IN THE MATTER OF: **DISTRESSED MORTGAGE SOLUTIONS, INC.** **And** **G. DARRELL RIGLEY, a/k/a DARRELL RIGLEY, Individually** **Respondents**	**BEFORE THE MARYLAND** **COMMISSIONER OF** **FINANCIAL REGULATION** **CFR-FY2017-0022**

FINAL ORDER

A hearing on the exceptions filed in the above captioned matter was held before Antonio P. Salazar, Maryland Commissioner of Financial Regulation ("Commissioner") on November 14, 2018. Distressed Mortgage Solutions, Inc. and Darrell Rigley (collectively "Respondents") were not present. Sophie Asike, Assistant Attorney General represented the Commissioner.

PROCEDURAL HISTORY

The Commissioner issued the Proposed Final Order on August 10, 2018. Respondents filed exceptions in a timely manner on August 31, 2018. In a letter dated September 25, 2018, Sandra G. Small, Assistant Attorney General and counsel to the Commissioner, advised Michael S. Krotman, Esq., counsel to Respondents that: (1) pursuant that COMAR 09.01.03.09(K), Respondents may not introduce additional evidence unless Respondents demonstrate to the Commissioner's satisfaction that the new evidence is: (a) relevant and material; (b) was not discovered before the Administrative Law Judge ("ALJ") hearing; and (c) could not have been discovered before the ALJ hearing with the exercise of due diligence, (2) under COMAR

09.01.03.09(L), the request to introduce additional evidence must be filed at least fifteen days prior to the date of the hearing on exceptions, and (3) any request to introduce new evidence would be considered as a preliminary matter.

On Friday, November 2, 2018, Mr. Krotman sent an email to the Commissioner in which Mr. Krotman advised that he had withdrawn his representation of Respondents, that Respondent Rigley was aware of the withdrawal, and requested the Commissioner to proceed on the exceptions as filed if Mr. Rigley could not attend.

PROCEEDINGS (Preliminary Matters)

There were no preliminary matters because Respondents did not file a request to introduce new evidence.

PROCEEDINGS (Exceptions)

In their exceptions to the Proposed Decision and Order, Respondents contend that: (1) Respondent Rigley's request for postponement should have been granted; (2) Respondents did not violate the Protect of Homeowners In Foreclosure Act or PHIFA[1], (3) Respondents did not violate the Maryland Mortgage Assistance Relief Services Act ("MMARS")[2], and (4) representations by Frank Gant were not authorized.

Respondent Rigley requested a postponement of the hearing via facsimile five minutes before the hearing was scheduled to begin.[3] The ALJ denied the request, noting specifically that Respondent Rigley knew in January that a hearing was on the horizon.[4] Respondents contend

[1] Md. Code Ann., Real Prop. §7-301 *et seq.*
[2] Md. Code Ann., Real Prop. §7-501 *et seq.*
[3] Proposed Decision at 2.
[4] Proposed Decision at 3.

that as out-of-state residents, the amount of time from February 20, 2018 (notice of hearing date) until March 20, 2018 (hearing date) was fundamentally unreasonable to hire an attorney and prepare a case.

In an adversary proceeding, due process requires that an individual against whom proceedings are instituted be given notice and an opportunity to be heard.[5] The notice must be " 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' "[6] In administrative proceedings, reasonable notice of the nature of the allegations must be given to the party so that it can prepare a suitable defense.[7] The Administrative Procedures Act requires an agency to give reasonable notice of its action.[8] Under *Regan v. Board of Chiropractic Examiner*[9], the charging document provides adequate and reasonable notice of the nature of the allegations that enables preparation of an adequate defense. On January 25, 2018, the Commissioner issued a fourteen page charging document that detailed the factual allegations and charges on which the hearing was to be held. Accordingly, Respondents received adequate and reasonable notice of the nature of the allegations, and Respondents had all of February through the date of the hearing to prepare a defense.

Respondents contend that they were not offering loan modification services, and did not violate the MMARS Act. Respondents did not attend the hearing. The evidence considered by

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[5]*Hider v. Department of Labor, Licensing and Regulation,* 115 Md.App. 258, 275, 693 A.2d 17 (1997)(citing *Burns v. Mayor of Midland,* 247 Md. 548, 553, 234 A.2d 162 (1967)), *rev'd on other grounds,* 349 Md. 71, 706 A.2d 1073 (1998).

[6]*Castruccio v. Dr. Bruce Goldberg, Inc.,* 103 Md.App. 492, 496, 653 A.2d 1013 (1995)(quoting *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)); *see also St. George Antiochian Orthodox Christian Church v. Aggarwal,* 326 Md. 90, 95, 603 A.2d 484 (1992).

[7]*Regan v. Board of Chiropractic Examiners,* 120 Md. App. 494, 519 (1998) (citing *Bragunier Masonry Contractors, Inc. v. Maryland Commissioner of Labor and Industry,* 11 Md. App. 698, 713 (1996)).

[8] Md. Code Ann., State Gov't §10–207(a) (1993).

[9] *Regan* at 519-520.

the ALJ was uncontroverted, and the ALJ found that the Commissioner proved the alleged violations by a preponderance of the evidence. Further, Respondents did not file a written request pursuant to COMAR 09.01.03.09(K) and 09.01.03.09(L) to introduce additional evidence at the hearing on exceptions, so no new evidence is before the Commissioner.

Respondents contend that representations made by Mr. Gant were not authorized based on an Affiliate Agreement and Affidavit of Respondent Darrell Rigley. Neither of these documents was offered or accepted into evidence by the ALJ. Further, Respondents did not file a written request pursuant to COMAR 09.01.03.09(K) and 09.01.03.09(L) to introduce additional evidence, so the purported Affiliate Agreement and Affidavit are not part of the evidentiary record before the Commissioner.

ORDER

The arguments having been received, and, having been considered, it is, by the Commissioner of Financial Regulation this 14th day of February, 2019.

ORDERED:

That the exceptions to the Proposed Final Order filed on behalf of Distressed Mortgage Solutions, Inc., and G. Darrell Rigley, be, and hereby are, DENIED;

That the Proposed Final Order of the Commissioner issued on August 10, 2018, be, and hereby is, AFFIRMED; and

That the records, files and documents of the Commissioner reflect this decision.

COMMISSIONER OF FINANCIAL REGULATION

By: _____
Antonio P. Salazar, Esq.

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which the Appellant resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30-days after the mailing of this Order.

IN THE MATTER OF:	BEFORE THE MARYLAND
DISTRESSED MORTGAGE SOLUTIONS, INC.	**COMMISSIONER OF FINANCIAL REGULATION**
And	
G. DARRELL RIGLEY, aka DARRELL RIGLEY, Individually	**CFR-FY2017-0022**
Respondents.	

PROPOSED FINAL ORDER

The Proposed Decision ("Proposed Decision") of the Administrative Law Judge, issued on June 11, 2018 in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation ("Commissioner") this 10th day of August, 2018 be, and hereby are **ORDERED**,

A. That the Findings of Fact in the Proposed Decision be, and hereby are, **ADOPTED**.

B. That the Conclusions of Law in the Proposed Decision be, and hereby are, **ADOPTED**.

C. Before ordering a penalty, pursuant to Md. Code Ann., Fin. Inst. § 2-115(c), the Commissioner must 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.

Considering these factors, the Commissioner finds that the violations are serious in their severity; that Respondents' actions and conduct showed the absence of good faith; that Respondents violated the Final Order to Cease and Desist dated July 1, 2014, thus showing willful conduct; that Respondents' actions had a deleterious effect on Consumer A; and that, the Commissioner is unable to consider the Respondents' assets because the Commissioner does not have any documentation regarding Respondents' assets. Having considered these factors, the Commissioner concludes civil penalties are warranted and the Commissioner adopts the penalty calculation in the Proposed Decision at 26-27.

A. It is by the Commissioner of Financial Regulation, hereby:

ORDERED that Respondents shall immediately **CEASE AND DESIST** from engaging in any further foreclosure consultant activities; and

FURTHER ORDERED that Respondents shall pay a civil penalty to the Commissioner in the amount of $50,000.00, within sixty (60) days of the date of this **FINAL ORDER**; and

FURTHER ORDERED that Respondents shall pay restitution to Consumer A by mailing to Consumer A a check in the amount $3,400.00 via First Class Mail, postage prepaid, at the most recent address of the consumer known to Respondents. 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 **FINAL ORDER**;

FURTHER ORDERED that Respondents 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, MD 21202, Attention: Proceedings Administrator; and

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

Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondents have twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner, and subject to judicial review pursuant to SG § 10-222.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

8/10/18
Date

By: _____
Antonio P. Salazar
Commissioner
of Financial Regulation

IN THE MATTER OF	*	BEFORE LAURIE BENNETT,
DISTRESSED MORTGAGE	*	AN ADMINISTRATIVE LAW JUDGE
SOLUTIONS, INC., AND G. DARRELL	*	OF THE MARYLAND OFFICE OF
RIGLEY, aka DARRELL RIGLEY,	*	ADMINISTRATIVE HEARINGS
RESPONDENTS	*	OAH No.: DLR-CFR-76-18-04872
	*	CFR No.: CFR-FY2017-0022

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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 January 25, 2018, the Deputy Commissioner of Financial Regulation (Commissioner) issued a Charge Letter against Distressed Mortgage Solutions, Inc., and G. Darrell Rigley, aka Darrell Rigley, (Respondent DMS and Respondent Rigley respectively, or Respondents collectively), alleging they violated the Protection of Homeowners in Foreclosure Act (PHIFA Act), related to mortgage foreclosure (Md. Code Ann., Real Prop. §§ 7-301 through 7-325)[1] and the Maryland Mortgage Assistance Relief Services Act (MMARS Act), related to loan modification services and mortgage assistance relief service activities (*Id.* §§ 7-501 through 7-511), all pertaining to a transaction with [redacted] (Consumer A). The Commissioner further asserts in the Charge Letter it may enforce these provisions by issuing an order requiring the Respondents to cease and desist from these violations and further similar violations, to take

[1] Unless otherwise noted, all references to the Real Property Article are to the 2015 Replacement Volume.

affirmative action to correct the violations, and to impose a civil monetary penalty up to the maximum amount of $1,000.00 for the first violation and up to the maximum amount of $5,000.00 for each subsequent violation.

On March 20, 2018, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(a) (2011).[2] Sophie Asike, Assistant Attorney General, represented the Commissioner. Neither of the Respondents nor anyone on their behalf appeared for the hearing.

Five minutes before the scheduled start time of the hearing, Respondent Rigley filed with the OAH a request for postponement by facsimile. Respondent Rigley asserted he had made unsuccessful efforts to hire an attorney and finally found an attorney who needed time to prepare for the hearing. The request is denied for the following reasons.

The OAH's Rules of Procedure provide that a postponement request made more than five days before the hearing may be granted for good cause. Code of Maryland Regulations (COMAR) 28.02.01.16A and C. A postponement request made within five days of the hearing must be for an emergency, which means "a sudden, unforeseen occurrence requiring attention which arises within 5 days of the hearing." COMAR 28.02.01.16D. Respondent Rigley's postponement request was within five days of the hearing. He did not prove an emergency reason, or even good cause for a non-emergency postponement.

The CFR issued it charges and order for a hearing on January 25, 2018. The OAH issued its hearing notice to Respondent Rigley on February 13, 2018, and someone on his behalf signed for receipt of the notice on February 20, 2018. Respondent Rigley knew in January a hearing was on the horizon and he knew one month before the hearing of the exact date.

[2] Unless otherwise noted, all references to the Financial Institutions Article are to the 2011 Replacement Volume.

Respondent Rigley said in his letter he consulted with the law office of Weinstock, Friedman & Friedman and thought he had legal representation but found out shortly before the hearing the firm could not represent him. No attorney from that firm or any other ever entered an appearance. I question whether Respondent Rigley ever had reason to believe he had representation. He added he now has an attorney, David Gloteh, but that person has not entered an appearance.

Having denied Respondent Rigley's last minute postponement request, I proceeded with the hearing in the Respondents' absence.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondents violate the PHIFA Act and the MMARS Act?
2. If so, what is the proper relief?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following numbered exhibits the Commissioner offered:

1. Notices of Hearing, dated February 13, 2018, with three returned mail receipts
2. Delegation to the OAH, dated January 25, 2018, with attached Charge Letter and Order for Hearing, dated January 25, 2018
3. Emails between Frank Gant and Consumer A, dated August 3, 2015
4. Email from Respondent Rigley to Consumer A, dated August 9, 2015
5. Untitled form completed by Consumer A for Respondent DMS, not dated
6. Third Party Authorization Letter, not dated

7. Securitization-Forensic Audit-Foreclosure Analysis Report Agreement, dated August 3, 2015

8. Four checks, each for $850.00, dated August 4, 2015, September 6, 2015, October 6, 2015, and November 6, 2015

9. Various emails between Frank Gant, Respondent Rigley, and Consumer A, in September, October, and November 2015

10. Letter from Respondent DMS to Consumer A, dated November 9, 2015

11. Letter from Consumer A to Respondent Rigley, dated June 6, 2016

12. Letter from Consumer A the Commissioner, dated September 7, 2016

13. Summary Order to Cease and Desist, dated June 20, 2013

14. Final Order to Cease and Desist, dated July 1, 2014

15. Report of Investigation, dated February 2, 2017

The Respondents were not present to offer evidence.

Testimony

The Commissioner presented the following witnesses:

- Consumer A
- Zenaida Velez-Dorsey, CFR Financial Fraud Examiner

The Respondents were not present to offer evidence.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence as alleged in the CFR's charges:

1. Respondent DMS is a business operating out of Florida that promises to obtain loan modifications for homeowners. Offering to obtain loan modifications meets the definition of mortgage assistance relief services.

2. Respondent DMS is not registered with the Maryland State Department of Assessments & Taxation to engage in business activities in the State.

3. Respondent Rigley is the owner, director, officer, manager, and/or agent of Respondent DMS. Respondent Rigley directs or exercises control over the activities and finances of Respondent DMS, including its loan modification activities with Maryland consumers.

4. Respondent Rigley was also the owner, director, manager, and/or agent of The Rigley Group, Inc., a company also engaged in loan modification services.

5. On June 13, 2013, based on a series of consumer complaints (but not Consumer A), and a subsequent investigation of those complaints, the Commissioner issued a Summary Order to Cease and Desist ("Summary Order") against Respondent Rigley and his company, The Rigley Group, Inc., directing them to cease and desist from engaging in any further credit services business activities, loan modification services, foreclosure consulting activities, or similar mortgage assistance relief services activities with Maryland consumers. Respondent Rigley and The Rigley Group failed to request a hearing on the merits of the Summary Order within the time limits prescribed by the Annotated Code of Maryland, Financial Institutions Article Section 2-115(b). On July 1, 2014, the Commissioner issued a Final Order (the "Final Order") against Respondent Rigley and The Rigley Group finding them in violation of the Maryland Credit Services Business Act, Md. Code Ann., Com. Law. Section 14-1901, *et seq.*; and the PHIFA Act, Md. Code Ann., Real Prop. , Sections 7-301, *et seq*. The Final Order also ordered Respondent Rigley and The Rigley Group to do the following:

i. 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;

ii. pay to the Commissioner a monetary civil penalty of $5,000.00 within fifteen (15) days from the date of the Final Order; and

iii. pay restitution to the affected consumers in an amount equal to three times the amount Respondent Rigley and The Rigley Group collected from those consumers and to a pay a monetary award of $13,485.00 to consumers (other than Consumer A), within thirty (30) days of the date of the Final Order.

CFR Ex 14.

6. In the time since the Summary Order and subsequent Final Order were issued, Respondent Rigley has violated the Commissioner's Summary Order and Final Order, by opening a new company, Respondent DMS, located at 4600 Touchton Rd., #1150, Jacksonville, Florida 32246, and continuing to engage in the same unlawful activities as Respondent Rigley had done under The Rigley Group, Inc.

7. In 2015 and 2016, Respondent Rigley, through Respondent DMS, advertised and marketed loan modification services to Maryland residents, including but not limited to, using internet-based advertising aimed at Maryland consumers and sending marketing material through the mail to Maryland consumers that offered mortgage loan modifications for homeowners in foreclosure or in default on their residential mortgage loans.

8. On August 3, 2015, Consumer A received an unsolicited email from "Frank," who advised Consumer A that Respondent DMS offered to obtain a loan modification for him that would reduce his mortgage by 50%. Respondent DMS advised Consumer A that "[r]esearch shows an immediate need for the following Reports to be executed and delivered to our head Attorney within 7 to 10 days, for an immediate free consultation, and retainer to proceed" including securitization analysis and foreclosure report; and "[t]he reports are created by a team of professionals with over 20 years experience in the banking industry." CFR Ex. 3. The Respondents estimated Consumer A could save $816.00 per month on his $1,564.00 mortgage and reduce his interest rate from 5.25% to 4%. The Respondents offered to prepare the

securitization audit for $3,675.00 plus a one-time attorney fee of $500.00, and the reports would be released to Consumer A on receipt of payment in full. The email includes information that "DMS is NOT a governmental agency but a consumer advocacy group committed to conducting thorough and accurate forensic mortgage and securitization reports. Our intention is to provide documentation of legitimate lender violations for advantageous positioning for negotiations with the lender." CFR Ex. 3. Respondent DMS' name, Florida address, email address, telephone number, facsimile number, and link to Respondent DMS' website are stated on the email.

9. Consumer A was more than three months in arrears on his mortgage held by JP Morgan Chase Bank, National Association (Chase).

10. Consumer A had dealings with two people who acted on behalf of Respondent DMS: Respondent Rigley and a person claiming to be a Frank Gant.[3] Mr. Gant acted on behalf the Respondents.

11. Consumer A told Mr. Gant that he noticed the principal on his mortgage with Chase never reduced. Mr. Gant told him he had an interest only mortgage, which Consumer A had not known. Mr. Gant told Consumer A he would fix that problem with a loan modification.

12. Mr. Gant told Consumer A he had nothing to worry about and Respondent DMS would definitely get him a loan modification with Chase. Consumer A told Mr. Gant his house was "under water," meaning he owed more than the house was worth. Mr. Gant told him they would fix that with a loan modification. Mr. Gant told Consumer A that Respondent DMS would obtain a loan modification that would lower his monthly mortgage payment by fifty percent, from $1,564.00 monthly to $748.00.

13. Consumer A entered into a Securitization-Forensic Audit-Foreclosure Analysis Report Agreement written with the Respondent DMS on August 3, 2015. The written agreement

[3] Investigator Velez-Dorsey testified she searched the name Frank Gant through two national databases that law enforcement entities use to locate people, and she could not find that name.

required Consumer A to pay $3,175 in upfront fees to the Respondent DMS, ostensibly for the securitization report but also for loan modification services. Consumer A actually paid Respondent DMS $3,400.00 in four installments, each by check, on August 4, 2015, September 6, 2015, October 6, 2015, and November 6, 2015. The Respondent DMS offered a money back guarantee "if no violations are found after a complete compliance audit has been performed." CFR Ex. 7. The securitization agreement specifically states that Respondent DMS intends only to provide a Securitization & Forensic Mortgage Audit and Foreclosure analysis Report for Consumer A's loan, and is "in no way engaged in foreclosure defense or foreclosure prevention with this audit/report. It is a tangible product which will be delivered to [Consumer A] once completed with findings regarding [Consumer A's] home mortgage." CFR Ex. 7. Further, "[Consumer A] understands and agrees that [Respondent DMS] does not provide loan modification services in connection with this contract...."

14. The agreement further includes notice to Consumer A that either he or Respondent DMS

> may terminate this agreement at any time for any reason upon written notice to the other party. In the event that [Consumer A] terminates Agreement prior to completion of services, [Respondent DMS] shall be credited the value of $350 per billable hour of work performed on the file including all reasonable costs against the flat fee to be refunded.

CFR Ex 7.

15. On August 4, 2015, Consumer A completed an untitled form on Respondent DMS' letterhead on which he listed his demographic information (e.g., name, address, and contact information), his lender's name, and other information. On or about that date, Consumer A completed a Third Party Authorization Letter that permitted Respondent DMS to act on his behalf with Chase.

16. On August 9, 2015, Respondent Rigley emailed Consumer A and said Respondent Rigley had left him a voice mail about how to save up to 50% on his mortgage and expressing that it was important that they speak. The email is on Respondent DMS' email letterhead.

17. In a September 15, 2015 email, Mr. Gant advised Consumer A to send him any documents he receives from Chase. Mr. Gant told Consumer A not to talk to Chase or send Chase any documents unless advised to do so by Respondent DMS. Mr. Gant identified himself as Director of Client Services for Respondent DMS, using Florida contact information.

18. On October 6, 2015, Consumer A emailed Mr. Gant to say he was getting "harassing" telephone calls from Chase. Mr. Gant replied by email that same day that the calls Consumer A was getting are from a completely different department than the one Respondent DMS was working with, and Consumer A should send him the names and phone numbers for Mr. Gant to forward to Respondent DMS's auditors. Consumer A replied by email that the caller (singular) used a concealed number and both callers said they sent "loan modification two weeks ago." CFR Ex. 9.

19. By email dated October 8, 2015, Consumer A sent Mr. Gant the names and telephone numbers of people from Chase who called him. On October 9, 2015, Mr. Gant replied by email to Consumer A that Chase must be employing a new tactic and Mr. Gant will turn the matter to "the audit department so they will know another move that they are making to try and screw with the clients." CFR Ex. 9.

20. In an email dated October 15, 2015, Consumer A advised Mr. Gant he had received a text (presumably from Chase) saying that it had tried to contact him regarding loan modification and because he did not seem serious about saving his home, it would close his file. Mr. Gant replied that day Chase was using another scare tactic, and he would forward the matter to Respondent DMS' auditors.

21. By email dated October 19, 2015, Mr. Gant notified Consumer A: (1) he had received some (unspecified) papers from Consumer A and forwarded them to Respondent DMS's auditors who would have a report done by November 8; (2) Respondent DMS would forward to an attorney who would provide a free consultation to Consumer A; (3) because Chase threatened foreclosure after November 29 (of an unspecified year, but presumably 2015), the attorney would act promptly after Consumer A retained him; (4) Respondent DMS would protect Consumer A; and (5) Consumer A had attorney protection. CFR Ex. 9. In follow-up emails in October 2015, Mr. Gant assured Consumer A the matter was in the auditors' hands.

22. In a November 6, 2015 email, Respondent Rigley asked Mr. Gant to advise Consumer A that Respondent Rigley would be calling him that Monday to set up an appointment with the attorney for a consultation. In an email that same day, Mr. Gant told Consumer A to be available that Monday for a call to set up an appointment with the attorney.

23. By letter dated November 9, 2015, Respondent Rigley advised Consumer A that Respondent DMS had completed a securitization audit of his mortgage and Consumer A's "results show that violations occurred in the audit[4] and was indeed done improperly." CFR Ex. 10. Respondent Rigley told Consumer A that he had the option of seeking outside legal counsel to address the findings and pursue litigation against Chase. Respondent Rigley also wrote, "We have referred your audit findings to one of our network attorneys for review. We will be contacting you in the next few days to set up a consultation with Attorney Mike Reed one of our network attorneys." CFR Ex. 10.

24. Consumer A noticed that when Mr. Gant telephoned him, Mr. Gant was using a California number. Consumer A inquired about that because Respondent DMS was located in Florida. Mr. Gant told him he is an executive with Respondent DMS and is permitted to work from California.

[4] Surely Respondent Rigley meant that there were violations in the mortgage, not Respondent DMS' audit.

25. Mr. Gant told Consumer A to stop making his mortgage payments because Consumer A probably could not afford the mortgage because he is on a fixed income. Mr. Gant told Consumer A not to talk to his lender.

26. Respondent Rigley told Consumer A to call the attorney named Mike Reed who would negotiate for a nonprofit to buy Consumer A's house and sell it back to Consumer A at a reduced price. Consumer A telephoned Mr. Reed and asked him if he is licensed to practice law in Maryland. Mr. Reed said no. Consumer A asked him how he could help him in Maryland. Mr. Reed said he has a network of lawyers in Maryland. Consumer A did not negotiate a buy/sell arrangement with Mr. Reed as Mr. Gant told him to.

27. By letter dated June 6, 2016, Consumer A[5] made a written demand of a refund from the Respondents in the amount of $3,455.00 because Respondent DMS "did not meet the goals of [their] retainer agreement." CFR Ex. 11. The Respondent DMS refused to issue a refund.

28. The Respondents promised Consumer A he would receive legal representation to protect him from foreclosure and lawsuits.

29. The Respondents deceived Consumer A into believing that the Respondents were making a legitimate loan modification offer on Consumer A's behalf to his lender. The Respondents never made a loan modification request to Chase on Consumer A's behalf.

30. Although the Respondents collected $3,400.00 in upfront fees from Consumer A, the Respondents never performed any of the promised services for Consumer A and the Respondents did not return the $3,400.00 in upfront payments that the Respondents received from Consumer A.

31. The Respondents did not submit Consumer A's loan modification application to Chase, and Chase was unaware that Consumer A was seeking a loan modification through the Respondents.

[5] The record does not show how Consumer A arrived at this figure when his checks show payments totaling $3,400.00.

32. In September 2016, the Commissioner received the complaint from Consumer A alleging the Respondents had engaged in illegal activities in connection with mortgage loan modification services the Respondents offered to him.

DISCUSSION

The CFR bears the burdens of production and persuasion.

The Commissioner bears the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Respondents violated the statutory sections at issue. *See* Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.01.02.16A; *Comm'r of Labor & Industry v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

The Respondent failed to appear after proper notice to their addresses of record.

Because neither the Respondents nor anyone on their behalf attended the hearing, I first address whether they received proper notice of the hearing. The OAH issued hearing notices to Respondent DMS and Respondent Rigley on February 13, 2018 by first-class mail as well as certified mail to the following addresses:

a. For Respondent DMS:

   4600 Touchton Road #1150
   Jacksonville, FL 32246

   and

   Maryland State Dept. of Assessments & Taxation
   301 W. Preston Street, #801
   Baltimore, MD 21201

b. For Respondent Rigley:

   12891 Winged Elm Drive
   N. Jacksonville, FL 32246

The CFR offered into evidence the customary United States Postal Service's (USPS) green certified mail return card showing that someone signed for Respondent DMS's certified

mail at the Florida address on February 20, 2018, and at its alternate address with the Maryland State Department of Assessments and Taxation on an uncertain date.[6]

Respondent Rigley's certified mail was signed for on an unspecified date between the mailing February 20, 2018 and the date the USPS returned the green card to the OAH. The hearing notice is addressed to Respondent Rigley at his address of record , but the typed address on the green card is incorrect in that the house number for the addressee is represented by a typographical error: "!@*(!." Nevertheless, Respondent Rigley received the notice, as evidenced by his postponement request.

The USPS did not return the notices posted by first class regular mail.

As notice was sent to Respondent DMS and Respondent Rigley at their addresses of record, I am satisfied that every effort was made to provide the Respondents with notice of the hearing. The notice was reasonable and equitable. *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 503-04 (1988). Therefore, I proceeded with the hearing in the Respondents' absence.

The Commissioner alleges the Respondents violated the PHIFA Act and the MMARS Act.

The Commissioner alleges that Respondents violated provisions of the PHIFA Act. In essence, the Commissioner contends that the Respondents contacted a Maryland homeowner, Consumer A, who was behind in his mortgage and facing foreclosure. The Respondents promised to obtain loan modifications for him and to reduce his monthly mortgage payment by 50%, but they failed to deliver any service. They failed to provide required notifications and disclosures by Maryland and federal law. The Respondents failed to issue a refund to Consumer A when he made a written demand and they failed to investigate his complaint about the failure to provide him with any service. The Commissioner argues that these violations caused

[6] The date stamp is February 12, 2018, but that is not possible because the letter was not mailed until the next day. The OAH received the green card from the USPS on February 26, 2017, leaving me to conclude it was received sometime before then.

Consumer A harm. The Commissioner alleges Respondent Rigley violated its prior cease and desist order.

The Commissioner is requesting a cease and desist order, civil penalties, and restitution to Consumer A.

The Respondents violated the PHIFA Act.

The Respondent Rigley in his own capacity and acting on Respondent DMS' behalf was a foreclosure consultant and are therefore subject to PHIFA Act. A foreclosure consultant means 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;[7]
>
> (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

[7] A residence in foreclosure "means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed." Md. Code Ann., Real Prop. § 7-301(k).

(2) Systematically contacts owners of residences in default[8] to offer foreclosure consulting services.

Md. Code Ann., Real Prop. § 7-301(c).

The Respondents offered to obtain a lower mortgage payment for the consumers in order to stop a foreclosure from occurring in exchange for the payment of upfront fees. They contacted Consumer A after he was ninety days past due on his mortgage and offered to help him get relief from his lenders and avoid foreclosure.

The PHIFA Act entitles a homeowner to rescind a foreclosure consulting contract at any time. Md. Code Ann., Real Prop. § 7-305(a). More specifically,

> (b) Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.
>
> (c) Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.
>
> (d) Notice of rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract.
>
> (e) After the rescission of a foreclosure consulting contract, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract, together with interest calculated at the rate of 8% a year.
>
> (f) The right to rescind may not be conditioned on the repayment of any funds.

Md. Code Ann., Real Prop. § 7-305(b)-(f).

[8] A residence in default "means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual's principal place of residence, and on which the mortgage is at least 60 days in default." Md. Code Ann., Real Prop. § 7-301(j).

Moreover, a foreclosure consulting contract shall meet certain requirements, as follows:

(1) Be provided to the homeowner for review before signing;

(2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

(3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any sale or tenancy that may be involved, and the total amount and terms of any compensation from any source to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) State the duty of the foreclosure consultant to provide the homeowner with written copies of any research the foreclosure consultant has regarding the value of the homeowner's residence in default, including any information on sales of comparable properties or any appraisals;

(5) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

(6) Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY MARYLAND LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have` you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction. The separate explanation must include: how much money you must pay; how much money you will receive, if any; and how much money the foreclosure consultant will receive from any source.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

You have the right to rescind this foreclosure consulting contract at any time by informing the foreclosure consultant that you want to rescind the contract. See the attached Notice of Rescission form for an explanation of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

If a contract to sell or transfer the deed or title to your property is involved in any way, you may rescind that contract at any time within 5 days after the date you sign that contract and you are informed of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, 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."

(b) The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of rescission is to be mailed; and

(2) The date the homeowner signed the contract.

(c)(1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"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)".

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the foreclosure consulting contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may rescind the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

Md. Code Ann., Real Prop. § 7-306.

The only written agreement between the Respondents and Consumer A is the Securitization-Forensic Audit-Foreclosure Analysis Report Agreement of August 3, 2015. The agreement entitles Consumer A to a report. The Agreement specifically states that Respondent DMS is "in no way engaged in foreclosure defense or foreclosure prevention with this audit/report. It is a tangible product which will be delivered to [Consumer A] once completed with findings regarding [Consumer A's] home mortgage" and "[Consumer A] understands and agrees that [Respondent DMS] does not provide loan modification service in connection with this contract...." CFR Ex 7. Notwithstanding the securitization agreement, the Respondents promised numerous times to provide loan modification services, or at least they deceived Consumer A into believing they were doing so. The Respondents told Consumer A they could save him 50% of his monthly mortgage payment with a loan modification; Consumer A should stop making mortgage payments; Consumer A should stop talking to his lender; and the "harassing" telephone calls from Chase were from a different department than the Respondents

were working with. Consumer A reasonably believed the Respondents were working with Chase to obtain a loan modification so that he would avoid foreclosure. The Respondents should have used a written agreement that included the required terms.

Also, "[a] foreclosure consultant may not . . . [c]laim, 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." Md. Code Ann., Real Prop. § 7-307(2). The Respondents collected upfront fees totaling $3,400.00 from Consumer A before obtaining a loan modification. The Respondents never obtained, or even attempted to obtain, the promised loan modification for Consumer A. The Respondents never submitted any documents on his behalf to Chase.

"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]." Md. Code Ann., Real Prop. § 7-307(10). As previously described, the Respondents had Consumer A sign a contract that did not comply with the requirements of the PHIFA Act and had him pay upfront fees before it performed any work on his mortgage.

The Respondent further violated section 7-309(9)(b) of the Real Property Article by not exercising the "same duty of care to a home owner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article," which provides as follows:

> (a) A licensee shall comply with the provisions of this section when providing real estate brokerage services.
> (b)(1) A licensee shall:
> (i) act in accordance with the terms of the brokerage agreement;
> (ii) promote the interests of the client by:
> 1. seeking a sale or lease of real estate at a price or rent specified in the brokerage agreement or at a price or rent acceptable to the client;
> 2. seeking a sale or lease of real estate on terms specified in the brokerage agreement or on terms acceptable to the client; and

3. unless otherwise specified in the brokerage agreement, presenting in a timely manner all written offers or counteroffers to and from the client, even if the real estate is subject to an existing contract of sale or lease;

(iii) disclose to the client all material facts as required under § 17-322 of this title;

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

(v) in a timely manner account for all trust money received;

(vi) exercise reasonable care and diligence; and

(vii) comply with all:

1. requirements of this title;

2. applicable federal, State, and local fair housing laws and regulations; and

3. other applicable laws and regulations.

(2) Unless the client consents in writing to the disclosure, a licensee may not disclose confidential information received from or about a client to any other party or licensee acting as the agent of that party or other representative of that party.

(3) Unless the client to whom the confidential information relates consents in writing to a disclosure of that confidential information, a licensee who receives confidential information from or about the licensee's own past or present client or a past or present client of the licensee's broker may not disclose that information to:

(i) any of the licensee's other clients;

(ii) any of the clients of the licensee's broker;

(iii) any other party;

(iv) any licensee acting as an agent for another party; or

(v) any representative of another party.

(4) Unless otherwise specified in the brokerage agreement, a licensee is not required to seek additional offers to purchase or lease real estate while the real estate is subject to an existing contract of sale or lease.

(5) An intra-company agent may disclose confidential information to the broker or dual agent for whom the intra-company agent works but the broker or dual agent may not disclose that confidential information to the other party or the intra-company agent for the other party, as provided in § 17-530.1(b) of this subtitle.

(c) A licensee does not breach any duty or obligation to the client by:

(1) showing other available properties to prospective buyers or lessees;

(2) representing other clients who have or are looking for similar properties for sale or lease;

(3) representing other sellers or lessors who have similar properties to that sought by the buyer or lessee;

(4) showing the buyer or lessee other available properties; and

(5) during an open house, discussing other properties with prospective buyers or lessees, if the licensee has the written consent of the seller or lessor to do so.

(d) This title does not limit the applicability of § 10-702 of the Real Property Article.

(e) The requirements of this section are in addition to any other duties required of the agent by law that are not inconsistent with these duties.
(f) The duties specified in this section may not be waived or modified.
(g) A licensee who performs ministerial acts for a person may not be construed to:
(1) violate the licensee's duties to the client, provided that the client has consented in the brokerage agreement to the licensee's provision of ministerial acts; or
(2) form an agency relationship between the licensee and the person for whom the ministerial acts are performed.

The Respondents violated their duty of care by instructing Consumer A not to talk to his lender, to stop making payments on his mortgage and by refusing a refund. The Respondents did not make any meaningful effort to protect Consumer A's interests. The Respondents never contacted Chase to negotiate on Consumer A's behalf.

The Respondents are subject to the MMARS Act.

The MMARS Act provides that "[a] mortgage assistance relief service provider providing mortgage assistance relief service in connection with a dwelling in the State that does not comply with 12 C.F.R. §§ 1015.1 through 1015.11 and any subsequent revision of those regulations is in violation of this subtitle." Md. Code Ann., Real Prop. § 7-502.

Section 1015.3 provides in pertinent part that:

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:
(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.
(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:
. . .
(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;
. . .
(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

. . .

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service[.]

The Respondent expressly advised Consumer A not to contact Chase and to cease payments. The Respondents told Consumer A he would be protected and not to worry about the threat of foreclosure because it was just a "scare tactic." The Respondents misled Consumer A into believing it had taken action on his behalf with Chase and the "harassing" calls Consumer A received from Chase were from a different department than Respondents were dealing with. The Respondents misrepresented to Consumer A he would save 50% per month in his monthly mortgage. The Respondents promised Consumer A "attorney protection" and that an attorney would be working with him to prevent foreclosure. Respondent Rigley advised Consumer A that his case was being forwarded to a network attorney for review. The attorney to which the Respondents referred Consumer A was not licensed to practice law in Maryland and was located in Massachusetts. The attorney did not offer loan modification assistance as promised. The Respondents collected payment before performing any service. The Respondents misrepresented that Consumer A could save 50% on his monthly mortgage; the Respondents promised to reduce his mortgage from $1,564.00 to $748.00.

The evidence does not show the Respondents misrepresented the terms or conditions of his dwelling loan, including but not limited to the amount of debt; thus, I do not find the Respondent violated 12 C.F.R. § 1015.3(b)(5).

The Respondents did not comply with the MMARS Act in that they did not provide the general commercial communications disclosures and the consumer-specific commercial

communications disclosures as required by 12 C.F.R. Section 1015.4. That regulation provides in pertinent part as follows:

> (a) *Disclosures in All General Commercial Communications* - Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:
>
> (1) "(Name of company) is not associated with the government, and our service is not approved by the government or your lender."
>
> . . .
>
> (b) Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:
>
> (1) "You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services." For the purposes of this paragraph (b)(1), the amount "you will have to pay" shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.
> (2) "(Name of company) is not associated with the government, and our service is not approved by the government or your lender."
>
> . . .

At a minimum, none of the Respondents' emails included the mandatory language.

Moreover,

> It is a violation of this rule for any mortgage assistance relief service provider to:
> (a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer;
> (b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: "This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services." The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: "IMPORTANT NOTICE: Before buying this service, consider the following

information." The heading must be in bold face font that is two point-type larger than the font size of the required disclosure[.]

12 C.F.R. § 1015.5.

The Respondents collected upfront fees from Consumer A without the required disclosures. Consumer A was delinquent in his mortgage with Chase, and was facing foreclosure. The Respondents executed a written contract with Consumer A that did not disclose to him that he could accept or reject the lender's offer of mortgage assistance. The Respondents contacted Consumer A and offered assistance in obtaining a loan modification from his lender. The Respondents promised Consumer A he could avoid foreclosure by lowering his mortgage payments by up to 50%. Consumer A relied on the Respondents' offer to save his home from foreclosure and paid $3,400.00 in upfront fees to the Respondents. The Respondents did not obtain a loan modification for Consumer A. Rather, despite Consumer A having paid $3,400.00 in upfront fees to the Respondents, Chase was unaware Consumer A was seeking a loan modification. The Respondents further failed to disclose to Consumer A that he is not required to pay the Respondents if he rejects the lender's offer of mortgage assistance and they did not include in their written agreement the required notices.

The Respondents demanded upfront payments from Consumer A prior to obtaining a loan modification between Consumer A and his lender and never obtained a loan modification as promised. The Respondents did not inform Consumer A he could accept or reject the mortgage assistance offer obtained from the lender. The Respondents did not notify Consumer A in writing that if he did not accept Chase's offer, he would not have to pay Respondent DMS.

Federal regulations required a mortgage assistance relief service provider to "Investigate promptly and fully each consumer complaint received." 12 C.F.R. §1015.9(b)(2). The Respondents failed to investigate promptly and fully the complaint Consumer A submitted to them. Consumer A attempted to contact the Respondents on multiple occasions to discuss the

status of the loan modification. Additionally, on June 6, 2016, Consumer A submitted a letter to the Respondents requesting a refund because the Respondents did not meet the goals of the written agreement. The Respondents did not issue a refund, nor did they follow up on the complaint.

The documentary and testimonial evidence presented by the Commissioner is uncontradicted, as the Respondents did not participate in the hearing. Based on the evidence before me, I conclude that the Respondents violated provisions of both the PHIFA Act and the MMARS Act and are therefore subject to penalties, and to a cease and desist order. More specifically:

> *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.

Md. Code Ann., Fin. Inst. § 2-115(b). A financial penalty is based on consideration of six 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.

Md. Code Ann., Fin. Inst. § 2-115(c).

The Respondents did not present any evidence on the penalty factors. Investigator Valez-Dorsey testified that in 2014, Respondent Rigley and his company The Ridgley Group were found in violation of the Maryland Credit Service Business Act and the Protection of

Homeowners in Foreclosure. Respondent Rigley was barred from engaging in credit service business and or foreclosure consultant activities, including providing loan modifications. Respondent Rigley then created a new company, Respondent DMS, of which he is the sole owner, in order to get around the Commissioner's Final Order. Respondent Ridgley continues to provide loan modifications to Maryland Consumers and his activities continue to harm Maryland consumers, such as Consumer A. Respondent Rigley has caused, and continues to cause, financial harm to Maryland consumers, and continues to pose a threat to the general public by operating a mortgage assistance relief services business in violation of the Final Order and by taking up-front fees in violation of the MMARS Act and PHIFA Act.

Considering the facts of this case, the Summary Order and Final Order issued against Respondent Rigley previously barring him from engaging in mortgage assistance relief, and the harm done to Consumer A, the Commissioner has requested a $50,000.00 penalty, as follows:

Violation of Real Property Article § 7-307(2) and 12 C.F.R § 1015.3(b)(7) (collecting upfront fees prior to fully and completely performing all services)	$5,000.00 (since it is the second violation of Respondent Rigley)
Violation of Real Property Article § 7-307(10) (induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle)	$5,000.00
Violation of Real Property Article §§ 7-305 and 7-306 and 12 C.F.R. § 1015.4(a)(b) (failing to disclose all requisite contractual terms in agreements, including notices of recession)	$5,000.00
Violation of Real Property Article § 7-309(b) (breach of duty of reasonable care and diligence)	$5,000.00
Violation of 12 C.F.R. § 1015.3(b)(4) (misrepresent a consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan)	$5,000.00
Violation of 12 C.F.R. § 1015.3(a) (Represent expressly that a consumer should not contact or communicate with his lender or servicer)	$5,000.00
Violation of 12 C.F.R. § 1015.3(b)(8) (Consumer will receive legal representation)	$5,000.00

Violation of 12 C.F.R. § 1015.3(b)(10) (misrepresent the amount of money or percentage of the debt amount that a consumer may save using the mortgage assistance relief service)	$5,000.00
Violation of 12 C.F.R. § 1015.5 (receiving payment before the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer)	$5,000.00
Violation of 12 C.F.R. § 1015.9 (failing to promptly and fully investigate each consumer complaint received)	$5,000.00
Total:	**$50,000.00**

The evidence supports the Commissioner's proposed penalty. The Respondents did not appear to present evidence in opposition. Thus, I recommend a $50,000 penalty.

Also, the "Commissioner may enforce the provisions of this subtitle by requiring a violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation." Md. Code Ann., Real Prop. § 7-319.1(c). The Respondents harmed Consumer A and the Respondents have made no effort to correct any violations. I therefore recommend that the Respondents pay restitution to Consumer A for the amount of upfront fees he paid totaling $3,400.00.

CONCLUSIONS OF LAW

The Commissioner has proven by a preponderance of the evidence that the Respondents:

1. Violated the PHIFA Act, Md. Code Ann., Real Prop. §§ 7-301 through 7-32 (2015), and the MMARS Act, Md. Code Ann., Real Prop. §§7-501 through 7-511 (2015); and
2. Are subject to a cease and desist order, financial penalty, and restitution. Md. Code Ann., Fin. Inst. § 2-115(b) and (c) (2011).

RECOMMENDED ORDER

I **RECOMMEND** that the Commissioner:

ORDER that the Respondents shall immediately **CEASE AND DESIST** from engaging in any further foreclosure consultant activities; and

ORDER that for violations of the Protection of Homeowners in Foreclosure Act and the Maryland Mortgage Assistance Relief Services Act, the Respondents pay a penalty of $50,000.00 and further;

ORDER, the Respondents shall pay restitution to Consumer A totaling $3,400.00; and

ORDER that the records and publications of the Commissioner reflect this decision.

June 11, 2018
Date Decision Issued

Laurie Bennett
Administrative Law Judge

LB/fe
#172952