CONSUMER PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL,	*	IN THE
	*	CONSUMER PROTECTION DIVISION
Proponent,	*	OF THE
v.	*	OFFICE OF THE
JAMES E. MACK, *et al.*,	*	ATTORNEY GENERAL
Respondents.	*	OF MARYLAND
	*	CPD Case No.: 13-017-234778
	*	OAH Case No.: OAG-CPD-04-13-47804

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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STATEMENT OF THE CASE

On December 16, 2013, the Consumer Protection Division of the Maryland Attorney General's Office ("Proponent" or "CPD")1 filed a Statement of Charges alleging that James Mack ("Respondent Mack") through his company Benefits U Earned, LLC ("Respondent Benefits U Earned") (collectively, "the Respondents"), violated the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§13-301(1), (2)(ii), and (3); and §13-303 (2013 Rep. Vol.), ("CPA"). Specifically, the Proponent alleged that the Respondents violated the CPA by: (1) improperly offering and selling services purporting to assist consumers with preparing, presenting, and prosecuting claim benefits from the United States Department of Veteran's

1 The Consumer Protection Division, in its capacity as the Proponent in this case, shall be referred to as the "Proponent" or "CPD." The Consumer Protection Division, in its capacity as a quasi-judicial agency authorized to conduct contested case hearings shall be referred to as the "Agency."

Affairs ("VA"); (2) improperly charging customers for services that could only be provided for free; and (3) failing to perform those services. With its Statement of Charges, the Proponent also filed a Petition for Hearing, Order Granting Hearing and Notification of Hearing, and Appointment of Designee.

The Notification of Hearing informed the Respondents that the Proponent's Petition for Hearing had been granted, a hearing on the Statement of Charges was scheduled to commence before the Office of Administrative Hearings ("OAH") on March 25, 2014, and the CPD had delegated its authority to the OAH to conduct a contested case hearing and to render proposed findings of fact and conclusions of law.[2] Attached to the Notification of Hearing was a copy of the Rules of Practice and Procedure – Cease and Desist Order Hearings contained in COMAR 02.01.02, which, among other things, informed the Respondents of the procedural requirements for responding to the Statement of Charges, including that, unless they responded to the Statement of Charges within 20 days of the date of service, the facts alleged in the Statement of Charges would be deemed admitted. (*Id.*; COMAR 02.01.02.07).

On January 16, 2014, the Proponent served the Respondent Mack personally and as the Resident Agent of Respondent Benefits U Earned with the Statement of Charges, Petition for Hearing, Notification of Hearing (with a copy of the Rules of Procedure for Cease and Desist Order Hearings attached) and Appointment of Designee. The service took place at Respondent Mack's residence located at 22 Prairie Rose Court, Gaithersburg, Maryland, 20878. The Proponent also served the Respondents with Proponent's Request for the Production of Documents by hand delivery that day.

On December 26, 2013, the OAH mailed the Respondents a Notice of Hearing informing them of the hearing scheduled to occur on March 25 and 26, 2014 at 9:30 a.m., to determine

[2] The OAH received the referral and all accompanying documents on December 18, 2013.

whether the Respondents' practices constitute unfair and deceptive trade practices under Maryland law. The Notice of Hearing was mailed to Respondent Mack at his residence and to the Respondent Benefits U Earned at it business address. The Notice of Hearing sent to the Respondent Benefits U Earned was returned by the United States Postal service as undeliverable. However, the Notice of Hearing sent to Respondent Mack was not returned by the United States Postal Service as undeliverable.

Having not received a response to its Request for the Production of Documents, on February 21, 2014, the Proponent filed a Motion to Compel Respondents' Responses to Request for Production of Documents.

At the request of the Proponent, Administrative Law Judge Zuberi Bakari Williams ("the ALJ") held a telephonic hearing on the Motion to Compel and Status Conference on March 7, 2014. The Notice regarding the telephonic conference was the mailed to the Respondents and was not returned by the United States Postal Service as undeliverable to either. The Respondents failed to attend the telephonic hearing. At the telephonic hearing, the Proponent made a motion, pursuant to COMAR 02.01.02.07(D), requesting that the ALJ order that, as a result of the Respondents' failure to reply to the Statement of Charges, all allegations in the Statement of Charges be deemed admitted. The ALJ granted the Proponent's motion as to the Respondents and ordered the same.

On March 25, 2014, the ALJ convened the merits hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Assistant Attorney General Sarah Preis represented the CPD and was accompanied by her supervisor, Deputy Chief Philip Ziperman. Respondent Mack appeared at the hearing and represented himself and on behalf of Benefits U Earned, LLC.

On July 23, 2014, the ALJ issued a Proposed Decision, finding that the Respondents violated the Consumer Protection Act.

ISSUES

The issues presented are whether the Respondents violated the CPA by committing unfair or deceptive trade practices as defined by §§ 13-301(1), (2)(ii) and (3) of the CPA, in violation of § 13-303 by:

(1) Offering and selling services to assist consumers with preparing, presenting, and prosecuting claims for VA benefits, without being accredited by the VA; and

(2) Charging customers for services that can only be provided for free; and

(3) Failing to perform services for consumers regarding the VA benefit claims.

SUMMARY OF THE EVIDENCE

Exhibits

The ALJ admitted the following exhibits offered by the CPD:

CPD Ex. #1 – Articles of Organization for Benefits U Earned, dated July 9, 2009
CPD Ex. #2 – State of Maryland Department of Assessments and Taxation Notice of Forfeiture, dated February 18, 2014
CPD Ex. #3a – Financial Documents from Capital Bank for Benefits U Earned
CPD Ex. #3b – PayPal Transaction Log, dated September 23, 2013
CPD Ex. #3c – Summary of Consumer Payments to Benefits U Earned LLC, from July 2009 to July 2012
CPD Ex. #4a – Application for Accreditation for James Mack, stamped June 2, 2009
CPD Ex. #4b – Application for Accreditation for James Mack, dated September 1, 2009
CPD Ex. #4c – Corrections to Application for Accreditation for James Mack
CPD Ex. #5a – Letter from David McLenachen to James Mack, dated September 23, 2009
CPD Ex. #5b – Letter from James Mack to David McLenachen, dated September 29, 2009
CPD Ex. #6 – Letter from David McLenachen to Edward Reese, dated December 10, 2009
CPD Ex. #7 – Letter from Richard Hipolit to James Mack, dated November 10, 2010
CPD Ex. #8 – Letter from Will A. Gunn to James Mack, dated October 25, 2012
CPD Ex. #9a – Disability Claim Filed re: Harry Brooks, February 23, 2010
CPD Ex. #9b – Disability Claim Filed re: Kevin Thomas, February 23, 2010
CPD Ex. #10a – Internal Investigation Report from Disabled American Veterans, dated July 6, 2009
CPD Ex. #10b – Benefits U Earned LLC Website (Screen Shots), dated July 1, 2009
CPD Ex. #11a – Benefits U Earned LLC Website (Screen Shots), dated August 3, 2009
CPD Ex. #11b – Letter from Edward Reese to David McLenachen, dated December 29, 2009

CPD Ex. #12a – Benefits U Earned LLC Website (Screen Shots), dated August 21, 2009
CPD Ex. #12b – Benefits U Earned LLC Website (Screen Shots), dated September 9, 2009
CPD Ex. # 13 – Copy of Benefits U Earned Website, printed March 26, 2013
CPD Ex. # 14 – Copy of Benefits U Earned Website, printed October 19, 2012
CPD Ex. # 15a – Check from Donna Turner to Benefits U Earned, dated March 14, 2011
CPD Ex. # 15b – Check from Joseph Turner to Benefits U Earned, dated March 14, 2011
CPD Ex. # 15c – Letter from James Mack to Donna Turner, dated March 23, 2011
CPD Ex. # 15d – Letter from James Mack to Joseph Turner, dated March 23. 2011
CPD Ex. # 15e – Letter from James Mack to Donna Turner, dated March 24, 2011 (not admitted)
CPD Ex. # 15f – Letter from James Mack to Joseph Turner, dated March 24, 2011
CPD Ex. # 16 – Check from Harry Brooks to Benefits U Earned, dated March 12, 2011
CPD Ex. # 17a – Check from Orlando Lee to Benefits U Earned, dated November 10, 2010
CPD Ex. #17b – Receipt to Orlando Lee for $250.00 Payment, dated December 13, 2010
CPD Ex. #17c – Letter from James Mack to Orlando Lee, dated February 16, 2012
CPD Ex. #18a – Contract Agreement between James Mack and Barbara McCoy
CPD Ex. #18b – Receipt to Orlando Lee for $250.00 Payment, dated April 20, 2014
CPD Ex. #18c – Disability Claim Filed, dated March 29, 2010
CPD Ex. #19a – Contract Agreement between James Mack and Lourdes Harley
CPD Ex. #19b – Money Order From Lourdes Harley to Benefits U Earned, dated March 25, 2014
CPD Ex. #19c – Disability Claim Filed, February 23, 2010
CPD Ex. #19d – Receipt to Orlando Lee for $250.00 Payment, dated March 14, 2010
CPD Ex. #20a – Disability Claim Amended for James Peter
CPD Ex. #20b – Screening Report From Benefits U Earned to James Peters, August 30, 2010
CPD Ex. #20c – Check from James Peters to Benefits U Earned, dated November 10, 2010
CPD Ex. #20d – Receipt to James Peters for $250.00 Payment, dated August 26, 2010
CPD Ex. #20e – Check from James Peters to Benefits U Earned, dated April 22, 2011
CPD Ex. #20f – Receipt to James Peters for $250.00 Payment, dated August 26, 2010
CPD Ex. #20g – Navy Federal Cashiers Check from Lisa Francois, dated October 4, 2010
CPD Ex. #20h – Receipt to Lisa Francois for $250.00 Payment, dated October 5, 2010
CPD Ex. #20i – Money Order in the Amountof $250.00 to James Mack, dated December 6, 2010
CPD Ex. #20j – Receipt to Lisa Francois for $250.00 Payment, dated November 13, 2010
CPD Ex. #20k – Letter from James Mack to Lisa Francois, dated May 17, 2011
CPD Ex. #21 – Affidavit of Welton Fields, Jr., dated March 11, 2014
CPD Ex. #22 – Affidavit of Vanessa Johnson, dated February 16, 2014
CPD Ex. #23 – Affidavit of Alfred Nicholson, dated February 27, 2014
CPD Ex. #24 – Affidavit of Kevin Thomas, dated March 24, 2014
CPD Ex. #25 – Affidavit of Victoria Clifford, March 21, 2014
CPD Ex. #26 – Examination Under Oath of James Mack (Excerpts), September 18, 2013

The Respondents did not submit any documents into evidence.

Testimony

The Proponent presented live testimony from the following seven consumers: Joseph Turner; Harry Brooks, III; Leverne Jackson; Orlando Lee; Barbara McCoy; Lourdes Harley; and James Peters, Jr. The Proponent further presented testimony via affidavit from four additional consumers: Welton Fields, Jr.; Vanessa Johnson; Alfred Nicholson; and Kevin Thomas. Last, the Proponent also presented testimony from Ken Lee of the Department of Veterans Affairs, Chad Moos of the Disabled American Veterans, and affidavit testimony from Victoria Clifford of Vistaprint.

Respondent Mack declined to testify.

FINDINGS OF FACT

The Agency finds the following facts by a preponderance of the evidence:

1. The Proponent is the State agency charged with enforcing the CPA and related consumer protection statutes.

2. Respondent Mack is a Maryland resident who owned and operated Respondent Benefits U Earned (*See* Corporate Charter Approval Sheet and Articles of Incorporation, Ex. 1). Respondent Benefits U Earned was organized in Maryland as a limited liability company on July 9, 2009, but is no longer a company in good standing with the State Department of Assessments and Taxation. (*See id.; see also* Certificate of Forfeiture, Ex. 2).

3. Respondent Mack was the sole officer, employee and owner of Respondent Benefits U Earned. He possessed and exercised authority to control the policies and trade practices of Respondent Benefits U Earned and participated directly in such trade practices. (Examination Under Oath of James Mack (Excerpts), Ex. 26 at p. 36–37; *see also* J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W. Fields, Jr. Aff., Ex. 21 at ¶¶ 4–11, 12, 14; V. Johnson Aff., Ex. 22 at ¶¶ 3–9;

A. Nicholson Aff., Ex. 23 at ¶¶ 4–12; K. Thomas Aff., Ex. 24 at ¶¶ 3–7).

4. Respondents are "merchants" as defined in § 13-101(g) of the CPA. (*See* K. Lee Test.; J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W. Fields, Jr. Aff., Ex. 21 at ¶¶ 4–11, 12, 14; V. Johnson Aff., Ex. 22 at ¶¶ 3–9; A. Nicholson Aff., Ex. 23 at ¶¶ 4–12; K. Thomas Aff., Ex. 24 at ¶¶ 3–7).

Offer and Sale of Veterans Services Without the Accreditation

5. The Respondents offered and sold services purporting to assist veterans with the preparation, presentation, and prosecution of claims for disability benefits from the United States VA. (*See* K. Lee Test.; J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W. Fields, Jr. Aff., Ex. 21 at ¶¶ 4–11, 12, 14; V. Johnson Aff., Ex. 22 at ¶¶ 3–9; A. Nicholson Aff., Ex. 23 at ¶¶ 4–12; K. Thomas Aff., Ex. 24 at ¶¶ 3–7). These services included, but were not limited to:

- reviewing medical records to assist in the preparation of a claim;
- preparing or filing a claim for benefits;
- corresponding and/or otherwise representing a claimant in his or her dealings with the VA;
- providing advice about a particular claim; and
- monitoring the status of a claim.

(*See id.*; *see also* Letter from J. Mack (Apr. 17, 2014)).

6. The goods and services offered and sold by the Respondents were primarily for personal, household, and family purposes.

7. In order for a person to assist with the preparation, presentation, and prosecution of a claim for VA benefits, including the types of services offered and sold by the Respondents, that person must be accredited by the VA. 38 U.S.C. §§ 5901, 5904; 38 C.F.R. §§ 14.627, 14.629; *see also* K. Lee Test (outlining what VA accreditation constitutes).

8. The purpose of the VA's accreditation rules and regulations are to "ensure that claimants for [VA] benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits." 38 C.F.R. § 14.626. (*see also* K. Lee Test.)

9. A person can be accredited to perform veterans' benefits services in three capacities: (1) as a representative of a veterans' service organization ("VSO"); (2) as an agent or attorney; or (3) on a one-time basis to assist with a particular claim. 38 U.S.C. §§5901-5904 and 38 C.F.R. § 14.629-14.630; *see also* K. Lee Test.

10. Respondent Mack worked for Disabled American Veterans ("DAV"), a VSO, for nine and one-half years. He was previously accredited as a representative for DAV. (*See* Respondent Mack's Application for Accreditation as an Agent, dated May 27, 2009, Ex. 4A; Updated Application (1 of 2) September, Ex. 4B; and C. Moos Test.)

11. On July 2, 2009, Respondent Mack lost his accreditation, after he was terminated for trying to divert DAV clients to his personal business, Respondent Benefits U Earned, and for soliciting fees from those clients through another DAV employee. (*See* Examination Under Oath of James Mack (Excerpts), Ex. 26 at p. 31, 100–03; Test. of Chad Moos; DAV Internal Investigation Report, dated July 6, 2009, Ex. 10A; Fax from DAV, dated August 3, 2009 (Letter from Edward Reese, Jr., dated July 1, 2009), Ex. 11A; Letter from VA to Mack regarding Application for Accreditation, dated November 10, 2010, Ex. 7.)

12. Even as an accredited representative of DAV, Respondent Mack could not charge any fees for assistance with claims for VA benefits.[3] (*See* Test. of C. Moos and 38 U.S.C. § 5902(b)(1)(A) (providing that no individual shall be recognized as a representative "unless the individual has certified to the Secretary that no fee or compensation of any nature will be

[3] Although Respondent Mack initially asserted that representatives could charge fees, he later admitted that he could not charge fees as a DAV representative. (*See* Examination Under Oath of James Mack (Excerpts), Ex. 26 at p. 122–2 and 150–51).

charged any individual for services rendered in connection with any claim.”)).

13. In order to assist with claims for VA benefits outside the scope of his employment at DAV, Respondent Mack had to be accredited as a claims agent. (*See* Updated Application (1 of 2) September 1, 2009, Ex. 4C; Examination Under Oath of James Mack (Excerpts, Ex. 26 at p. 121–22.)

14. On May 27, 2009, Respondent Mack applied for accreditation as a claims agent with the VA. On November 10, 2010, the VA denied his application. (Letter from VA to Respondent Mack regarding Application for Accreditation, dated November 10, 2010, Ex. 7; *see also* Examination Under Oath of James Mack (Excerpts), Ex. 26 at p. 104–08; 121–22). The VA denied his application in large part because it found that Respondent Mack had not been truthful in his dealings with claimants and had engaged in conduct involving “fraud, deceit, misrepresentation or dishonesty.” The VA further found that Respondent Mack could not establish that he was of good character and reputation or that he was qualified to represent claimants for the VA. (Letter from VA to Mack regarding Application for Accreditation, dated November 10, 2010, Ex. 7).

15. Respondent Mack did not contest the VA’s denial of his application and took no further action in order to become accredited. (K. Lee Test.).

16. Although they were not accredited to assist with claims for VA benefits, the Respondents advertised services purporting to provide such assistance to consumers through their website at benefitsuearned.com, direct dealings with consumers, billboards, and distributing fliers. (Examination Under Oath of James Mack (Excerpts), Ex. 26 at pps. 43–44,48–52; J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr., Test.; W. Fields, Jr., Aff., Ex. 21 at ¶¶ 5–8; V. Johnson Aff., Ex. 22 at ¶ 4; A.

Nicholson Aff., Ex. 23 at ¶ 5; K. Thomas Aff., Ex. 24 at ¶ 5; V. Clifford Aff., Ex. 25 at ¶¶ 4–7).[4]

17. The Respondents' website was available to the public from July 1, 2009 through November 4, 2012. It contained multiple representations indicating that the Respondents could lawfully assist with the preparation, presentation, and prosecution of claims for VA benefits. (*See* V. Clifford Aff., Ex. 25 at ¶¶ 4–7)). For example:

a. From at least July 1, 2009, through at least September 23, 2009, the "About Us" page of the Respondents' website included the following statement:

> A highly experienced **Accredited Agent** by the Department of Veterans Affairs (DVA), who demonstrates the ability to lead diverse teams of professionals to new levels of success in field of veterans claims representation, appellate remands, military Physical Evaluation Boards, Discharge Review Boards, Board for Correction of Military Records, and Social Security Administration.

(DAV Internal Investigation Report - Appendix A, Ex. 10B) (emphasis added).

b. By July 1, 2009, that same page also included the following statements:

> A strong technical and business qualification with an impressive track record of more than **15 years of hand-on experience as a Disabled American Veterans' National Service Officer in claims adjudication**, policy establishment, performance oversight, and management.
>
> As a trained skilled **professional**, I am an expert in **developing and prosecuting Active Duty Service Member's and Veteran's Claims**.

(*See id.*) (emphasis added).

In addition, the home page to the Respondents' website stated:

> With over **20 years of highly trained experience** in VA law benefits and healthcare to ensure that veterans receive every benefit to which they are entitled.

(*Id.*) (emphasis added).

[4] The full extent of Respondent Mack's advertising activities is unknown because he did not produce any documents in response to the Proponent's discovery requests regarding the Respondents' advertising practices that would enable the Division to verify the content and the dates of his advertisements.

c. By August 3, 2009, this page also included the following statements:

> I am well versed at conducting in-depth review of medical histories and the sound application of all relevant laws and regulations in the **prosecution** of veteran's benefits.
>
> Once all necessary forms are completed and development has been accomplished, **I provide comprehensive representation services through every step of the claims adjudication process, including any necessary appellate-related proceedings**.
>
> I review facts and circumstances of a claim and **develop it for presentation** to the Department of Veterans Affairs, or its prospective agencies. I ensure all claims are **properly filed** and monitored as it proceeds through the claims process.

(Fax from DAV and BUE website, Ex. 11A) (emphasis added).

d. By August 21, 2009, the Respondents' stated on their website:

> If you need assistance in filing a claim for compensation and/or pension with the Department of Veterans' Affairs, or have questions about what to do in order to receive benefits, you might be entitled to, . . . 'Reply Please'.

(Benefitsuearned.com, Ex. 12A).

e. By February 3, 2011, the Respondents' stated on their website that their services included:

> Outstanding Initial Claims Submission"; "Professional Resubmission of Denied Claims"; "Effective Medical Records Review"; and "Review of the Claims Process[.]"

(Benefitsuearned.com, Ex. 13). The Respondents further stated that they could focus on particular aspects of the claims process, including the "evidence needed to perfect a claim"; the VA's "timeline for processing claims"; "[p]reparation" for VA compensation examinations; responding to VA correspondence, and '[e]ducation on particular disabilities.' (*Id.*)

f. By February 3, 2011, the Respondents' website also contained representations

regarding the Respondents' fees, which reflected that the total fee was typically $1,500.00 and could be paid in three installments or on a one-time basis. (*Id.*).

18. When contacted by consumers (military veterans), Respondent Mack spoke with the veteran about his or her claim or arranged a follow-up phone call or in-person meeting to further discuss any claim. (*See* J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W, Fields, Jr. Aff., Ex. 21 at ¶¶ 5–8; V. Johnson Aff., Ex. 22 at ¶4; A. Nicholson Aff, Ex. 23 at ¶¶ 4–5.; and K. Thomas Aff., Ex. 24 at ¶ 4).

19. During initial communications with consumers, Respondent Mack again represented to them that he could assist them with their claims for benefits. (*See id.*). He told consumers that he could help them determine which disabilities they should try to get compensation for and that he could help expedite their claim; claimed that he knew how to "word things correctly" so that they would get benefits; and represented that he would communicate with the VA on their behalf, including by filing a claim. (*See id.*)

20. Respondent Mack also explained that there would be a fee for these services, typically totaling $1,500.00 per consumer. (*See id.*).

21. In some cases, Respondent Mack provided consumers with a contract. The contract set forth the services to be provided and stated that "all work shall be performed by individuals duly certified and authorized by law to perform said work." (*See* B. McCoy Test.; Contract Agreement, Ex. 18A; L. Harley Test.; and Contract Agreement, Ex. 19A). In fact, Respondent Mack was the only employee of Respondent Benefits U Earned, and because he was not accredited, he could not lawfully assist veterans with their claims for VA benefits. (*See* Examination Under Oath of James Mack (Excerpts), Ex. 26 at p. 35–37; K. Lee Test.)

22. Respondent Mack did not inform consumers that he was not accredited.

23. Respondent Mack's lack of accreditation was a material fact that would have impacted consumers' decisions to hire him and Respondent Benefits U Earned. (*See* J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; W. Fields, Jr. Aff., Ex. 21 at ¶ 15; V. Johnson Aff., Ex. 22 at ¶ 6).

24. Respondent Mack also tried to conceal from the VA that he was offering and selling assistance with claims for benefits. Specifically, in connection with his application to the VA for accreditation, Respondent Mack denied that he was assisting veterans with the preparation, presentation, and prosecution of their claims for benefits; confirmed that he understood that he needed to be accredited in order to provide assistance to veterans; and instead falsely claimed that he was only offering "general" advice free of charge. In particular:

a. In September 2009, Respondent Mack wrote in his updated application for accreditation: "After termination from DAV, I have not prepared, presented, nor prosecuted any claims for VA Benefits." (Updated Application (1 of 2), Ex. 4B).

b. Respondent Mack further wrote in an addendum to his updated application: "Be advised, my self-employment is contingent upon me becoming an Accredited Agent. I fully understand that I cannot or will not be able to assist our Nation's Veterans in accordance with VA Laws and regulations without the approval of your office and me being accredited." (Updated Application (2 of 2), Ex. 4C).

c. Shortly thereafter, when the VA confronted Respondent Mack about the Respondents' website, Respondent Mack denied that he had been representing veterans without being accredited, falsely stating that he was "waiting patiently" for approval of his application for accreditation, and claimed that he was "only voluntarily providing free consultation by answering general questions at the VA Medical Center and Soldiers Home." (Letter from Mack to VA, Ex. 5B).

25. The Respondents collected fees from consumers as early as July 3, 2009. (*See* Copies of Checks and Money Order Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3A and Summary Table of Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3C)).

26. Respondent Mack also attempted to conceal his representation of claimants from the VA by signing veterans' names on documents that he submitted to the VA. (K. Lee Test.; H. Brooks III Test.; Memoranda RE: Harry Brooks, Ex. 9A; and Memoranda RE: Kevin Thomas, Ex. 9B; K. Thomas Aff.).

27. Despite their lack of accreditation, Respondents offered, sold and provided services to veterans and their families that purported to assist them with their claims for disability benefits from the VA from at least July 1, 2009, through June 2012. (Letter from J. Mack (Apr. 17, 2014)).

28. The Respondents unlawfully offered, sold and provided veterans services for a period of at least 1,086 days. (*Id.*)[5]

29. Respondent Mack attempted to conceal his representation of claimants from the Proponent by testifying inconsistently regarding his business activities. (*See* Examination Under Oath of James Mack (Excerpts), Ex. 26 at pp. 36, 42, 90–91).

<u>The Respondents' Solicitation and Acceptance of Illegal Fees</u>

30. Federal law prohibits veterans from being charged for assistance provided with initial claims submissions, including any services provided before a Notice of Disagreement has been filed initiating the appeals process. 38 U.S.C. § 5904(c)(1). (*see also* K. Lee Test.)

31. Initial claims submissions include filing claims establishing entitlement to disability compensation or to increase an existing award of compensation.

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[5] There are 1,086 days between July 1, 2009 and June 20, 2012.

32. The purpose of the prohibition on charging for assistance with initial claims submissions is to ensure that veterans are not charged for unnecessary services or services that are ministerial in nature, but instead either file claims themselves or utilize the free services available to them. (*See* K. Lee Test.)

33. The Respondents' services included initial claim submissions. (*See* K. Lee Test.; J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W. Fields, Jr. Aff., Ex. 21 at ¶¶ 4–11, 12, 14; V. Johnson Aff., Ex. 22 at ¶¶ 3–9; A. Nicholson Aff., Ex. 23 at ¶¶ 4–12; K. Thomas Aff., Ex. 24 at ¶¶ 3–7).

34. The Respondents' charged consumers for initial claim submissions. (*See* Contract Agreement, Ex. 18A; Contract Agreement, Ex. 19A; Benefitsuearned.com, Ex. 13 (including payment options for "Initial Claims" and "Exam Preparation")).

35. The Respondents regularly charged consumers fees of $1,500.00. (*See* Copies of Checks and Money Order Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3A; Spreadsheet of Pay Pal payments, Ex. 3B; Summary Table of Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3C; Benefitsuearned.com, Ex. 13; Contract Agreement, Ex. 18A; Contract Agreement, Ex. 19A).

36. Consumers also paid the Respondents for their services in amounts ranging from $50.00 to $2,000.00 for their purported services. (*See* Summary Table of Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3C; Test. of H. Brooks III; Test. of J. Peters, Jr.; *see also* Aff. of V. Johnson, Ex. 22 at ¶ 4).

37. The Respondents charged each of the consumers who testified at the hearing or by affidavit the following amounts for services purporting to assist in the preparation, presentation, and prosecution of claims for veterans' benefits:

a. Joseph Turner and his wife at the time, Donna Turner, each paid $250.00

to the Respondents. (J. Turner Test.; $250.00 Check to Benefits U Earned (Donna Turner), dated Mach 14, 2011, Ex 15A; $250.00 Check to Benefits U Earned (Joseph Turner), dated March 14, 2011, Ex. 15B; Receipt for $250.00 Payment (Donna Turner); Ex. 15C; Receipt for $250.00 Payment (Joseph Turner), Ex.15D).

b. Harry Brooks III paid $1,500.00 to the Respondents. (H. Brooks III Test.; $1, 500.00 Check to Benefits U Earned, LLC, dated March 12, 2012, Ex. 16).

c. Leverne Jackson paid $250.00 to the Respondents. (L. Jackson Test.; Spreadsheet of Pay Pal payments, Ex. 3B).

d. Orlando Lee paid $250.00 to the Respondents. (O. Lee Test.; $250.00 Check to Benefits U Earned, dated November 30, 2010, Ex. 17A; Receipt for $250.00, dated December 13, 2010, Ex. 17B).

e. Barbara McCoy made two payments of $250.00 to the Respondents, for a total of $500.00. (B. McCoy Test.; Receipt for $250.00, dated April 20, 2010, Ex. 18B).

f. Lourdes Harley paid $250.00 to the Respondents. (L. Harley Test.; $250.00 Money Order to James Mack/Benefits U Earned, dated March 8, 2010, Ex. 19B; Receipt for Lourdes Santiago Harley, dated March 14, 2010, Ex. 19C.)

g. James Peters, Jr. and his wife, Lisa Francois, paid a total of $2,000.00 to the Respondents. (J. Peters, Jr. Test.; $250.00 Check to Benefits U Earned, dated August 18, 2010, Ex. 20C; Receipt for $250.00, dated August 26, 2010, Ex. 20D; $1,250.00 Money Order to Benefits U Earned, LLC, dated April 22, 2011, Ex. 20E; Receipt for $1,250.00 and $250.00, dated April 25, 2011, Ex. 20F; $250.00 Money Order to Benefits U Earned, LLC, dated October 4, 2010 (Francois), Ex. 20G; Receipt for $250.00, dated October 5, 2010 (Francois), Ex. 20H; $250.00 Money Order to James Mack, dated December 6, 2010 (Francois), Ex. 20I; Receipt for $250.00, dated November 13, 2010,

Ex. 20J).

h. Welton Fields, Jr. paid $250.00 to the Respondents. (W. Fields, Jr. Aff., Ex. 21 at ¶ 11.)

i. Vanessa Johnson paid $50.00 to the Respondents. (V. Johnson Aff., Ex. 22 at ¶ 4.)

j. Alfred Nicholson made five $250.00 payments to the Respondents, for a total of $1,250.00. (A. Nicholson Aff., Ex. 23 at ¶ 6.)

k. Kevin Thomas paid $250.00 to the Respondents. (K. Thomas Aff., Ex. 24 at ¶ 24.)

38. The Respondents collected at least $73,075.00 from 118 consumers for their purported services. This total reflects the consumer payments identified through records obtained from Capitol Bank and PayPal, which totaled $72,575.00, plus two $250.00 payments made by Barbara McCoy, whose payments were not reflected in these records. (*See* B. McCoy Test.; Copies of Checks and Money Order Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3A; Spreadsheet of Pay Pal payments, Ex. 3B; Summary Table of Payments to James Mack and/or Benefits U Earned, LLC, Ex. 3C).

39. The full extent to which the Respondents collected fees from consumers for services is not known because the Respondents did not respond to the Proponent's discovery requests for the identities of their customers and the amounts that Respondents collected from consumers for their services.

40. Respondent Mack was aware that he could not charge fees for initial claim submissions but did so anyway. (*See* Updated Application (2 of 2), Ex. 4C; C. Moos Test. (explaining that Respondent Mack participated in a 16-month training that included training regarding laws and regulations concerning the administration of veterans' benefits and that DAV

employees must agree to comply with DAV policies, which incorporate the prohibition against charging fees for such services); *see supra* ¶¶ 35–37).

The Respondents' Failure to Provide the Promised Assistance

41. The Respondents also engaged in a practice of accepting payments and then not providing or failing to complete the promised assistance. (*See* J. Turner Test.; H. Brooks III Test.; L. Jackson Test.; O. Lee Test.; B. McCoy Test.; L. Harley Test.; J. Peters, Jr. Test.; W. Fields, Jr. Aff., Ex. 21 at ¶¶ 5–14, 12, 14; V. Johnson Aff., Ex. 22 at ¶¶ 4–9; A. Nicholson Aff., Ex. 23 at ¶¶ 4–12; K. Thomas Aff., Ex. 24 at ¶¶ 3–8).

42. In the following instances, the Respondents accepted payments from consumers and then failed to provide any of the promised assistance:

a. Respondent Mack told Joseph Turner and his wife, Donna Turner, that he would file claims seeking to establish an entitlement to benefits for new medical issues and to increase Mr. Turner's existing benefits award related to his elbow injury. (J. Turner Test.) Respondent Mack also told Joseph Turner and his wife that he would get copies of their medical records. After accepting the Turners' respective $250.00 payments, Respondent Mack ignored multiple inquiries from Mr. Turner, save for one email in which he promised to follow up with Mr. Turner about their claims (and then never did). Respondent Mack's failure to file Mr. Turner's claim meant that the actual filing of Mr. Turner's claim was delayed. (*Id.*)

b. Respondent Mack told Leverne Jackson that he would file a claim for benefits on his behalf. (L. Jackson Test.) After accepting a payment of $250.00 from Mr. Jackson, Respondent Mack never filed Mr. Jackson's claim and ignored repeated phone calls and emails from Mr. Jackson. (*Id.*) The Respondents' failure to file Mr. Jackson's claim meant that the actual filing of Mr. Jackson's claim was delayed. (*Id.*)

c. Respondent Mack told Orlando Lee that he would file a claim to increase his existing benefits award. (O. Lee Test.) Mr. Lee paid the Respondents $250.00 and provided Respondent Mack with medical records and other documents for his application for benefits, but Mr. Lee did not know what, if anything, Respondent Mack ever did on his behalf. (*Id.*) When Mr. Lee tried calling Respondent Mack to inquire about the status of his claim, Respondent Mack told him that "things were ongoing" and that there wasn't anything he could tell Mr. Lee until he was contacted by the VA. (*Id.*) Although Mr. Lee ultimately received a benefit increase, he believed that increase was a result of a policy change, not because of any action taken by the Respondents. (*Id.*)

d. Respondent Mack agreed to represent Alfred Nicholson before the Board of Veterans of Appeals. (A. Nicholson Aff., Ex. 23 at ¶¶ 5–6.) Despite receiving five $250.00 payments from Mr. Nicholson, for a total of $1,250.00, Respondent Mack did not provide any assistance to him. (*Id.* at ¶¶ 6–7.) Mr. Nicholson requested a refund in writing and by phone, but was unable to reach Respondent Mack. (*Id.* at ¶¶ 8–12.)

43. The Respondents' failure to file consumers' claims delayed adjudication of these claims and also meant that consumers paid for services from the Respondents that they never received. (*See, e.g.*, ¶ 41(a)-(d)).

44. The Respondents' website contained multiple representations indicating that their services would not conclude until after a claim had been adjudicated, that they would monitor claims, and that they would provide updates to veterans about the status of their claims. For example, by at least August 3, 2009, the Respondents made the following statements on their website:

> Once all necessary forms are completed and development has been accomplished, I provide **comprehensive representation services through every step of the claims adjudication process**, including any necessary appellate-related proceedings.

. . .

> I ensure all claims are properly filed and **monitored as it proceeds through the claims process. I advise[] claimants of significant developments with respect to their claim** and would do everything ethically possible for a favorable outcome.

(Fax from DAV and BUE website August 3, 2009, Ex. 11A) (emphasis added).

45. In some instances, the Respondents accepted payments from consumers and provided some initial assistance, but then stopped responding to the consumer and failed to provide the balance of the promised assistance. For example:

a. Respondent Mack agreed to assist Harry Brooks with his claim for VA benefits. (H. Brooks III Test.) When Mr. Brooks received his compensation award, he realized that the VA had erroneously calculated his award as though he was single, when he was in fact married. (*Id.*) Mr. Brooks contacted Respondent Mack about the error, and Respondent Mack agreed to help him and asked that he send him the paperwork. (*Id.*) Mr. Brooks never heard from Respondent Mack again, and ultimately resolved the matter himself. (*Id.*)

b. Respondent Mack contracted with Barbara McCoy to assist her with her claim for VA benefits. (McCoy Test.; Contract Agreement, Ex. 18A). After accepting Ms. McCoy's second $250.00 payment, Respondent Mack stopped responding to Ms. McCoy's emails and did not provide her any further advice regarding her claim. (McCoy Test.)

c. Respondent Mack contracted with Lourdes Harley to assist her with her claim for VA benefits. (Harley Test.; Contract Agreement, Ex. 19A). After accepting Ms. Harley's $250.00 payment, he did not respond to multiple voicemails that she left inquiring about the status of her claim. (Harley Test.)

d. Respondent Mack agreed to assist Welton Fields, Jr., with his claim for benefits, and accepted an initial payment of $250.00. (W. Fields, Jr., Aff., Ex. 21 at ¶¶ 6, 11.) Respondent Mack provided Reverend Fields with a letter to submit to the VA. When Reverend Fields contacted Respondent Mack by phone, email and text message to ask follow up questions about upcoming medical tests, Respondent Mack never responded. (*Id.* at ¶14.)

The Respondents' Violations of the Consumer Protection Act

46. Consumers relied upon the Respondents' misrepresentations and omissions of material fact in purchasing services purporting to assist them with their claims for VA disability benefits.

47. The Respondents' misrepresentations and omissions included that:

- they were accredited or otherwise legally authorized to perform the services when they were not;
- the Respondents could charge fees for their services, when they could not legally do so; and
- the Respondents would provide promised services that they did not actually provide, including "expediting" claims, filing claims, and advising consumers throughout the entire process for claiming veterans benefits.

These representations had the capacity, tendency, or effect of deceiving or misleading consumers.

48. The Respondents misrepresented their approval, status, and affiliation when they represented they were accredited and/or could lawfully offer, sell, and perform veterans services and when they exaggerated Respondent Mack's prior experience as National Service Officer

with DAV and the number of "duly certified and authorized" individuals employed by Respondent Benefits U Earned.

49. The Respondents' practices of offering and selling services that they were not accredited to perform, of accepting payments for these purported services, and of failing to perform these services, in whole or in part, caused substantial injury to consumers, which they could not reasonably avoid.

50. These injuries were not offset by any benefit to consumers or to competition.

51. The Respondents were aware that they needed to be accredited in order to perform and charge for the services that they offered. Instead of obtaining the requisite accreditation, the Respondents offered and sold veterans' benefits services without the necessary accreditation and attempted to conceal their illicit activities from the VA.

52. The Respondents also accepted payments from consumers for services that by law must be performed for free. In several instances, the Respondents provided minimal or no assistance in exchange for the consumers' payments.

53. The Respondents failed to provide the services for which consumers paid, which resulted in delaying consumers' access to benefits from the VA.

DISCUSSION

I. The Relevant Law: Alleged Violations

A. Respondents Have Committed Unfair or Deceptive Trade Practices in Violation of the Maryland Consumer Protection Act.

The purpose of the CPA, sections 13-101 through 13-501 of the Commercial Law Article of the Annotated Code of Maryland, is to "set certain minimum standards for the protection of consumers across the State . . . ." Md. Code Ann., Com. Law § 13-102(b)(1) (2013 Repl. Vol.). In enacting the CPA, the Maryland Legislature determined that the State:

> [s]hould take strong protective and preventative steps to investigate

> unlawful consumer practices, to assist the public in obtaining relief from these practices and to prevent these practices from occurring in Maryland.

Id. at § 13-102(b)(3). The Legislature further instructed that the CPA shall be "construed and applied liberally to promote its purpose." *Id.* at § 13-105.

The CPA prohibits all trade practices that are unfair or deceptive in the sale, or offer for sale, of consumer goods and services. *Id.* at § 13-303. Consumer goods and services are defined as goods and services "which are primarily for personal, household, family, or agricultural purposes." *Id.* at § 13-101(d). The Respondents offered and sold services to help veterans apply for, and win, monetary benefit claims from the VA. The Respondents' services were offered and sold for personal, family, and household purposes and, therefore, were consumer services.

The CPA provides a non-exclusive list of unfair or deceptive trade practices at section 13-301. *Golt v. Phillips*, 308 Md. 1, 8 (1996). The Respondents are charged with unfair or deceptive trade practices in the offer and/or sale of goods and services, in violation of § 13-303 of the Maryland Consumer Protection Act, as defined in §§ 13-301(1), (2), (3), and 13-303 of the CPA. As set forth below, the Respondents' violations of these sections are clear, and were established by the evidence presented at the hearing of this matter.

1. The Respondents Made False or Misleading Statements That Constitute Unfair or Deceptive Trade Practices Under Section 13-301(1).

A misrepresentation, as defined in section 13-301(1) of the CPA, is any "false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency or effect of deceiving or misleading consumers." The Court of Appeals has stated that "[f]or consumer protection purposes, the meaning of any statement or representation is determined not only by what is explicitly stated, but also by what is reasonably implied." *Golt*, 308 Md. at 10. The Federal Trade Commission ("FTC") has long held that a representation by a merchant is judged on the total, or overall, impression it makes on

the consumer's mind. *F.T.C. v. Sterling Drug, Inc.,* 317 F.2d 669, 674-75 (2d Cir. 1963), citations omitted; *see also American Home Products Corp. v. F.T.C.*, 695 F.2d 681, 687-88 (3d Cir. 1983); F.T.C. Policy Statement on Deception of October 14, 1983, Appendix to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 178 (1984), *cited with approval, Luskin's, Inc. v. Consumer Protection Division*, 353 Md. 335, 352 (1999).[6] The burden is not on the consumer to inquire into the truth of a representation. *Sterling Drug*, 317 F.2d at 674; *Resort Car Rental System, Inc. v. F.T.C.*, 518 F.2d 962, 964 (9th Cir. 1975), *cert. denied,* 423 U.S. 827 (1975). Instead, the burden is on the party who is making the representation to convey the truth with the total impression of its advertisement and other disclosures. *Spiegel, Inc. v. F.T.C.*, 494 F.2d 59, 62 (7th Cir. 1974), *cert. denied*, 419 U.S. 896 (1974).

Here, the Respondents engaged in unfair or deceptive trade practices as defined in § 13-301(1) of the Consumer Protection Act by making false and misleading representations in connection with their offer and sale of services to Maryland consumers. As stated above in greater detail, these misrepresentations included that:

- the Respondents were accredited or otherwise legally authorized to perform the services they offered and sold;
- the Respondents could accept payments for those services, and;
- the Respondents would perform the agreed upon services.

The Respondents explicitly represented to consumers that they were licensed and able to legally assist them with the VA benefits claims. The Respondents' website is damning in this respect. As shown above, the website included several statements claiming to be accredited and/or able to legally provide services. *See* Findings of Fact (FOF) Nos. 15 and 16. This was

[6] The CPA provides that "due consideration and weight be given to the interpretation of section 5(a)(1) of the FTC Act by the FTC and the federal courts." Md. Code Ann., Com. Law § 13-105. Section 5(a)(1) of the FTC Act declares unlawful unfair methods of competition and unfair or deceptive acts that affect commerce. 15 U.S.C. § 45(a)(1).

simply not true and the Respondents knew that it was not true because Respondent Mack lost his accreditation when he was fired from his previous job.

It is not necessary to show any actual damage to the public or that consumers were actually deceived by a false or misleading representation in order to show a violation of the Consumer Protection Act. *See* Md. Code Ann., Com. Law § 13-302; *see also Resort Car Rental System, Inc.*, 518 F.2d at 693. Here, however, consumers suffered harm through paying unnecessary fees and by paying for services that they never received or that were not completed. Consumers were further harmed through the delay in the ultimate adjudication of their claims caused by the Respondents' failure to perform.

The website, coupled with the other misrepresentations outlined in detail above (FOF Nos. 4 – 25), leave no doubt that the Respondents' representations had the capacity, tendency, and effect of misleading consumers and constitute unfair or deceptive trade practices as defined in section 13-301(1) of the CPA.

2. The Respondents Represented That They Have Approval, Status, Affiliation and/or Connection That They Do Not Have, That Constitute Unfair or Deceptive Trade Practices Under Section 13-301(2)(ii).

As discussed above, the Respondents represented, both expressly and impliedly, that they were authorized by the VA to legally perform the services they offered and sold to consumers. (FOF Nos. 16 – 24). The Respondents' representations were designed to create the impression that the Respondents could lawfully provide assistance with VA benefits, and that they were successful experts in that field. In fact, at no point were the Respondents accredited to assist with the preparation, presentation, or prosecution of claims for VA benefits. The Respondents' misrepresentations of their sponsorship, approval, status, and or/affiliation deceived consumers and constituted unfair or deceptive trade practices as defined in § 13-301(2)(ii), in violation of § 13-303.

3. The Respondents Made Material Omissions of Fact That Constitute Unfair or Deceptive Trade Practices Under Section 13-301(3).

Section 13-301(3) of the CPA prohibits the omission of material facts if the omission deceives or tends to deceive. *See* Md. Code Ann., Com. Law § 13-301(3). To tell less than the whole truth is a well-known method of deception. *P. Lorillard Co. v. F.T.C.*, 186 F.2d 52, 59 (4th Cir. 1950). "An omission is material if a significant number of unsophisticated consumers would find that information important in determining a course of action." *Green v. H & R Block*, 355 Md. 488, 524 (1999), *citing, Luskin's,* 353 Md. at 358-59; *Golt*, 308 Md. at 10; *State v. Cottman Transmissions Systems, Inc.*, 86 Md. App. 714, 723, *cert. denied*, 324 Md. 121 (1991). Information is material if it is likely to affect a consumer's choice of service; and a material misrepresentation or omission is one that is likely to cause injury to consumers. *Luskin's*, 353 Md. at 358-59. The Respondents omitted a number of material facts that either deceived or tended to deceive consumers in their dealings with consumers.

Here, that the Respondents could not legally provide or charge for the services that they offered and sold to consumers was information that would have affected consumers' decisions to retain the Respondents. (FOF Nos. 15 – 25.) Because of the Respondents' material omissions, consumers could not properly evaluate whether to hire the Respondents. *See Spiegel, Inc.*, 494 F.2d at 63 (explaining that consumers "have a right to be told the truth so that their choices among . . . offers[] can be understandingly made."). Respondents thus omitted material facts in their dealing with consumers in violation of § 13-303, as defined in §13-301(3).

4. The Respondents' Unfair Practices in Violation of Section 13-303.

In addition to prohibiting deceptive trade practices, the CPA prohibits practices that are unfair. *See* Md. Code Ann., Com. Law § 13-303. An "unfair" trade practice must result in a (1) substantial injury; (2) that is not outweighed by any countervailing benefits to the consumer or to competition that the practice produces; and (3) it must not be the type of injury that a consumer

could reasonably avoid. *See Legg v. Castruccio*, 100 Md. App. 748, 768 (1994). The Court of Special Appeals has applied this standard in a private action for damages under the CPA, although Maryland courts have not addressed whether this standard would similarly apply in private enforcement actions as well. The Consumer Protection Division has regularly adopted this standard in public enforcement of the Act, however. *See, e.g., Consumer Protection Division v. All State Plumbing, Inc.,* CPD Case No. 12-003-210734 (Jan. 3, 2013); *Consumer Protection Division v. Tommy Edward Clack,* CPD Case No: 11-037-207106; (July 5, 2012); *Consumer Protection Division v. Paris George*, File No. 01-004 (June 24, 2002).

Here, consumers suffered substantial injury by paying for services that by law must be provided for free, and, in several cases, which were never actually provided by the Respondents. Respondent Mack failed to adduce any evidence that consumers' injuries were outweighed by any countervailing benefits to consumers or to competition. Federal law and regulations regarding the administration of veterans' benefits aim to ensure that veterans receive assistance from responsible and qualified individuals and do not pay fees for services that are largely ministerial in nature. The marketplace is harmed both when merchants disregard this accreditation regime and when they violate the prohibition on charging fees for initial claims submissions. Moreover, consumers are best served by information in the marketplace. Consumers were entitled to rely on the Respondents' representations that they could and would perform the promised assistance and could accept fees for those services. *See Sterling Drug,* 317 F.2d at 674 (explaining that consumers have a right to rely upon representations of fact as the truth). Accordingly, consumers could not have reasonably avoided the harm they suffered. Respondents therefore committed unfair trade practices in violation of § 13-303.

B. Respondent James Mack is Individually Liable for the Unfair and Deceptive Trade Practices.

Respondent Mack is individually liable because he was aware of the unfair and deceptive trade practices of Respondent Benefits U Earned, failed to take steps to prevent those practices, and instead actively participated in those practices. In Maryland, officers and agents of a corporation are personally liable for torts that they commit or which they "inspire," "participate in," "contributed to" or "helped bring about." *Tedrow v. Deskin*, 265 Md. 546, 550–51 (1972); *see also Metromedia Co. v. WCBM Maryland, Inc.*, 317 Md. 514, 519–20 (1992) (expounding that corporate officers may be held individually liable for corporate wrongdoing undertaken based on their decisions). Because a violation of the CPA is in the nature of a tort action, officers of a corporation may be held individually liable for corporate wrongdoing in which they participated. *See Hartford Accident and Indemnity Co. v. Scarlett Harbor Assocs. Ltd. Partnership*, 109 Md. App. 217, 265 (1996) (explaining that a Consumer Protection Act violation is in the nature of a tort action). The Federal Trade Commission has similarly held officers liable for unfair or deceptive trade practices committed on behalf of a corporation if the officers participated directly in the practices or knew or should have known of the practices and had authority to control them. *See F.T.C. v. Amy Travel Servs., Inc.*, 875 F.2d 564, 574 (7th Cir. 1979). The Maryland Court of Appeals has applied this standard to violations of the Consumer Protection Act as well. *See Morgan v. Consumer Protection Division*, 387 Md. 125, 176 (2005) (adopting standard set forth in *F.T.C. v. Amy Travel Servs.* and holding that individuals may be held jointly and severally liable for restitution for violations by corporations).

As stated above, Respondent Mack was the sole owner and employee of Respondent Benefits U Earned. He was responsible for creating and implementing the unfair or deceptive policies and practices that are described herein, including the Respondents' offer and sale of services without the requisite accreditation; charging illegal fees for these services; and offering

and selling services that they subsequently failed to perform in whole or in part. Respondent Mack decided to engage in each of these practices and he personally committed each violation. Thus, not only was he aware of the unfair and deceptive trade practices and had the power to stop them, he also promoted their use and actively participated in these practices. Accordingly, Respondent Mack should be held individually liable for the Respondents' violations.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and Discussion, the Agency makes the following Conclusions of Law:

1. The Respondents engaged in unfair or deceptive trade practices as defined in §§13-301(1), (2) and (3) of the CPA in the sale or offer for sale of consumer goods and services, which is prohibited by section 13-303 of the CPA.

2. The Respondents engaged in unfair or deceptive trade practices as defined in §13-301(1) of the CPA by making false and misleading representations in connection with their offer and sale of services to Maryland consumers. Such representations included that the Respondents were accredited or otherwise legally authorized to perform the services they offered and sold, that they could accept payments for those services, and, in several cases, that they would perform the agreed upon services.

3. The Respondents engaged in unfair or deceptive trade practices as defined in § 13-301(2) of the CPA by making express and implied representations that they were accredited by the VA to assist in the preparation, presentation, and prosecution of claims for VA benefits, when in fact they were not, and by exaggerating Respondent Mack's prior experience as a National Service Officer with DAV and the number of "duly certified and authorized" individuals employed by Respondent Benefits U Earned.

4. The Respondents engaged in unfair or deceptive trade practices as defined in § 13-301(3) of the Consumer Protection Act in connection with their offer and sale of services to Maryland consumers by failing to state material facts, including that the Respondents were not accredited to perform the services they offered and sold; could not legally charge for those services; and, in several cases, were unable or unwilling to provide the agreed upon services. The omission of these material facts deceived or tended to deceive consumers.

5. The Respondents have engaged in unfair practices prohibited by §13-303 of the Consumer Protection Act by causing substantial injury to consumers that consumers could not reasonably avoid. These unfair practices did not benefit the marketplace.

6. The Respondents violated the Maryland CPA every day they were in business, for a total of at least 1,086 violations.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

Date: September 24, 2014

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