to Consumer B, with whom Respondent entered into loan modification agreements, with the total amount of restitution owed to the Consumers equaling **SEVEN THOUSAND EIGHT HUNDRED (\$7,800.00)** (consisting of the \$1,500.00 up-front fee collected from Consumer A, plus the \$1,100.00 up-front fee collected from Consumer B, each multiplied by three); and it is further

**ORDERED** that Respondent shall pay the required respective monetary awards to the Consumers within 30 days of the date of this Final Order. Respondent shall make

payment by mailing to each Consumer a check in the amount specified above for each Consumer via U.S. First Class Mail at the most recent address of that Consumer known to the Respondent. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondent shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Upon the making of the required payments, the Respondent shall furnish evidence of having made the payments to the Commissioner within sixty (60) days of this Final Order being signed, which evidence shall consist of a copy of the front and back of the cancelled check for each payment; and it is further

**ORDERED** that 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, Attn: Proceedings Administrator.

4/12/12  
Date

  
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Mark A. Kaufman  
Commissioner of Financial Regulation