

IN THE MATTER OF:
SUNBELT FIDELITY CORPORATION,
LLC,

and

**JANICE E. MCCARTHY a/k/a/
JANICE MONTOYA-MCCARTHY,**

Respondents.

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No. CFR-FY2013-108

FINAL ORDER TO CEASE AND DESIST

Pursuant to Md. Code Ann., Fin. Inst. Art. ("FI"), § 2-115, and for the reasons stated below, Gordon M. Cooley, the Commissioner of Financial Regulation of the Department of Labor, Licensing and Regulation of the State of Maryland, issues this Final Order to Cease and Desist to Sunbelt Fidelity Corporation, LLC and Janice E. McCarthy a.k.a. Janice Montoya-McCarthy (collectively, the "Respondents").

The Summary Order to Cease and Desist ("Summary Order") issued on March 23, 2015 is herein adopted and incorporated by reference.

Background.

1. As described more fully in the Summary Order, the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the "Agency") undertook an investigation, as a result of a consumer complaint, into the credit services business activities of the Respondents.

2. The Agency's investigation revealed that Respondent Sunbelt Fidelity Corporation, LLC ("Sunbelt") is a Texas-based business entity. Further, the Agency's investigation revealed that Sunbelt engaged in business activities with Maryland consumers involving Maryland residential real property, although it is not a registered

business entity in the State of Maryland. The Agency's investigation determined that Respondent Janice E. McCarthy a.k.a. Janice Montoya-McCarthy is the owner, director, officer, manager, employee and/or agent of Sunbelt.

3. The Agency's investigation revealed that, in July 2012, [REDACTED] ("Consumer A") contacted the Respondents after receiving a post-card solicitation by mail. Consumer A expressed her interest in hiring Respondents to help her modify her residential mortgage. Consumer A paid \$1,698.00 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to obtain a loan modification for Consumer A. Although Respondents collected \$1,698.00 in fees Respondents never obtained a loan modification for Consumer A. Further, Consumer A requested a refund of the up-front fees, which Respondents have failed to provide.

4. The Agency's investigation further revealed that, in June 2012, [REDACTED] ("Consumer B"), entered into a loan modification agreement with Respondents. Consumer B paid \$4,149.00 in up-front fees to Respondents in exchange for which Respondents represented that they would be able to secure a loan modification for Consumer B. Although Respondents collected \$4,149.00 in fees, Respondents never obtained a loan modification for Consumer B.

5. The Acting Deputy Commissioner, as a result of the Agency's investigation, found reasonable grounds to believe that Respondents were not licensed as required by Maryland law and had violated various provisions of Maryland law, including Md. Code Ann., Commercial Law Article ("CL"), Title 14, Subtitle 19, (the Maryland Credit Services Business Act, hereinafter "MCSBA") and Financial Institutions Article, Title 11, Subtitles 2 and 3 (Licensing, Consumer Loans and Installment Loans).

Maryland Credit Services Businesses Act

6. The Acting Deputy Commissioner determined that by representing that they could provide mortgage assistance relief services, and by entering into agreements with Maryland consumers to provide loan modification services, Respondents have engaged in credit services business activities without having the requisite license. Respondents' unlicensed loan modification activities thus constitute violations of CL § 14-1902(1), CL §14-1903(b), FI § 11-302, and FI § 11-303, thereby subjecting Respondents to the penalty provisions of the MCSBA.

7. The Acting Deputy Commissioner determined by collecting up-front fees prior to fully and completely performing all services on behalf of consumers, Respondents violated CL § 14-1902(6) of the MCSBA.

8. The Acting Deputy Commissioner determined that Respondents made or used false or misleading representations in their sale of services to Maryland consumers, thereby violating CL § 14-1902(4). For example, Respondents represented that they would be able obtain beneficial loan modifications for Maryland homeowners when in fact Respondents never obtained such beneficial modifications for Maryland consumers.

9. The Acting Deputy Commissioner determined that Respondents further violated the MCSBA through the following: they failed to obtain the requisite surety bonds, in violation of CL §§ 14-1908 and 14-1909; they failed to provide consumers with the requisite information statements, in violation of CL §§ 14-1904 and 14-1905; and Respondents failed to include all of the requisite contractual terms in their agreements with consumers as required under CL § 14-1906.

10. The Acting Deputy Commissioner determined that, because the agreements between Respondents and the consumers failed to comply with the specific requirements imposed by the MCSBA (as discussed above), all such contracts between Respondents and Maryland consumers are void and unenforceable as against the public policy of State of Maryland, pursuant to CL § 14-1907(b).

11. The Acting Deputy Commissioner determined that, by failing to obtain beneficial loan modifications or other forms of forbearance agreements for Maryland consumers which Respondents had agreed to provide, Respondents breached their contracts with Maryland consumers and/or breached the obligations arising under those agreements. Pursuant to CL § 14-1907(a), such breaches constitute per se violations of the MCSBA.

Maryland Mortgage Assistance Relief Services Act Also Now Applies.

12. The Maryland Mortgage Assistance Relief Services Act (“Maryland MARS Act,” at RP § 7-501 *et seq.*) went into effect on July 1, 2013.¹ Pursuant to RP § 7-501(d) of the Maryland MARS Act, “mortgage assistance relief service” has the meaning stated in 12 C.F.R. § 1015.2 and any subsequent revision of that federal regulation. Further, pursuant to RP § 7-501(e), “mortgage assistance relief service provider” has the meaning stated in

¹ At the time of the alleged violations, the Credit Services Business Act applied to mortgage assistance relief services, which includes, *inter alia*, negotiating a modification of any term of a mortgage or loan on a dwelling. Effective July 1, 2013, the definition of “credit services business” under the Credit Services Business Act was amended to exclude “a mortgage assistance relief service provider regulated under Title 7, Subtitle 5 of the Real Property Article.” See 2013 Md. Laws Ch. 247 and CL § 14-1901(e)(3)(x); see also Md. Code Ann., Real Prop. Art., § 7-501 *et seq.* (Maryland Mortgage Assistance Relief Services Act). The 2013 amendment further provided: “This Act is not intended, and may not be construed, to have any effect on the authority of the Commissioner of Financial Regulation to regulate mortgage assistance relief service providers under Title 14, Subtitle 19 of the Commercial Law Article, or on any enforcement actions, including litigation, taken under that authority as it existed and based on actions that occurred before the effective date of this Act [July 1, 2013].” 2013 Md. Laws Ch. 247.

12 C.F.R. § 1015.2 and any subsequent revision of that regulation, and that definition incorporates the meanings of other terms stated in 12 C.F.R. § 1015.2 to the extent those terms are used to establish the meaning of “mortgage assistance relief service provider.”

13. The loan modification activities of Respondents constitute “mortgage assistance relief services” under 12 C.F.R. § 1015.2, and the Respondents satisfy the definition of “mortgage assistance relief service providers” under 12 C.F.R. § 1015.2. As such, pursuant to RP §§ 7-501 and 7-502, Respondents and their loan modification activities are currently subject to the Maryland MARS Act, including the investigative and enforcement authority of the Commissioner set forth in RP § 7-506.

The Summary Order

14. The Acting Deputy Commissioner issued the Summary Order against the Respondents on March 23, 2015, after determining that the Respondents were engaged in credit services business activities, including mortgage assistance relief services, as defined by Maryland law; 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 services business activities and/or mortgage assistance relief services with Maryland consumers related to residential real property.

15. The Summary Order notified Respondents of, among other things, the following:
1) Respondents were entitled to hearing before the Commissioner of Financial Regulation to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; 2) the Summary Order would be entered as a final order if the Respondents did not request a hearing within 15 days of the receipt of the Summary

Order; and 3) as a result of a hearing or of Respondents' failure to request a hearing the Commissioner may, in his discretion and in addition to taking any other action allowed by law, enter an order making the Summary Order final, issue penalty orders against Respondents, and issue orders requiring Respondents to pay refunds and other monetary awards to Maryland consumers, as well as take other action related to Respondents' business activities.

16. The Summary Order was mailed via first class mail and Certified U.S. Mail to Respondents at their last known address. Respondents failed to request a hearing in connection with the Summary Order.

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 to CL §§ 14-1907, 14-1911 and FI § 2-115, it is by the Maryland Commissioner of Financial Regulation hereby:

ORDERED that the Summary Order is entered as a **FINAL ORDER** of the Commissioner;

FURTHER ORDERED that the Respondents shall permanently **CEASE and DESIST** from engaging in any further credit services business activities with Maryland consumers; that Respondents shall permanently **CEASE and DESIST** from engaging in any further mortgage assistance relief services with Maryland consumers; and that Respondents shall permanently **CEASE and DESIST** from further violation of the Maryland laws identified herein;

FURTHER ORDERED that all provisions of this Final Order shall also apply to all named and unnamed partners, officers, employees, and/or agents of Respondents;

FURTHER ORDERED that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), Respondents shall pay to the Commissioner a civil money penalty in the amount of Ten Thousand Dollars (\$10,000.00). The civil money penalties are calculated as follows:

Prohibited Activity and Violation	Penalty per Violation	Number of Violations	Penalty
Unlicensed Activity in Violation of CL §§14-1902 and 14-1903 and FI §§11-302 and 11-303	\$1,000.00	2	\$ 2,000.00
Violation of CL §14-1902 (collecting up-front fees prior to performing all services)	\$1,000.00	2	\$ 2,000.00
Violation of CL §14-1908 and 14-1909 (failing to obtain surety bonds)	\$1,000.00	2	\$ 2,000.00
Violations of CL §§14-1904, 14-1905, and 14-1906 (failing to provide information statements and to include requisite contractual terms in agreements)	\$1,000.00	2	\$ 2,000.00
Violation of CL §14-1907 (breached contract with consumer)	\$1,000.00	2	\$ 2,000.00
Total			\$ 10,000.00

FURTHER ORDERED that Respondents shall be and hereby are jointly and severally liable for the payment of this \$10,000.00 penalty and shall pay the Commissioner, by cashier's check or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$10,000.00 within twenty (20) days from the date of this Final Order;

FURTHER ORDERED that, because Respondents are in violation of the Maryland Credit Services Business Act, any and all loan modification services agreements made by Respondents with Maryland consumers are void and unenforceable pursuant to CL § 14-1907;


FURTHER ORDERED that, pursuant to FI § 2-115(b), Respondents shall pay Consumer A the monetary award of One Thousand Six-Hundred Ninety-Eight Dollars (\$1,698.00); and Consumer B the monetary award of Four Thousand One Hundred Forty-Nine Dollars (\$4,149.00);

FURTHER ORDERED that Respondents shall pay the required monetary award to the consumers identified herein within thirty (30) days of the date of this Final Order. Respondents shall make payment by mailing to the consumer a check in the amount specified above via First Class Mail, postage prepaid, at the most recent address of the consumer known to the Respondents. If mailing is returned as nondeliverable, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of making said payment. Upon making the required payment, the 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;

FURTHERED ORDERED that, notwithstanding the imposition of civil penalties herein, the Commissioner reserves the right to refer any and all of these violations to the State's Attorney for consideration of criminal prosecution pursuant to CL § 14-1915.

12/7/2016
DATE



GORDON M. COOLEY,
COMMISSIONER OF FINANCIAL
REGULATION