

IN THE MATTER OF:

MAURICIO RIVERA

Respondent.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2012-121

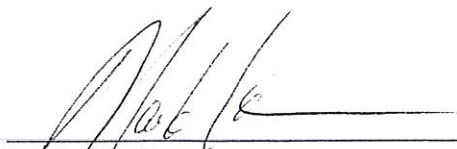
PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge (the "ALJ"), issued on February 19, 2014 in the above captioned case, having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this ^{14th} of March, 2014 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

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

FINAL ORDER
DATE 4/10/14



Mark Kaufman
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

MAURICIO RIVERA,
RESPONDENT

* BEFORE WILLIAM SOMERVILLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-CFR-76A-13-28555
* CFR NO.: FY2012-121
*

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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

On May 29, 2013, the Office of the Commissioner of Financial Regulation (CFR) issued to Mauricio Rivera (Respondent), among other entities, a Summary Order to Cease and Desist (Administrative Order). That Administrative Order directed the Respondent, and others, to cease and desist from engaging in “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” The Administrative Order, which functions as a notice of action, also directed the Respondent, and others, to cease and desist from violating various statutes. On or about June 17, 2013, the Respondent requested a hearing to challenge the action of the CFR and to challenge the terms of the Administrative Order.

On July 15, 2013, 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, a final order to cease and desist, as well as other sanctions, might be appropriate.

The OAH issued a hearing notice on September 9, 2013. I heard the matter on November 21, 2013. Rebecca J. Coleman, Assistant Attorney General, and William T. Lawry, Jr., Assistant Attorney General, represented the CFR. The Respondent represented himself.

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 (2009 & Supp. 2013); COMAR 09.01.03; 28.02.01.

ISSUES

1. Did the Respondent engage in any of the conduct set forth in the CFR's notice of action which violated any of the statutes set forth in the CFR's notice of action?
2. If so, whether a final cease and desist order and/or other remedies set forth in the notice of action are authorized and appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR offered the following exhibits which, unless otherwise noted, were admitted as evidence:

1. Administrative Order, 5-29-13
2. Request for hearing, 6-12-13
3. Letter, 7-15-13
4. (Not admitted)

5. (Not admitted)
 6. Packet of documents from consumer, [REDACTED], 5-31-13
 7. Packet of documents from consumer, [REDACTED], 6-29-13
 8. (Not admitted)
 9. Website document, 2-28-12
 10. Website document, California Secretary of State, 2-28-12
 11. DLLR website search results
 12. Final Order in another CFR case, 1-21-11
 13. Final Order in another case, 3-26-13
 14. (Not admitted)
-
15. Administrative Order in another CFR case, 10-12-13

The Respondent offered the following exhibits which were entered as evidence:

1. Copies of checks, various dates
2. Copies of checks to Alliance Marketing services, various dates
3. Handwritten note, 5-17-10

Testimony

The CFR presented the following witnesses:

- Zenaida Velez-Dorsey, CFR Investigator
- Juan Sempertegui, Director of Licensing
- [REDACTED] consumer
- [REDACTED] consumer
- The Respondent

The Respondent testified in his case.

FINDINGS OF FACT

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

1. At all times relevant, Alliance Marketing Services, LLC (Alliance) held itself out as a company in the business of reducing customer's mortgage loan payments and in the business of obtaining loan modifications for its customers, among other credit services business activities.

2. At all times relevant, MAE Global Enterprises, LLC (MAE) held itself out as a partner or subcontractor of Alliance and as a company in the business of filing papers and claims in its efforts to reduce customers' mortgage loan payments and to obtain for its customers mortgage loan modifications, among other credit services business activities. As a partner or subcontractor of Alliance, Alliance paid some money obtained from its customers to MAE.

3. At no time was Alliance, MAE, or the Respondent licensed by the CFR to engage in credit services business activities.

4. In October of 2009, employees of Alliance approached the Respondent and explained to him that Alliance, in conjunction with MAE, offered a "program" by which the Respondent's outstanding mortgage loan principal balance could be reduced to zero. In essence, the Respondent was told that Alliance and MAE could sue lenders, and in settlement, cause the lenders to reduce outstanding mortgage loan principal balances possibly to zero.

5. Soon thereafter, the Respondent asked the employees of Alliance if he could have a job with that company. The Respondent also asked to be included in the "program" to reduce loan payments on his two properties. His mortgage loan payments were not current on those properties. The employees of Alliance entered into an employment contract with the Respondent by which the Respondent would receive \$400.00 for each customer he referred, and the Respondent would be eligible for employee discounts on his payments for the "program." The

Respondent paid \$3,000.00 per property as an initial payment to be included in the loan payment reduction "program."

6. From October 2009 until some point in 2010, the Respondent referred seven customers to Alliance. Several of those customers did not speak English. For each customer referred, the Respondent received a referral fee. Each of the customers whom the Respondent referred eventually paid between \$1,250.00 and \$8,000.00 to Alliance.

7. At some point before November 2009, the Respondent approached [REDACTED] and explained to her that Alliance was offering a program by which 1) her mortgage loan payments could be reduced, and 2) she could obtain title to the property. At that time, [REDACTED] was current with her mortgage loan payments. On or about November 22, 2009, [REDACTED] gave the Respondent some mortgage loan documents and an initial payment check to Alliance for \$3,500.00. She also signed a contract document. (Agency Ex. 6.) She understood that she would be included in the mortgage loan payment reduction program. Thereafter, [REDACTED] made three additional payments to Alliance for a total of \$8,000.00. Eventually, she defaulted on the mortgage loan.

8. At some point between October 2009 and the end of 2010, the Respondent approached [REDACTED] about what she understood to be a loan modification or a loan payment reduction program involving a lawsuit. The Respondent told [REDACTED] that Alliance could lower her mortgage loan payments, possibly to zero, because of defects in a deed of trust. [REDACTED] provided mortgage loan documents and checks directly to Alliance. Over time, [REDACTED] paid \$7,250.00 in total to Alliance. She entered into an agreement with Alliance. At the time that she entered into an agreement with Alliance, she was current with her mortgage loan payments to her lender; thereafter, she defaulted on the mortgage loan.

9. At no time did the Respondent, Alliance, or MAE obtain a mortgage loan payment reduction or a loan modification for the Respondent, or for any of the customers whom the Respondent referred.

10. The Respondent collected payments for, or caused customers to submit payments to, Alliance in order to include them in the Alliance "program." The payments were made before any services were provided. The Respondent also signed some agreement documents on behalf of Alliance.

11. At no time did Alliance, MAE, or the Respondent have a surety bond for the benefit of any mortgage loan borrower.

12. Alliance entered into written agreements with the Respondent and the seven customers whom he referred, as follows: [Alliance will] "attempt to help the client keep their [sic] home or recover any financial debts." Alliance would provide "financial recovery service" through a "Home Solution Program." Alliance would cause "[t]he current loan to be paid off in full, reporting on record, Paid in Full." A \$1,500.00 initial fee was non-refundable. Some of the agreements contained rescission terms that allowed a consumer to cancel the transaction within five business days of the agreement, but did not reference a notice of cancellation. None of the agreements contained the mandatory notice set forth in Md. Code Ann., Real Prop. § 7-306(a)(6). (Agency Ex. 6.)

13. At no time did Alliance, MAE, or the Respondent satisfy the terms of the agreements. No loan modifications were effected. No mortgage loan payments were reduced. No lawsuits were filed. No mortgage loan principal was reduced.

14. In March and April 2011, the Respondent and the customers whom he referred to Alliance met with owners or employees of Alliance. They asked for refunds of their initial payments.

15. Shortly thereafter, some customers received from MAE refund checks for some of the money they paid.

16. Upon receiving a \$3,000.00 refund from MAE, [REDACTED] immediately gave the \$3,000.00 to Alliance, believing that Alliance would still follow through with the "program."

17. Soon thereafter, Alliance disconnected its telephone lines and the owners of Alliance disappeared.

DISCUSSION

Burdens

The CFR bears the burden of proving by a preponderance of the evidence that the Respondent violated the statutory sections at issue. Md. Code Ann., State Gov't § 10-217 (2009); *See, Comm'r of Labor & Indus. v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

Arguments of the Parties

The CFR argues that the Respondent was an employee of Alliance and was the catalyst to have the consumers victimized. It argues that the Respondent, Alliance, and MAE were involved in an orchestrated scam. 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 statutory violations.

The Respondent does not deny that he was involved; he describes himself, however, as another victim.

Unlicensed

The CFR's notice of action alleges in paragraphs 28 and 29 that the Respondent was not licensed as required by four statutes: Md. Code Ann., Com. Law § 14-1902(1)(2013), Md. Code

Ann., Com. Law § 14-1903(b)(2013), Md. Code Ann., Fin. Inst. § 11-302 (2011), and Md. Code Ann., Fin. Inst. § 11-303 (2011).¹

Section 14-1903 of the Commercial Law Article provides, in relevant part, as follows:

(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.

(c) *Licenses – Issuance.* - A license required by this subtitle shall be issued by the Commissioner.

Md. Code Ann., Com. Law § 14-1903(b) and (c). *See also* Md. Code Ann., Fin. Inst. § 11-302, and Md. Code Ann., Fin. Inst. § 11-303.²

Commercial Law Article § 14-1901(e)(1) defines a “credit services business” as follows

in relevant part:

(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 § 14-1903(e)(1)(2013).

In the instant case, Maryland consumers sought assistance with mortgage loans that were current and with loans that were past due. The Maryland consumers contacted or were contacted by the Respondent regarding advising and assisting Maryland consumers with loan modifications

¹ The conduct in issue in the instant case occurred from October 2009 through 2011. The statutes that were in effect during that period have not been substantively amended; citations are current unless otherwise noted. *See State v. Chaney*, 375 Md. 168, 179-82(2002)(presiding judges are presumed to know the laws and to properly apply them).

² The Financial Institutions Article sections are similar to, and virtually mirror, the Commercial Law Article sections.

to reduce loan debt through a mortgage loan modification “program.” The “program” that was offered in this case involved extending credit, among other things. (Findings of Fact 1, 2, 4, 7, and 8.) Thus, the activities of persons charging fees for engaging in, offering, or providing loan modification services, such as the Respondent, are within the scope of the statutory scheme. There was no dispute on that point.

The Commission established that the Respondent and Alliance offered credit services to Maryland consumers and that the Maryland consumers in issue intended to hire, and reasonably believed that they had hired, the Respondent and Alliance to obtain mortgage loan modifications. (Findings of Fact 1, 2, 4, 7, and 8.) At no time, did the Respondent or Alliance hold the statutorily-required license to engage in that business. (Finding of Fact 3.) Md. Code Ann., Com. Law § 14-1902(1), Md. Code Ann., Com. Law § 14-1903(b), Md. Code Ann., Fin. Inst. § 11-302, and Md. Code Ann., Fin. Inst. § 11-303 (license required before offering credit services). I conclude that the CFR has shown a violation of these code sections.

Up-front Fees

The CFR’s notice of action in this case alleges in paragraphs 30 and 45 that the Respondent collected up-front fees before fully performing all credit services or before obtaining a loan modification as prohibited by two statutes, Md. Code Ann., Com. Law § 14-1902(6)(2013) and Md. Code Ann., Real Prop. § 7-307(2)(2010).

Md. Code Ann., Com. Law § 14-1902(6) provides:

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) 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[.]

Md. Code Ann., Real Prop. § 7-307(2) provides:

A foreclosure consultant may not:

. . .

(2) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform[.]

In the instant case, there is no dispute that the Respondent was an employee of a credit services business, Md. Code Ann., Com. Law § 14-1901(e) (statutory definition), nor was there any dispute that the Respondent was a foreclosure consultant. Md. Code Ann., Real Prop. § 7-301(c) (statutory definition). It is clear that he received and collected money from customers (Findings of Fact 6, 7, 8, and 10) before the complete performance of all of the obligations that ~~the service agreement contemplated. (Findings of Fact 9 and 13.) In this case, customers were~~ even required to pay up-front, non-refundable fees. (Finding of Fact 12.) I conclude that the CFR has met its burdens to show that the Respondent violated these statutes. Md. Code Ann., Com. Law § 14-1902(6) and Md. Code Ann., Real Prop. § 7-307(2).

Misrepresentation

The CFR's notice of action in this case alleges in paragraph 31 that the Respondent made false representations in violation of Md. Code Ann., Com. Law § 14-1902(4)(2013) by saying that he and Alliance would be able to halt foreclosure auctions and obtain beneficial loan modifications. (Agency Ex. 1, p. 13.)

Md. Code Ann., Com. Law § 14-1902(4) provides:

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[.]

In the instant case, the Respondent represented to at least one customer that Alliance was offering a program by which 1) her mortgage loan payments could be reduced, and 2) she could obtain title to the property. He represented to another customer that Alliance could lower her mortgage loan payments, possibly to zero, because of defects in a deed of trust. (Findings of Fact 7 and 8.) These statements were false. The services were not provided and what was promised was virtually impossible. The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Com. Law § 14-1902(4).

Surety Bond

The CFR's notice of action in this case alleges in paragraph 32 that the Respondent failed to obtain required surety bonds in violation of Md. Code Ann., Com. Law §§ 14-1908 and 14-1909 (2013). (Agency Ex. 1, p. 13.) When asked whether the Respondent or Alliance had obtained the required bonds, an investigator for the CFR testified, "Not to my knowledge." The Respondent did not address the point in his testimony. If such a bond had existed, it is more likely than not that the facts would have reflected a claim and a payment under the bond. *See* Md. Code Ann., Com. Law §§ 14-1910 (2013) (claims against the surety). I found as fact that the Respondent failed to obtain a surety bond. (Finding of Fact 11.) The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Com. Law §§ 14-1908 and 14-1909.

Contract Terms

The CFR's notice of action in this case alleges in paragraph 32 that the Respondent failed to provide required disclosure statements and failed to provide required terms in the contract documents in violation of Md. Code Ann., Com. Law §§ 14-1904, 14-1905, and 14-1906 (2013). (Agency Ex. 1, p. 13.) The required disclosure statement addresses consumer credit reporting rights. The required contract terms must state that a consumer can cancel the transaction within

three business days and reference an attached notice of cancellation, must provide a complete and detailed description of services to be performed, and must set forth the total of all payments to be made, among other things. Md. Code Ann., Com. Law §§ 14-1906.

When asked whether the Respondent or Alliance had used or issued the required information statements, an investigator for the CFR testified, "No." When asked about the required terms in the contract documents, the investigator responded that they were not in the contract documents. Contract documents were entered into evidence. (Agency Ex. 6 and 7.) Except for a rescission term that allowed a consumer to cancel the transaction within five business days of the agreement, but did *not* reference a notice of cancellation (Agency Ex. 6), the required terms were not in the documents. The Respondent did not address these points in his testimony. I found that the information statements and the required terms did not exist. (Finding of Fact 12.) The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Com. Law §§ 14-1904, 14-1905, and 14-1906.

Breach of Agreement

The CFR's notice of action in this case alleges in paragraph 34 that the Respondent and Alliance breached the agreements with the customers in violation of Md. Code Ann., Com. Law § 14-1907(a)(2013). (Agency Ex. 1, p. 13 and 14.) The nebulous agreements in evidence stated that Respondent and Alliance were to provide "financial recovery service" through a "Home Solution Program." Alliance would cause "[t]he current loan to be paid off in full, reporting on record, Paid in Full." That result was to happen through mortgage loan modifications, mortgage loan reductions, principal reductions, and law suits, among other services. At no time did Alliance, MAE, or the Respondent satisfy the terms of the agreements. No mortgage loan modifications were effected. No mortgage loan payments were reduced. No lawsuits were filed.

No mortgage loan principal was reduced. (Findings of Fact 7, 8, 9, 12, and 13.) The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Com. Law § 14-1907(a).

Notice of Rescission

The CFR's notice of action in this case alleges in paragraph 46 that the Respondent and Alliance induced persons to enter into contracts that did not contain the mandatory notices of rescission set forth in the statutory scheme, in violation of Md. Code Ann., Real Prop. §§ 7-305, 7-306, and 7-307. (Agency Ex. 1, p. 17.)

Among other provisions, one applicable statute requires that the following be included in a foreclosure consulting contract document:

"NOTICE OF RESCISSION

(Date of Contract)

You may rescind this foreclosure consulting contract, without any penalty, at any time.

If you want to rescind this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

After any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

This is an important legal contract and could result in the loss of your home. Contact an attorney before signing.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)
(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

..... (Date)
..... (Homeowner's signature)".

Md. Code Ann., Real Prop. § 7-306(a)(6).

This wording was not included in any of the contract documents. (Finding of Fact 12.) Moreover, the rescission provision in the contract documents used by the Respondent and Alliance did not state that a customer could rescind the agreement “at any time.” Md. Code Ann., Real Prop. § 7-305(a). (Finding of Fact 12.) The contract documents must comply with the statutory scheme. Md. Code Ann., Real Prop. § 7-307(10). The documents did not comply. The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Real Prop. §§ 7-305, 7-306, and 7-307.

Reasonable Care and Diligence

The CFR’s notice of action in this case alleges in paragraph 47 that the Respondent and Alliance breached a statutory duty of reasonable care, in violation of Md. Code Ann., Real Prop. § 7-309(b)(2010) and Md. Code Ann., Bus. Occ. & Prof. §17-532(c)(vi)(2010). (Agency Ex. 1, p. 17.) The real property statute provides as follows:

(b) Duty of care. -- A foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article.

Md. Code Ann., Real Prop. § 7-309(b). Section 17-532(c)(vi) of the Business Occupations and Professions Article requires one to “exercise reasonable care and diligence.”

In the instant case, the Respondent and Alliance failed to perform that which was promised with regard to the services touted. The Respondent and Alliance took up-front money and then no loan modifications were effected. No mortgage loan payments were reduced. No lawsuits were filed. No mortgage loan principal was reduced. (Finding of Fact 13.) No diligence was shown on the part of the Respondent and Alliance. The CFR has met its burdens to show that the Respondent violated Md. Code Ann., Real Prop. § 7-309(b) and Md. Code Ann., Bus. Occ. & Prof. §17-532(c)(vi).

Sanctions

The CFR asks for several forms of relief.³ In closing argument, the CFR specified that it believed that an award of \$400.00 to each of the seven customers recruited by the Respondent was fair, and that a fine of \$500.00 per customer was fair. The CFR argued that although the customer's losses were not directly attributable to the Respondent, the Respondent was part of

³ At p. 20 of the CFR's Administrative Order, the CFR notifies various respondents that the CFR "may, in [its] discretion, take the following actions" and lists some statutorily authorized actions or sanctions that it might, or might not, impose. It might, for instance, convert the Administrative Order to a final order; it might impose up to a \$1,000.00 penalty for each statutory violation; it might impose a \$5,000.00 penalty for each post-summary-order statutory violation, and it might order that the respondents pay some undisclosed amount of refunds and some undisclosed amount of damages.

This case is governed by Maryland's Administrative Procedure Act. Md. Code Ann., Fin. Inst. § 2-115(d). Maryland's Administrative Procedure Act requires that an agency give reasonable notice of "the agency's action." Md. Code Ann., State Gov't § 10-207(a). The notice of action is also to cite the statute or regulation "under which the agency is taking its action." Md. Code Ann., State Gov't § 10-207(b)(2). Thus, the statutes require disclosure of "the agency's action" -- that action which the agency has actually taken, or actually intends to take. *See State Retirement & Pens. Sys. v. Thompson*, 368 Md. 53, 63-64 (2002) (statute requires notice of "the agency's action or proposed action").

One reason for the statutory requirement that State agencies unequivocally disclose the actions that they take, or the actions that they actually intend to take, is 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 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).

In the instant case, other than asking for a final, permanent order to cease and desist, the State agency does not set forth its action or its proposed action in the Administrative Order, although it would have been simple to do so. Nowhere in the CFR's notice of action does it state "the CFR intends to impose a penalty of \$1,000.00 for each violation." Nowhere does the notice of action state that "the CFR intends to order restitution from the respondents of" any amount. Nowhere does the notice of action state that the CFR will impose any sanction. Such specifics are not implied by the wording in the notice of action. Under Maryland's Administrative Procedure Act, notifying an accused that there exists a general statutory range of possible sanctions is not equivalent to notifying an accused of the sanction that a State agency actually imposes or actually intends to seek under the facts and circumstances of the particular case. *See Md. Racing Comm. v. Castrenze*, 335 Md. 284, 297 (1994) (*dicta* indicating that Maryland's Administrative Procedure Act, at that time, contemplated notice of facts to support a particular sanction and an opportunity to be heard on that agency action).

Not until the end of the hearing (at which only one of the respondents appeared, and did so *pro se*), did the CFR disclose the specific sanctions, penalties, and restitution it sought to impose against the Respondent. Had the Respondent known before the time of the hearing that the CFR intended to ask for that which was disclosed in closing argument, he might have hired an attorney, hired an investigator, hired an expert, or settled the case. Likewise, those other respondents (assuming that they were served with the notice of action) who did not request a hearing to challenge the State agency's action, or who did not otherwise muster a defense, might have done so, if it had been disclosed to them in the CFR's Administrative Order what sanctions and penalties the State agency intended to seek. The *pro se* Respondent in the instant case, however, did not challenge the notice of action.

the operation and he knowingly helped. The CFR also asked that the administrative order be made final.

The CFR's authority to impose sanctions is set forth in Md. Code Ann., Fin. Inst. § 2-115

(2011). That section provides:

(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.

(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.

(d) Administrative Procedure Act. -- Notice of any hearing under this section shall be given and the hearing shall be held in accordance with the Administrative Procedure Act.

In addition, Md. Code Ann., Real Property § 7-319.1 provides that the Protection of Homeowners in Foreclosure Act can be enforced using the remedies listed above. Md. Code Ann., Real Property § 7-319.1(a)(2013).⁴

The CFR asks for restitution from the Respondent of \$400.00 per customer, or \$2,800.00 total. The CFR has authority to do so. Md. Code Ann., Real Property § 7-319.1(c). With regard to the required considerations, Md. Code Ann., Fin. Inst. § 2-115(c), when gauging the seriousness of the violation, it is clear that the Respondent was part of the scam that snatched thousands of dollars from the seven customers. I cannot conclude that the CFR has shown bad faith. There was no history of previous violations. I conclude that there were deleterious effects of the violation on the public and the industry involved because 1) the Respondent and Alliance were unlicensed (Finding of Fact 3.), 2) the Respondent received fees for recruiting others into the scam (Findings of Fact 5 and 6.), and 3) customers received no services for their payments. (Findings of Fact 9 and 13.) There was no evidence regarding the assets of the Respondent. Under these circumstances, an order of restitution for \$400.00 for each of the seven customers whom the Respondent recruited appears to be appropriate.

The CFR asks for a fine of \$500.00 per customer, or \$3,500.00 total, to be paid to the State of Maryland. The CFR has authority to do so. Md. Code Ann., Fin. Inst. § 2-115(b)(3).

⁴ That code section was enacted on April 12, 2011.

With regard to the statutory factors to be considered, the discussion set forth above also applies to the amount of a fine. Under these circumstances, a fine of \$500.00 for each of the seven customers whom the Respondent recruited appears to be appropriate.

The CFR asks for the temporary or summary cease-and-desist order (Agency Ex. 1) to be made permanent or final. The CFR has authority to do so. Md. Code Ann., Fin. Inst. § 2-115(a)(1) and (b)(1). The standard that the CFR must meet in order to obtain that relief is proof “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(b). Clearly, based upon the discussion set forth above, the CFR has shown several instances in which the Respondent violated laws over which the CFR has jurisdiction. Moreover, the Respondent offered no reasons to deny that relief and did not argue that such relief should be denied. Under these circumstances, I conclude that such relief 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 Respondent violated Md. Code Ann., Com. Law § 14-1902(1), Md. Code Ann., Com. Law § 14-1903(b), Md. Code Ann., Fin. Inst. § 11-302, and Md. Code Ann., Fin. Inst. § 11-303 because he was unlicensed; violated Md. Code Ann., Com. Law § 14-1902(6) and Md. Code Ann., Real Prop. § 7-307(2) because he took up-front fees; violated Md. Code Ann., Com. Law § 14-1902(4) because he made misrepresentations; violated Md. Code Ann., Com. Law §§ 14-1908 and 14-1909 because he did not obtain the required security bond; violated Md. Code Ann., Com. Law §§ 14-1904, 14-1905, 14-1906 and Md. Code Ann., Real Prop. §§ 7-305, 7-306, and 7-307 because he failed to include certain terms and notices in his contract documents; violated Md. Code Ann., Com. Law § 14-1907(a) because he breached the agreements; and violated Md. Code Ann., Real Prop. § 7-309(b) and Md. Code Ann., Bus. Occ.

& Prof. §17-532(c)(vi) because he did not exercise reasonable diligence.

I further conclude that the specific sanctions and remedies requested by the CFR are authorized and appropriate. Md. Code Ann., Fin. Inst. § 2-115 and Md. Code Ann., Real Property § 7-319.1.

ORDER

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

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

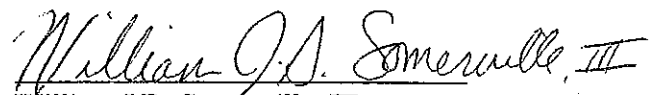
ORDERED that within 30 days the Respondent pay to the State of Maryland \$2,800.00 in restitution, and it is further

ORDERED that within 30 days the Respondent pay to the State of Maryland \$3,500.00 in fines, and it is further

ORDERED that the temporary or summary cease-and-desist order, dated May 29, 2013, be, and is hereby, made permanent or final, and it is further

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

February 19, 2014
Date Decision Mailed


William J.D. Somerville, III
Administrative Law Judge
1909

WS/emh
#147136

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

v.

MAURICIO RIVERA,
RESPONDENT

* BEFORE WILLIAM SOMERVILLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-CFR-76A-13-28555
* CFR NO.: FY2012-121
*

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FILE EXHIBIT LIST

The CFR offered the following exhibits which, unless otherwise noted, were admitted as evidence:

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1. Administrative Order, 5-29-13
 2. Request for hearing, 6-12-13
 3. Letter, 7-15-13
 4. (Not admitted)
 5. (Not admitted)
 6. Packet of documents from [REDACTED], 5-31-13
 7. Packet of documents from [REDACTED], 6-29-13
 8. (Not admitted)
 9. Website document, 2-28-12
 10. Website document, California Secretary of State, 2-28-12
 11. DLLR website search results
 12. Final Order in another case, 1-21-11
 13. Final Order in another case, 3-26-13

14. (Not admitted)

15. Administrative Order in another case, 10-12-13

The Respondent offered the following exhibits which were entered as evidence:

1. Copies of checks, various dates
 2. Copies of checks to Alliance Marketing services, various dates
 3. Hand-written note, 5-17-10
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