

IN THE MATTER OF:

DODD & ASSOCIATES, LTD.
d/b/a A-1 CREDIT, and

JOHN W. DODD,

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: DFR-EU-2008-251

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Office of the Commissioner of Financial Regulation (“OCFR”) conducted an investigation into the business activities of Dodd & Associates, Ltd., d/b/a A-1 Credit, and John W. Dodd (collectively the “Respondents”); and

WHEREAS, as a result of that investigation, the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”) found evidence to support that Respondents have engaged, and continued to engage, in acts or practices constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, namely that Respondents have violated various provisions of the Annotated Code of Maryland, including Commercial Law Article (“CL”), Title 14, Subtitle 19, (the Maryland Credit Services Businesses Act, hereinafter “MCSBA”), and Financial Institutions Article (“FI”), Title 11, Subtitles 2 and 3; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist and Order to Produce (the “Summary Order”) against Respondents on July 19, 2010 after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents

immediately Cease and Desist from engaging in credit repair and other credit services business activities with Maryland residents, including but not limited to directly or indirectly offering, contracting to provide, or otherwise engaging in, credit repair services or related activities.; and

WHEREAS, the Summary Order notified Respondents of, among other things, the following: that Respondents were entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondents did not request a hearing within 15 days of the receipt of the Summary Order; that as a result of a hearing, or of Respondent's failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue penalty orders against Respondents, or take any combination of these actions; that the Commissioner may enter an order declaring that all credit repair agreements made by Respondents with Maryland consumers are void and unenforceable, and that Respondents must refund to Maryland consumers all money and other valuable consideration that consumers paid to Respondents, their employees, or independent contractors that is in any way related to these agreements; and that as a result of Respondents' failure to comply with requirements imposed under the MCSBA, the Commissioner may also enter an Order requiring Respondents to pay consumers a monetary award equal to any actual damages sustained by the consumers as a result of that failure, and, in instances of willful noncompliance under the Act, an additional monetary award equal to 3 times the total amount collected from the consumers; and

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

WHEREAS, Respondent failed to request a hearing on the Summary Order within fifteen (15) days of Respondent's receipt thereof and has not filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

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

1. Pursuant to CL § 14-1902, "[a] credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: (1) [r]eceive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article. . . ."

2. Pursuant to CL § 14-1903(b), "[a] credit services business is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article."

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

4. Pursuant to FI § 11-303, "[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions."

5. Title 14, Subtitle 19 of the Commercial Law Article defines credit services business at CL § 14-1901(e); this statute provides, in part, as follows:

- (1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:
 - (i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;
 - (ii) Obtaining an extension of credit for a consumer; or
 - (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.
- (2) "Credit services business" includes a person who sells or attempts to sell written materials containing information that the person represents will enable a consumer to establish a new credit file or record.

6. CL § 14-1902 further provides, in pertinent part, as follows:

A credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not:

* * *

- (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;

* * *

7. Further, CL § 14-1903(a) addresses the scope of credit services contracts covered under the Maryland Credit Services Business Act, providing as follows:

- (a) *In general.* – Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:
 - (1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;
 - (2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or
 - (3) The credit services business makes any verbal or written solicitation or communication that originates either

inside or outside of this State but is received in the State by a resident of this State.

8. Pursuant to CL § 14-1903.1,

A person who advertises a service described in § 14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:

- (1) The license issued under § 14-1903 of this subtitle; or
- (2) If not required to be licensed, the exemption provided by the Commissioner.

9. CL § 14-1904(a) provides that, “[b]efore either the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under § 14-1905 of [the MCSBA].” CL § 14-1905(b) further requires a credit services business “to maintain on file for a period of 2 years from the date of the consumer’s acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement.”

10. CL § 14-1905 indicates the specific terms which must be provided in the information statement, stating, in part, as follows:

(a) *In general.* – The information statement required under § 14-1904 of this subtitle shall include:

* * *

(5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services.

* * *

(b) *Additional requirements of licenses.*– A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

- (1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;
- (2) The address of the Commissioner where such complaints should be filed; and
- (3) A statement that a bond exists and the consumer's right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

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

(a) *Requirements.*— Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include:

(1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) *Notice of cancellation form.*— The contract shall be accompanied by a form completed in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

* * *

(c) *Copies of completed contract and other documents to be given to consumer.*— A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

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

(a) *Breach of contract.*— Any breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle.

(b) *Void contracts.*— Any contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State.

(c) *Waivers.*—

* * *

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

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

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

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

- (1) Any actual damages sustained by the consumer as a result of the failure;
 - (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;
 - (3) Such amount of punitive damages as the court may allow; and
 - (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (b) *Negligent noncompliance.*— Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:
- (1) Any actual damages sustained by the consumer as a result of the failure; and
 - (2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

15. CL §§ 14-1901(e) provides, in relevant part, that, unless otherwise exempt, persons who, in exchange for payment of money or other valuable consideration from any source, sell, provide, perform, or represent that they will sell, provide or perform, services to improve a consumer's credit record, history, or rating or establishing a new credit file or record (hereinafter "credit repair services") for Maryland consumers, or who provide advice or assistance to Maryland consumers regarding such services, fall under the statutory definition of "credit services businesses," and are thereby subject to the licensing, investigatory, enforcement, and penalty provisions of the MCSBA.

16. The following relevant and credible evidence, obtained pursuant to OCFR's investigation, was considered in the issuance of the Summary Order: internet marketing materials by Respondents; written communications between Respondents and OCFR staff; Respondents' standard written contract for "credit repair services" with Maryland residents; phone conversations between OCFR staff and Respondents; and the

Division's licensing records. More particularly, this evidence supports the following findings:

a. Respondent John W. Dodd owns and operates Respondent Dodd & Associates, Ltd. at 501 Wynnewood Village Shopping Center, Suite 201, Dallas, Texas 75224. These Respondents advertise, offer, and sell credit repair services on the internet under the name A-1 Credit, including to residents of Maryland, at the following web site: <http://www.a-1credit.com/index.php>.

b. On December 5, 2008, OCFR sent Respondents a letter by certified and first class U.S. Mail which notified Respondents that they were required to be licensed pursuant to the MCSBA in order to advertise or offer credit repair services to Maryland residents, and which requested a copy of Respondents' contract and information statement for Maryland consumers as required under the MCSBA. Respondents signed for the certified letter on December 11, 2008, but failed to respond to OCFR's request. On January 5, 2009, OCFR sent a subpoena to Respondents by certified and first class U.S. Mail, directing them to provide, pursuant to the Commissioner's authority under FI § 2-114, a copy of Respondents' contract and information statement for Maryland consumers, as well as other relevant business documents. Respondents signed for the certified letter on January 10, 2009, but failed to comply with the subpoena.

c. On March 10, 2009, an investigator from OCFR contacted Respondents at the phone number listed on their web site, (214) 941-8222, and asked whether Respondents could provide credit repair services to Maryland residents. The investigator was transferred to Mr. Terry Welker, who replied that Respondents could

provide credit repair for Maryland residents, and believing the investigator was a Maryland consumer seeking credit repair services, faxed a copy of Respondents' standard form services contract to the investigator to complete, sign, and return. However, the investigator was not provided with an information statement, the contract did not contain the specific terms required under the MCSBA, and the contract required the consumer to pay, at minimum, \$350 in up-front fees at the time of entering into the agreement.

d. OCFR contacted Respondent John W. Dodd by telephone on April 21, 2009, and stated that the Agency would issue a Summary Order to Cease and Desist to him and his business if he failed to comply with the subpoena. Respondent has never responded back to OCFR concerning the subpoena.

e. On May 24, 2010, an investigator from OCFR again contacted Respondents at the phone number listed on their web site, (214) 941-8222, and asked whether Respondents could provide credit repair services for Maryland residents. The investigator spoke directly to John W. Dodd, who replied that Respondents operated in all 50 states, including Maryland. Respondent further offered to e-mail the investigator, who he believed was a Maryland consumer seeking credit repair services, a copy of Respondents' consumer contract so that she could obtain credit repair services from the Respondents.

17. By advertising that they could provide credit repair services, and by offering to enter into contractual agreements with Maryland residents to provide such services, Respondents engaged in credit services business activities. As such, Respondents activities are subject to regulation under the MCSBA, including the Act's

prohibition on engaging in credit services business activities with Maryland consumers without first being duly licensed under the MCSBA.

18. However, Respondents have never been licensed by the Commissioner under the MCSBA, nor are they exempt from licensing. As such, Respondents' unlicensed credit services business activities involving Maryland residents violate the licensing provisions of the MCSBA cited above, including CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303.

19. Respondents further violated the MCSBA through the following: in their credit repair advertisements, they failed to clearly and conspicuously state their license number under the MCSBA or their exemption, in violation of CL § 14-1903.1; and they failed to obtain the requisite surety bonds, in violation of to CL §§ 14-1908 and 14-1909.

20. Additionally, as evidenced by Respondents' standard form contract, discussed above, all agreements which Respondents entered into with Maryland consumers violated CL § 14-1902(6) of the MCSBA, as credit services businesses are prohibited from collecting up-front fees prior to fully and completely performing all services on behalf of consumers. Respondents' agreements with Maryland consumers also violated the MCSBA because Respondents failed to provide Maryland consumers with the requisite information statement, in violation of CL §§ 14-1904 and 14-1905, and because Respondents failed to include all of the requisite contractual terms in their agreements, as required under CL § 14-1906.

21. Further, as the contracts between Respondents and consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above),

pursuant to CL § 14-1907(b) all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of State of Maryland.

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

23. Pursuant to the Commissioner's authority to conduct investigations under FI §§ 2-114, the Deputy Commissioner issued a subpoena to Respondents on January 5, 2009, ordering them to provide all documents in their control in any way related to their credit repair activities involving Maryland residents. Respondents have never complied with the subpoena as of the date of this Final Order to Cease and Desist, and thus are in violation of FI § 2-114.

24. Pursuant to the Commissioner's authority to conduct investigations under FI § 2-114, the Deputy Commissioner issued an Order to Produce to Respondents on July

19, 2010 in conjunction with the Summary Order, ordering them to provide specific information and all documents related to their credit repair activities involving Maryland residents no later than 15 days after the receipt of the Summary Order and Order to Produce. However, Respondents failed to comply with the Order to Produce, and in fact have not provided any documents or information as of the date of this Final Order to Cease and Desist. Therefore, by failing to fully comply with the Deputy Commissioner's Order to Produce, Respondents are in violation of FI § 2-114.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant CL §§ 14-1902, 14-1907, 14-1912, and FI § 2-115(b), it is, by the Maryland Commissioner of Financial Regulation, **HEREBY**

ORDERED that the Summary Order to Cease and Desist issued by the Deputy Commissioner against Respondents on July 19, 2010 is entered as a Final Order of the Commissioner, and that Respondents shall permanently **CEASE** and **DESIST** from engaging in any credit repair or other credit services business activities with Maryland residents, including but not limited to directly or indirectly offering, contracting to provide, or otherwise engaging in, credit repair services or related activities; it is further

ORDERED that, pursuant to FI § 2-115(b), and upon careful consideration of (i) the seriousness of the Respondents' violations; (ii) the lack of good faith of Respondents, (iii) the history and ongoing nature of Respondents' violations; and (iv) the deleterious effect of Respondents' violations on the public and on the credit services businesses and credit repair industries, Respondents shall pay to the Commissioner a total civil penalty in

the amount of **THREE THOUSAND DOLLARS (\$3,000)**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Civil Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Activity in Violation of MCSBA</i>	\$1,000	1	\$ 1,000
<i>Failure to Comply with Subpoena and Order to Produce, in Violation of FI § 2-114</i>	\$1,000	2 Failures to comply	\$ 2,000
		TOTAL	\$ 3,000

and it is further,

ORDERED that Respondents shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **THREE THOUSAND DOLLARS (\$3,000.00)** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, pursuant to CL § 14-1907(b), all credit repair agreements which Respondents entered into with the Maryland consumer are void and unenforceable as contrary to the public policy of the State of Maryland; and it is further

ORDERED that, pursuant to CL §§ 14-1902, 14-1907, and 14-1912, Respondents shall refund to each Maryland consumer with whom Respondents have entered into credit repair or other credit services business agreements all money and other

valuable consideration that consumers paid to Respondents, their employees, or independent contractors that is in any way related to these agreements; and it is further

ORDERED that Respondents shall pay the required refunds to each Maryland consumer within 30 days of this Final Order being signed. Respondents shall make such payments by mailing to each consumer a check for the total amount owed to that consumer via First Class U.S. Mail at the most recent address of the consumer known to the Respondents. If the mailing of any of these payments is returned as undeliverable by the U.S. Postal Service, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payments. Upon the making of the required payments, the Respondents shall furnish evidence of having made the payments to the Commissioner within fifteen (15) days, which evidence shall consist of a copy of the front and back of the cancelled check for each payment; and it is further

ORDERED that Respondents shall send all correspondences, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator.

2/2/11
Date



Anne Balcer Norton
Deputy Commissioner