

IN THE MATTER OF:

NATALIE PINGLEY JAMES,

D/B/A MORTGAGEHELPNOW,

RESPONDENT

**BEFORE THE COMMISSIONER OF
FINANCIAL REGULATION**

OAH NO.: LABOR-CFR-76-20-14970

CFR No.: FY2020-0015

PROPOSED FINAL ORDER

The Proposed Decision ("Proposed Decision") of the Administrative Law Judge (the "ALJ"), issued on February 16, 2021, in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this of ^{9th} day of April 2021, 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. The civil penalties in the Proposed Decision be, and hereby are ADOPTED after having considered the factors under Md. Code Ann., Fin. Inst., §2-115(c), and determined that the violations are serious; Respondent's conduct showed the absence of good faith; and Respondent's actions had deleterious effect on the public and the foreclosure consulting/mortgage assistance relief services industries. The Commissioner does not have any information regarding Respondent's history of previous violations or assets;
- D. Respondent shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$31,000, in penalties, within twenty (20) days from the date of this Proposed Final Order;
- E. Pursuant to Md. Code Ann., Real Prop. §§7-319.1(c) and 7-506(c), Respondent shall pay restitution to Consumer A (as identified in the Commissioner's June 4, 2020 Charge Letter) in the

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amount of \$2,300.00, Consumer B (as identified in the Commissioner's June 4, 2020 Charge Letter) in the amount of \$1,700.00 and Consumer C (as identified in the Commissioner's June 4, 2020 Charge Letter) in the amount of \$1,500.00. Respondent shall make payment by mailing to each consumer a check in the amount specified herein via First Class Mail, postage prepaid, at the most recent address of the consumer known to the Respondent. If Respondent does not know the mailing address of any consumer or any such mailing is returned as non-deliverable, Respondent shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Within 60 days of the date of this Final Order, Respondent shall furnish a copy of the front and back of the cancelled check for each restitution payment to the Commissioner as evidence of having made such payment;

F. Respondent shall immediately CEASE AND DESIST from engaging in any further foreclosure consultation activities and/or mortgage assistance relief services, as such activities and services are defined and described in Md. Code Ann., Real Prop. §§7-301 et seq. and 7-501 et seq.;

G. Respondent 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

H. The records and publications of the Commissioner reflect the Proposed Final Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). 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 Md. Code Ann., State Government §10-222.

Respondent may have the right to file a petition for judicial review; however, the filing of a petition for judicial review does not automatically stay the enforcement of this order.

Date:

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

April 9th, 2021

By: Antonio P. Salazar Digitally signed by Antonio P. Salazar
Date: 2021.04.09 10:06:24 -04'00'

Antonio P. Salazar,
Commissioner of Financial
Regulation



MARYLAND DEPARTMENT
OF LABOR,
COMMISSIONER OF FINANCIAL
REGULATION

* BEFORE RICHARD O'CONNOR,
* ADMINISTRATIVE LAW JUDGE,
* THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

v.

NATALIE PINGLEY JAMES,
D/B/A MORTGAGEHELPNOW,
RESPONDENT

* OAH No.: LABOR-CFR-76-20-14970
* CFR No.: FY2020-0015

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On June 4, 2020, the Assistant Commissioner of Financial Regulation (Commissioner) issued a Charge Letter against Natalie Pingley James, doing business as MortgageHelpNow (Respondent), alleging that she violated various provisions of the Real Property Article of the Annotated Code of Maryland, specifically sections 7-301 through 7-325 (the Protection of Homeowners in Foreclosure Act, related to mortgage foreclosure) and sections 7-501 through 7-511 (the Maryland Mortgage Assistance Relief Services Act, related to loan modification services and mortgage assistance relief service activities).

The Charge Letter further asserted that the Commissioner may enforce these provisions by issuing an order requiring the Respondent to cease and desist from these violations and further similar violations and requiring affirmative action to correct the violations. In addition, the Charge Letter stated that the Commissioner may impose a civil monetary penalty up to \$10,000.00 for the first violation and up to \$25,000.00 for each subsequent violation.¹

On November 18, 2020, I convened a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 2-115(a) (2020).² Kevin McGivern, Assistant Attorney General, represented the Commissioner. Neither the Respondent nor anyone on her behalf appeared for the hearing.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Respondent request or receive payment of a fee from a consumer prior to the consumer obtaining a mortgage loan modification, in violation of section 7-502 of the Real Property Article and Title 12, section 1015.5(a) of the Code of Federal Regulations?

2. Did the Respondent fail to investigate consumer complaints, in violation of section 7-502 of the Real Property Article and Title 12, section 1015.9(b)(2), of the Code of Federal Regulations?

¹ The Charge Letter also cited paragraphs (b) and (c) of section 2-115 of the Financial Institutions Article as in effect before October 1, 2018, which provided a monetary penalty up to \$1,000.00 for the first violation and up to \$5,000.00 for each subsequent violation.

² Unless otherwise noted, all references to the Financial Institutions Article are to the 2020 Replacement Volume.

3. Did the Respondent fail to provide required disclosures when advising consumers to stop making mortgage payments, in violation of section 7-502 of the Real Property Article and Title 12, section 1015.4(c) of the Code of Federal Regulations?

4. Did the Respondent fail to provide proper disclosures in consumer-specific commercial communications with consumers, in violation of section 7-502 of the Real Property Article and Title 12, section 1015.4(b) of the Code of Federal Regulations?

5. Did the Respondent collect compensation from consumers prior to fully performing each and every service she contracted to perform or represented that she would perform, in violation of section 7-307(2) of the Real Property Article?

6. Did the Respondent fail to provide a notice of rescission to consumers with whom she contracted, in violation of section 7-305 of the Real Property Article?

7. Did the Respondent fail to provide signed and dated copies of the written agreements to consumers with whom she contracted, in violation of section 7-306(d) of the Real Property Article?

8. If the Respondent committed any of the charged violations, what, if any, sanctions should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits offered by the Commissioner:

1. Notice of Hearing, August 13, 2020; signed receipts for certified mail, September 28 and 29, 2020.
2. Charge Letter, June 4, 2020.
3. Letter from the Commissioner to OAH, June 11, 2020.
4. Subpoena, August 17, 2020.

5. Subpoena, August 17, 2020.
6. Subpoena, August 17, 2020.
7. Affidavit of Service, June 4, 2020.
8. Copies of two receipts for certified mail, dated "6/9."
9. Report of Investigation, February 3, 2020.
10. Copy of a receipt, February 24, 2019.
11. Text message string between the Respondent and [REDACTED], February 7, 2019 to April 2, 2019.
12. Contract for Mortgage Loan Modification, August 31, 2017 (annotated).
13. Copy of a check, August 31, 2017.
14. Complaint from [REDACTED], November 1, 2018.

The Respondent did not offer any exhibits.

Testimony

The Commissioner presented the following witnesses:

- Zenaida Velez-Dorsey, Financial Fraud Investigator;
- [REDACTED], homeowner;
- [REDACTED], homeowner; and
- [REDACTED], homeowner.

No witnesses testified on behalf of the Respondent.

PROPOSED FINDINGS OF FACT

I find the following relevant facts by a preponderance of the evidence:

1. In 2017 through 2019, the Respondent held herself out to the public as a foreclosure consultant who could assist individuals who were having difficulty making their mortgage payments or who had defaulted on their mortgages and were facing foreclosure, by

securing modifications of mortgage loans resulting in lower monthly payments, obtaining forbearance agreements from the holders of the mortgages, and assisting the individuals to retain their homes.

2. The Respondent did business as MortgageHelpNow, with a business address of 12500 Cross Ridge Way, Germantown, Maryland 20874.

3. MortgageHelpNow was not registered with the Maryland State Department of Assessments and Taxation and was not authorized to conduct business in Maryland.

4. On August 31, 2017, the Respondent entered into a loan modification consulting services contract with [REDACTED], a Maryland homeowner residing in Elkridge.

5. Before entering into the contract, the Respondent communicated orally and by telephone with [REDACTED].

6. Under the terms of the contract, the Respondent agreed to obtain a loan modification of [REDACTED] fifteen-year mortgage. [REDACTED] was seeking a twenty-year mortgage with a reduction in the monthly payment.

7. [REDACTED] mortgage was not in default and her payments were current when she signed the contract, but she was having difficulty continuing to make the monthly payments.

8. The Respondent demanded and received an up-front payment of \$2,300.00 from [REDACTED] before performing any services.

9. Neither the contract with the Respondent nor the Respondent's pre-contract communications included notice of [REDACTED] right to rescind the contract at any time without penalty, did not state that MortgageHelpNow is not associated with the government and that its services are not approved by the government or the lender, did not disclose that [REDACTED]

could accept or reject any offer of mortgage assistance, and did not disclose that [REDACTED] was not required to pay the Respondent if she rejected the lender's offer of mortgage assistance.

10. The Respondent advised [REDACTED] to stop making mortgage payments but did not advise [REDACTED] of the risks incurred by not making payments.

11. The Respondent did not submit a loan modification application to [REDACTED] lender or obtain a modification of her mortgage.

12. [REDACTED] telephoned the Respondent about five days after signing the contract, and the Respondent told her to be patient.

13. Subsequently, the Respondent never answered [REDACTED] calls or responded to her messages. [REDACTED] continued to leave messages with the Respondent through December 2017, complaining about the Respondent's failure to perform the contract or provide a refund.

14. [REDACTED] requested a refund of her \$2,300.00 payment, but the Respondent refunded no money.

15. In October 2017, the Respondent entered into a loan modification consulting services contract with [REDACTED] a Maryland homeowner residing in Granite.

16. Before entering into the contract, the Respondent communicated orally and by telephone with [REDACTED]

17. [REDACTED] was having difficulty making her monthly mortgage payments, but her loan was not in default when she signed the contract with the Respondent.

18. The Respondent told [REDACTED] that she could obtain a lower monthly payment for her by submitting a loan modification application to the lender.

19. The Respondent never gave [REDACTED] a copy of the contract, despite repeated requests.

20. Neither the contract with the Respondent nor the Respondent's pre-contract communications included notice of [REDACTED] right to rescind the contract at any time without penalty, did not state that MortgageHelpNow is not associated with the government and that its services are not approved by the government or the lender, did not disclose that [REDACTED] could accept or reject any offer of mortgage assistance, and did not disclose that [REDACTED] was not required to pay the Respondent if she rejected the lender's offer of mortgage assistance.

21. The Respondent demanded and received an up-front payment of \$1,500.00 from [REDACTED] before providing any services.

22. The Respondent advised [REDACTED] to stop making mortgage payments but did not advise [REDACTED] of the risks incurred by not making payments.

23. The Respondent did not submit a loan modification application to [REDACTED] lender or obtain a modification of her mortgage.

24. The Respondent performed no services under the contract and stopped responding to [REDACTED] calls and messages not long after the contract was signed.

25. [REDACTED] requested a refund of her \$1,500.00 payment, but the Respondent refunded no money.

26. On or about February 24, 2019, the Respondent entered into a loan modification consulting services contract with [REDACTED] a Maryland homeowner residing in Burtonsville.

27. Before entering into the contract, the Respondent communicated orally and by telephone with [REDACTED]

28. [REDACTED] mortgage was in default at the time and she was facing the loss of her home to foreclosure.

29. The Respondent was aware of [REDACTED] financial situation.

30. The Respondent told [REDACTED] that she would apply for a loan modification on her behalf and that [REDACTED] would be able to keep her home even if the modification were not approved.

31. The Respondent never gave [REDACTED] a copy of the contract.

32. Neither the contract with the Respondent nor the Respondent's pre-contract communications included notice of [REDACTED] right to rescind the contract at any time without penalty, did not state that MortgageHelpNow is not associated with the government and that its services are not approved by the government or the lender, did not disclose that [REDACTED] could accept or reject any offer of mortgage assistance, and did not disclose that [REDACTED] was not required to pay the Respondent if she rejected the lender's offer of mortgage assistance.

33. The Respondent demanded and received an up-front payment of \$1,700.00 from [REDACTED] before providing any services.

34. [REDACTED] continued to communicate with the Respondent by text message until at least April 3, 2019. The Respondent continued to assure [REDACTED] that she was in communication with [REDACTED] lender about a loan modification.

35. The Respondent never communicated with [REDACTED] lender, nor did she submit a loan modification package or any payment on [REDACTED] behalf. The Respondent performed no services under the contract.

36. On April 2, 2019, [REDACTED] demanded that the Respondent refund her \$1,700.00 payment.

37. The Respondent, on the same date, refused to refund any money.

38. [REDACTED] ultimately lost her home to foreclosure.

DISCUSSION

The Commissioner bears the burdens of production and persuasion to demonstrate by a preponderance of the evidence that the Respondent violated the statutory and regulatory 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).

Because neither the Respondent nor anyone on her behalf attended the hearing, I shall first address whether she received proper notice of the hearing. Documents in the file show that the OAH sent notices of the hearing to the Respondent on August 13, 2020, to both her residential and business addresses, by certified and first-class mail. The Commissioner offered as evidence (CFR Ex. 1) a copy of the notice sent to the Respondent's residential address by certified mail, with attached receipts for certified mail ("green cards") signed for at 8685-614 Baymeadows Road East, Jacksonville, FL 32256 on September 28 and September 29, 2020. Although the signatures on the green cards are illegible, the United States Postal Service provided the address where the mail was delivered and indicated that the signature was that of the addressee, who is "Natalie Pingley James" on the first card and "Natalie Pingley James D/B/A Mortgage HelpNow" on the second. I concluded from these documents that the Respondent received actual notice of the hearing and chose not to attend. Therefore, I proceeded with the hearing in the Respondent's absence.

The Commissioner alleges that the Respondent violated provisions of the Protection of Homeowners in Foreclosure Act and the Maryland Mortgage Assistance Relief Services Act by contacting Maryland homeowners struggling to pay their mortgages or facing foreclosure, collecting up-front fees, and promising to obtain loan modifications for them – and then failed not only to provide required information and disclosures, but also performed no services toward obtaining loan modifications. The Respondent's victims complained to the Commissioner, prompting an investigation, which revealed that the Respondent was making false representations, improperly collecting up-front fees, failing to make required disclosures, and failing to provide promised services. These violations, alleges the Commissioner, subject the Respondent to both penalties and restitution.

The Commissioner asserts that the Respondent was a foreclosure consultant under the Protection of Homeowners in Foreclosure Act, relying on the definitions in section 7-301, which provide, in part, as follows:

(c) "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;
 - (ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or
 - (x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or
- (2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

(d) "Foreclosure consulting contract" means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service.

(e) "Foreclosure consulting service" includes:

- (1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;
- (2) Contacting creditors on behalf of a homeowner;
- (3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;
- (4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in default;
- (5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title;
- (6) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure; or
- (7) Arranging for or facilitating a homeowner remaining in the homeowner's residence after a sale or transfer as a tenant, renter, or lessee under terms provided in a written lease.

Md. Code Ann., Real Prop. § 7-301(c), (d), (e) (Supp. 2020).

The Respondent solicited the three complaining homeowners in person and represented to them that she could obtain modifications of their mortgage loans. [REDACTED] mortgage was in default and she was facing foreclosure. As to her, the Respondent represented that she could stop the foreclosure and save [REDACTED] home from foreclosure, thus clearly acting as a mortgage consultant under the definition in section 7-301(c)(i), (ii), and (viii) of the Real Property Article.

The Respondent's interactions with [REDACTED] and [REDACTED] are less clear-cut. Neither homeowner was in default on [REDACTED] loan nor facing foreclosure. The evidence establishes

that both homeowners were having difficulty making their monthly payments, and the Respondent assured them that she could obtain loan modifications that would reduce those payments. The only contract actually provided to any of the homeowners, [REDACTED] states this explicitly (CFR Ex. 12). Because the Respondent agreed to obtain loan modifications for homeowners who were not in default, her actions do not meet exactly the definitions in section 7-301(e)(i) through (x), since those definitions generally contemplate assistance offered to owners of property in default or foreclosure.

However, the Respondent advised [REDACTED] to stop making their mortgage payments, telling them that this was necessary to prioritize their loan modification applications with their lenders. She neglected to mention that stopping payments would very likely cause the lenders to accelerate the note (i.e., demand payment in full or the full reinstatement amount) and possibly file foreclosure actions. In other words, the Respondent urged [REDACTED] to default on their loans, putting them in jeopardy of losing their homes and incurring significant additional expenses. I find that the Respondent's actions constitute mortgage consulting services under section 7-301(e)(2) and (3), above, because the Respondent promised explicitly to contact the homeowners' lenders and implied that she could extend or delay the time to cure the defaults that she was encouraging the homeowners to undertake. Therefore, the Respondent entered into mortgage consulting contracts with all three homeowners and agreed to act as a mortgage consultant on behalf of each.

Having established that the Respondent was acting as a mortgage consultant, under section 7-305(a) of the Real Property Article the homeowners had the right to rescind their contracts with the Respondent at any time. Each homeowner quickly realized that the Respondent had scammed her and expressed a desire to cancel the contract and obtain a refund.

Their task was complicated by the fact that the Respondent never gave copies of the contracts to [REDACTED], and none of the contracts contained required information about the right of rescission. The only way the Respondent could have properly rescinded the contracts upon the homeowners' requests was to refund their money, since she had not performed any of the services she agreed to in the contracts. The Respondent provided no refunds, thus denying the homeowners their right to rescind the contracts, in violation of section 7-305 of the Real Property Article.

Additionally, section 7-306 of the Real Property Article requires that foreclosure consulting contracts inform homeowners of the right of rescission and other rights, as follows:

- (a) A foreclosure consulting contract shall:
- (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 (2015).

Only one of the Respondent's contracts -- that provided to [REDACTED] -- is in evidence; the other two homeowners testified that they never received copies of their contracts. [REDACTED] testified that the contract she signed resembled [REDACTED]. The latter document contains no notice of the right to rescind the contract; no notice that the foreclosure consultant

cannot ask the homeowner to sign a lien, mortgage, or deed without a separate explanation; no notice that the foreclosure consultant cannot guarantee that the homeowner will be able to refinance the mortgage or keep her home; or state that it is an important legal document that could result in the loss of the home. Additionally, the contract does not 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, nor is the contract notarized as required by paragraph (a)(5), above. Based on the evidence, it is reasonable to assume that the Respondent's contracts with [REDACTED] contained the same deficiencies. The Respondent violated section 7-306 of the Real Property Article by preparing and having the homeowners execute contracts that did not meet the requirements of that statute.

The Commissioner also alleges that the Respondent violated section 7-307 of the Real Property Article by demanding fees from the homeowners before performing any services. That section states, in relevant part, as follows:

A foreclosure consultant may not:

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

Md. Code Ann., Real Prop. § 7-307 (2015).

The evidence is uncontroverted that the Respondent charged fees to each of the homeowners at the time they executed the contracts — \$2,300.00 from [REDACTED], \$1,500.00 from [REDACTED], and \$1,700.00 from [REDACTED]. At the time, the Respondent had

performed no foreclosure consultant services for the homeowners, nor did she ever perform such services. Thus, the Respondent violated section 7-307(2) of the Real Property Article.

Turning from the Protection of Homeowners in Foreclosure Act to the Maryland Mortgage Assistance Relief Services Act, section 7-502 of the Real Property Article requires that a mortgage assistance relief service provider must comply with applicable sections of the Code of Federal Regulations (C.F.R.), as follows: "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 (2015). Section 7-501(e) of the Real Property article provides that "mortgage assistance relief service provider" is defined in 12 C.F.R. § 1015.2, which, in turn, states: "Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service." Mortgage assistance relief service is defined in the same section, as follows:

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

- (1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
- (2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- (3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- (4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
 - (i) Cure his or her default on a dwelling loan,
 - (ii) Reinstate his or her dwelling loan,
 - (iii) Redeem a dwelling, or
 - (iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

- (5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- (6) Negotiating, obtaining or arranging:
 - (i) A short sale of a dwelling,
 - (ii) A deed-in-lieu of foreclosure, or
 - (iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

12 C.F.R. § 1015.2 (2020).³ Although slightly more specific, the above definition is very similar to that of “foreclosure consulting service” in section 7-301(c) of the Real Property Article. The Respondent agreed to assist the homeowners in obtaining modifications of the terms of their loans and delay or stop foreclosure proceedings. Accordingly, she was a mortgage assistance relief service provider under the C.F.R.

The Commissioner alleges that the Respondent violated sections 1015.4(b) and (c) of Title 12 of the C.F.R. Those sections state the following:

(b) Disclosures in All Consumer-Specific Commercial Communications—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.”

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in § 1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

³ All references to Title 12 of the C.F.R. are to the volume published in 2020.

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement "Before using this service, consider the following information" and, in telephone communications, must be made at the beginning of the call.

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that "If you stop paying your mortgage, you could lose your home and damage your credit rating."

12 C.F.R. § 1015.4(b), (c).

Except for the contracts the Respondent executed with the homeowners, the Respondent does not seem to have communicated with them in writing. However, all three homeowners testified that they had conversations with the Respondent by telephone and in person before signing the contracts. Ms. Bishop testified that the Respondent "bragged about helping many people."

12 C.F.R. § 1015.2 provides in part: "Consumer-Specific Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer." This definition also states that "commercial communication" means "any written or oral statement."

The Respondent made consumer-specific statements to each of the three homeowners involved in this case to induce them to execute contracts for mortgage relief assistance. None of those communications contained any of the disclosures required by 12 C.F.R. 1015.4(b) and (c).

Like section 7-307 of the Real Property Article, Title 12, section 1015.5(a) of the C.F.R. prohibits a mortgage assistance relief service provider from collecting a fee before obtaining an agreement from the homeowner's lender, as follows:

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[.]

12 C.F.R. § 1015.5(a). As discussed previously, the evidence is clear that the Respondent collected fees from the three complaining homeowners before performing any services, in violation of this regulation.

The Commissioner also alleges a violation of section 1015.9(b)(2) of Title 12, which provides:

(b) A mortgage assistance relief service provider also must:

(2) Investigate promptly and fully each consumer complaint received[.]

12 C.F.R. § 1015.9(b)(2):

[REDACTED] each complained to the Respondent after they realized that the Respondent had taken their money and performed no services. Far from investigating those complaints, the Respondent cut off communication with the homeowners and refused to refund their payments. Any legitimate investigation would have revealed that the complaints were valid. Therefore, the Respondent violated this regulation.

Having determined that the Respondent violated every statute and regulation cited in the Charge Letter, I turn now to the issue of sanctions. Section 2-115 of the Financial Institutions Article addresses that issue, as follows:

(b) 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 not exceeding:
 - (i) \$10,000 for a first violation; and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

(c) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Commissioner shall consider the following factors:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and the industry involved;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

Md. Code Ann., Fin. Inst. § 2-115(b), (c). Before October 1, 2018, paragraph (b)(3) of this statute provided for penalties of \$1,000.00 for a first violation and \$5,000.00 for a subsequent violation, Md. Code Ann., Fin. Inst. § 2-115(b) (2011). The earlier version of the possible monetary penalties governs the Respondent's dealings with [REDACTED].

Additionally, section 7-506 of the Real Property Article authorizes the Commissioner to seek restitution: "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. § 7-506(c) (2015).

In determining the appropriate sanction, I am required to consider the factors listed in section 2-115(c), above. The first is the seriousness of the violation.

The Respondent committed an extremely serious offense. She preyed upon financially vulnerable homeowners who were under great stress because they could not pay their mortgages or were facing foreclosure. She illegally required each homeowner to pay her up-front fees, then performed none of the services she had promised. Essentially, the Appellant committed the crime of theft by deception⁴ against the consumers who signed contracts with her. Even though the total stolen – \$5,500.00 – is not an egregiously large sum, it was taken from people who had very little money and put their trust in the Respondent.

The Respondent showed no good faith whatsoever. She took payments from struggling homeowners and provided no services in return. The evidence establishes that the Respondent never even contacted the homeowners' lenders, and she certainly did not submit loan modification applications as she contracted to do. When the victims realized that the Respondent was not fulfilling their contracts, each asked for a refund. The Respondent directly refused to refund [REDACTED] payment and denied the others' requests by cutting off communication.

The profession affected by the Respondent's action is foreclosure consulting and mortgage assistance relief services, to which the Respondent has done great harm. Simply put, the Respondent saw an opportunity to profit from the misfortunes of consumers who were struggling to keep their homes. She made promises that she had no intention of fulfilling and took money from the homeowners who thought she could help them. In many ways, the Respondent is typical of the many scam artists who have sullied the reputation of the foreclosure consulting profession. The State and federal governments have found it necessary to enact the

⁴ See Md. Code Ann., Crim. Law § 7-104(b) (Supp. 2020).

statutes and regulations discussed above to protect homeowners from predators like the Respondent. Unfortunately, the Respondent in this case was able to profit by willfully ignoring those laws, thus further tarnishing the foreclosure consulting profession.

The Commissioner did not present any evidence of prior violations by the Respondent, nor of her assets. I infer that she has not been sanctioned previously and that her assets are unknown.

Considering all the factors required by section 2-115(c), I find that the Respondent is subject to the severest possible penalties, including restitution to each of the victims. The Commissioner also requests a cease and desist order against the Respondent, which is appropriate.

PROPOSED CONCLUSIONS OF LAW

In accord with the foregoing Findings of Fact and Discussion, and having fully considered the evidence presented at the hearing, I conclude as a matter of law the following:

1. The Respondent requested and received payment of fees prior to the consumer obtaining a mortgage loan modification. Md. Code Ann., Real Prop. § 7-502 (2015); 12 C.F.R. § 1015.5(a) (2020).
2. The Respondent failed to investigate consumer complaints. Md. Code Ann., Real Prop. § 7-502 (2015); 12 C.F.R. § 1015.9(b)(2) (2020).
3. The Respondent failed to provide required disclosures when advising consumers to stop making mortgage payments. Md. Code Ann., Real Prop. § 7-502 (2015); 12 C.F.R. § 1015.4(e) (2020).

4. The Respondent failed to provide proper disclosures in consumer-specific commercial communications with consumers. Md. Code Ann., Real Prop. § 7-502 (2015); 12 C.F.R. § 1015.4(b) (2020).

5. The Respondent collected compensation from consumers prior to fully performing each and every service she contracted to perform and represented that she would perform. Md. Code Ann., Real Prop. § 7-307(2) (2015).

6. The Respondent failed to provide notices of rescission to consumers with whom she contracted. Md. Code Ann., Real Prop. § 7-305 (2015).

7. The Respondent failed to provide signed and dated copies of the written agreements to consumers with whom she contracted. Md. Code Ann., Real Prop. § 7-306(d) (2015).

8. The Respondent is subject to a cease and desist order. Md. Code Ann., Fin. Inst. § 2-115(b)(1) (2020).

9. The Respondent is liable for restitution of \$2,300.00 to [REDACTED]. Md. Code Ann., Real Prop. § 7-506(c) (2015).

10. The Respondent is liable for restitution of \$1,500.00 to [REDACTED]. Md. Code Ann., Real Prop. § 7-506(c) (2015).

11. The Respondent is liable for restitution of \$1,700.00 to [REDACTED]. Md. Code Ann., Real Prop. § 7-506(c) (2015).

12. The Respondent is subject to a penalty of \$1,000.00 for her violations relating to the contract with [REDACTED] in 2017. Md. Code Ann., Fin. Inst. § 2-115(b) (2011).

13. The Respondent is subject to a penalty of \$5,000.00 as a subsequent violation relating to the contract with [REDACTED] in 2017. Md. Code Ann., Fin. Inst. § 2-115(b) (2011).

14. The Respondent is subject to a penalty of \$25,000.00 as a subsequent violation relating to the contract with [REDACTED] in 2019. Md. Code Ann., Fin. Inst. § 2-115(b) (2020).

15. The Respondent shall be jointly and severally liable for any sanctions imposed herein.

RECOMMENDED ORDER

I **RECOMMEND** that the Commissioner:

ORDER that the Respondent shall immediately **CEASE AND DESIST** from engaging in any further foreclosure consultant activities and/or mortgage assistance relief services; and

ORDER that for violations of the Protection of Homeowners in Foreclosure Act and the Maryland Mortgage Assistance Relief Services Act, the Respondent pay a penalty of \$31,000.00; and

ORDER the Respondent to pay \$2,300.00 in restitution to [REDACTED]; and

ORDER the Respondent to pay \$1,500.00 in restitution to [REDACTED]; and

ORDER the Respondent to pay \$1,700.00 in restitution to [REDACTED]; and

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

Richard O'Connor

February 16, 2021
Date Decision Issued

Richard O'Connor
Administrative Law Judge

ROC/kdp
#190282

