

CONSUMER PROTECTION DIVISION,
OFFICE OF THE ATTORNEY GENERAL

Proponent,

v.

H & S MARKETING, LLC
d/b/a STUDENT LOAN COUNSEL, *et al.*,

Respondents.

* * * * *

* IN THE CONSUMER
* PROTECTION DIVISION OF
* THE OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND
* CPD No. 17-029-287679

ADMINISTRATIVE HEARING PROCESS

SEP 28 2017

Office of the Attorney General
Consumer Protection Division
FILED

CEASE AND DESIST ORDER

Upon consideration of the Proponent’s Statement of Charges, Petition for Entry of *Ex Parte* Cease and Desist Order, and the affidavits and other evidence submitted in support thereof, the Consumer Protection Division of the Office of the Attorney General of Maryland (the “Agency”)¹ finds that there are reasonable grounds to believe that H & S Marketing, LLC d/b/a Student Loan Counsel; Client Processing Services, LLC, in its own name and d/b/a Student Loan Counsel; Henrique Silva a/k/a Rick Silva, individually and d/b/a H & S Marketing, LLC and Student Loan Counsel; Melissa Haddad, individually and d/b/a H & S Marketing, LLC and Student Loan Counsel; Cimar Scaff, individually and d/b/a Client Processing Services, LLC and Student Loan Counsel; and Gail Ghada Haddad, individually and d/b/a Client Processing Services, LLC and Student Loan Counsel (collectively, the “Respondents”) have violated and will continue to violate the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 Repl. Vol., 2016 Supp.) (the “CPA”), the Maryland Credit Services Businesses Act, Md. Code Ann., Com. Law §§ 14-1901 through 14-1916 (2013 Repl. Vol., 2016 Supp.) (the “MCSBA”) and the Maryland Debt Settlement Services Act, Md. Code Ann., Fin. Inst. §§ 12-

¹ The Consumer Protection Division acting in its capacity as a quasi-judicial agency is referred to herein as the “Agency,” while the Consumer Protection Division acting as the Proponent is referred to as the “Proponent.”

1001 through 12-1017 (2011 Repl. Vol., 2016 Supp.) (the “MDSSA”) in connection with their offer and sale of student loan debt relief services to Maryland consumers, that additional consumers will be harmed by the Respondents’ continued violations, and that the consumers harmed by the Respondents’ violations will be unable to obtain restitution from these unlicensed people and entities after a cease and desist hearing. Accordingly, the Agency hereby issues a cease and desist order pursuant Md. Code Ann., Com. Law § 13-403(d) and orders that the Respondents cease and desist from violating the CPA, MCSBA, and MDSSA, and take affirmative action pursuant to § 13-403 of the CPA as described herein.

Application

1. This Cease and Desist Order (the “Order”) applies to H & S Marketing, LLC d/b/a Student Loan Counsel and Client Processing Services LLC, in its own name and d/b/a Student Loan Counsel and to each of their owners, members, directors, officers, partners, employees, agents, successors and assigns, and to all other persons or companies acting in concert or in participation with these businesses.

2. This Order also applies to Henrique Silva a/k/a Rick Silva, Melissa Haddad, Cimar Scaff, and Gail Ghada Haddad, and to each of their partners, agents, and employees, and to any corporation, partnership, sole proprietorship, or other business or business entity in or for which any of these individuals, currently or in the future, has an ownership interest, has the authority to control, or has the authority to establish or manage policy.

Cease and Desist Provisions

3. The Respondents shall immediately cease and desist from engaging in any unfair or deceptive trade practices in violation of the CPA in connection with the offer, sale, or providing of student loan services and/or debt relief services.

4. The Respondents shall not make any false or misleading oral or written statements or other representations that have the capacity, tendency, or effect of deceiving or misleading Maryland consumers when offering, selling, or providing student loan services and/or debt relief services, including but not limited to the offer or sale of services that the Respondents are unable or unwilling to provide within a reasonable time.

5. In offering, selling, or providing student loan services and/or debt relief services to Maryland consumers, the Respondents shall provide the services that they agreed to provide within a reasonable time.

6. In offering, selling, or providing student loan services and/or debt relief services to Maryland consumers, the Respondents shall not make representations that (a) the Respondents have a sponsorship, approval, status, affiliation, or connection, which they do not have; (b) the Respondents' services have a sponsorship, approval, use, or benefit which they do not have; (c) the Respondents' services are of a particular standard or quality, when they are not; or, (d) fail to state material facts, the omission of which deceives or tends to deceive Maryland consumers.

7. Respondents shall not make any oral or written statement, or any other representation, which states, implies, or otherwise has the capacity to lead Maryland consumers to believe, any of the following:

- a. That the Respondents have specialized skills or professional expertise in providing student loan services and/or debt relief services;
- b. That the Respondents' student loan services and/or debt relief services are in any way comparable to tax preparation or other professional services;
- c. That the Respondents' student loan services and/or debt relief services are extensive, sophisticated, complex, or of high quality, or that they consist of anything other than forwarding the consumer's paperwork to a federal student loan servicer;

- d. That the Respondents have any type of affiliation, connection, or relationship with, or have been approved by, the U.S. Department of Education or any federal student loan servicer;
- e. That the Respondents' student loan services and/or debt relief services are in any way sponsored or approved by the U.S. Department of Education or by any federal student loan servicer;
- f. That a consumer could be harmed in any way, financially or otherwise, if the consumer attempts to obtain debt relief on his or her own by directly contacting or working with his or her student loan servicer;
- g. That the Respondents or other debt relief companies may be able to obtain better results for the consumer than the consumer could obtain for free by contacting or working directly with his or her federal student loan servicer on his or her own;
- h. That the Respondents' student loan debt relief services provide any benefits beyond what the consumer can already obtain for free by contacting or working directly with his or her federal student loan servicer on his or her own;
- i. That it is difficult, complicated, or otherwise burdensome for the consumer to obtain debt relief by contacting or working directly with his or her federal student loan servicer on his or her own;
- j. That the Respondents will obtain any particular type of debt relief for consumers, such as enrollment in a particular type of payment plan, enrollment in a particular loan forgiveness plan, or reduced monthly loan payments;
- k. That the Respondents' student loan services and/or debt relief services are necessary for consumers to obtain student loan debt relief;
- l. That the Respondents will conduct research, enroll them in a specific debt relief program, or provide any other services for the consumer that the Respondents are not capable of providing, or which the Respondents do not

actually provide for the consumer in full; or

- m. That the consumer is enrolled in a debt relief program, when in fact the consumer is not actually enrolled in that program.

8. The Respondents shall immediately cease and desist from violating the MCSBA, including, but not limited to: (a) offering, selling, or providing student loan services and/or debt relief services to Maryland consumers without first becoming licensed by the Commissioner of Financial Regulation (the “Commissioner”) as a credit services business under the MCSBA; (b) charging and/or receiving money prior to becoming licensed by the Commissioner; (c) charging and/or receiving money prior to fully and completely performing all of the services for or on behalf of Maryland consumers; or, (d) engaging, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with their offer or sale of student loan services and/or debt relief services to Maryland consumers.

9. The Respondents shall immediately cease and desist from violating the MDSSA including, but not limited to: (a) offering, selling, or providing debt settlement services to Maryland consumers without first becoming registered with the Commissioner as a debt settlement services provider under the MDSSA; (b) charging Maryland consumers fees for debt settlement services without becoming registered as a debt settlement services provider and prior to obtaining altered terms of at least one individual debt specified in the agreement; and, (c) making misrepresentations about material aspects of their debt settlement services to Maryland consumers.

10. Unless and until the Respondents fully satisfy the licensing and registration requirements of the MCSBA and the MDSSA, the Respondents shall ensure that all of their oral and written advertisements available to or accessible by consumers in Maryland, including but not limited to any websites and radio advertisements, clearly and conspicuously state that the Respondents cannot offer, sell, or otherwise provide student loan services and/or debt relief

services to consumers in Maryland.

11. In offering, selling, or providing student loan services and/or debt relief services to Maryland consumers, the Respondents shall not fail to:

- a. Provide the consumer an information statement in accordance with the MCSBA prior to entering in a contract for services;
- b. Ensure their agreements with Maryland consumers fully comply with the MCSBA and MDSSA, including but not limited to making all necessary disclosures and including all necessary contract terms; and
- c. Fully apprise the consumer of all of their debt relief options, including all potential advantages and disadvantages of each available program, prior to submitting any paperwork to the U.S. Department of Education or to a federal student loan servicer on behalf of the consumer.

Document Retention

12. For at least ten (10) years from the date of this Order, the Respondents shall maintain copies of all contracts, invoices, and other documents that the Respondents provide to or receive from any Maryland consumer in connection with the offer and/or sale of student loan services and/or debt relief services. The Respondents shall produce the documents that they must maintain pursuant to this paragraph to the Proponent upon request.

13. For at least ten (10) years from the date of this Order, the Respondents shall maintain records concerning all student loan services and/or debt relief services that they provide to Maryland consumers and records of all payments they accept for student loan services and/or debt relief services from Maryland consumers. The Respondents shall produce the documents that they must maintain pursuant to this paragraph to the Proponent upon request.

14. Upon request by the Proponent, the Respondents shall produce to Proponent a copy of the form of any contract that the Respondents send to Maryland consumers in connection with

the offer to provide student loan services and/or debt relief services.

Surety Bond

15. Each of the Respondents shall not offer, sell or provide student loan services and/or debt relief services in Maryland unless the entity or person wishing to do business in Maryland, or any entity through which they are operating, posts a surety bond (the “Bond”) with the Agency, in a form acceptable to the Proponent, in the amount of Fifty Thousand Dollars (\$50,000.00), that meets the following conditions:

- a. The Bond shall be issued by a surety licensed to do business in Maryland (the “Surety”) and shall provide that the entity or person wishing to do business in Maryland and the Surety are held and firmly bound to consumers who suffer any damage or loss in connection with the offer or sale of student loan services and/or debt relief services by the person or entity.
- b. The Bond shall permit any consumer who suffers any damage or loss in connection with the offer or sale of student loan services and/or debt relief services to file a claim for damage or loss with the Surety and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction, and recover against the Surety any damage or loss suffered by the consumer in connection with the offer or sale of student loan services and/or debt relief services, as well as the costs of the legal action.
- c. The Bond shall also permit the Proponent to file a claim with the Surety for any damage or loss suffered by a consumer in connection with the offer and sale of student loan services and/or debt relief services and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, and recover against the Surety for any damage or loss suffered by the consumer in connection with the offer or sale of student loan services and/or debt relief services, as well as the costs of the legal action.
- d. The Bond shall also permit the Proponent to file a claim with the Surety for

expenses it incurs in connection with its enforcement of this Order and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, for the costs and expenses incurred by the Proponent in connection with its enforcement of this Order.

- e. The Bond posted pursuant to this paragraph shall remain in effect until five (5) years from the date the last claim is made against it, or if no claims are made, five (5) years from the date it was first posted.
- f. The Respondents shall provide the Proponent with a copy of the Bond and the Respondents shall maintain accurate records of any premium payments made on it or claims payments made from it. Commencing ninety (90) days from the date of this Order, and annually thereafter for the duration of the Bond, the Respondents shall provide the Proponent with copies of all such records maintained by the Respondents concerning the Bond.
- g. If a claim is filed with the Surety by the Proponent, notice shall be given to the Respondents by mailing a copy of the claim to the Respondents. Any notice to the Respondents that is made under this or any other paragraph of this Order shall be made by mailing such notice, first class mail, postage prepaid, to Henrique Silva, 23923 Windward Lane Valencia, CA 91355, or to such other addresses as the Respondents may designate by written notice to the Proponent, with the limitation that each Respondent designate no more than one individual or entity to receive notice.

In determining the amount of the Bond, the Agency has considered the severity of the violations (that the Respondents took advance payments from consumers, but failed to provide any of the promised goods and services, and failed to provide refunds, causing significant harm to consumers), the Respondents' failure to provide restitution to consumers, and the risk that future consumers will be harmed by the absence of a Bond.

16. If due to changed circumstances, any of the specific prohibitions or affirmative obligations that are imposed by this Order become unnecessary, any party may petition the Agency

to amend this Order.

Restitution, Penalties, and Costs

17. The Agency finds that (a) Maryland consumers were harmed as a result of the Respondents' unfair and deceptive trade practices; (b) Maryland consumers paid the Respondents for services that they did not receive; (c) Respondents collected money from consumers that they were not legally entitled to receive; and (d) the Respondents committed multiple violations of the CPA, the MCSBA, and the MDSSA.

18. Based upon the affidavits presented with the Petition for Entry of Ex Parte Order, the Agency finds that the Respondents and their agents, servants and/or employees took \$2,891.45 from the Maryland consumers whose affidavits were attached to the Petition, that Respondents were not legally entitled to collect that money, that the Respondents failed to provide promised student loan services and/or debt relief services, and that the Respondents failed to provide refunds. Within thirty (30) days of the date of this Cease and Desist Order, the Respondents shall pay the Agency \$2,891.45. The payment made to the Agency shall be placed in an account from which consumers may be paid restitution by the Proponent (hereinafter referred to as the "Restitution Account").

19. In addition to the payment provided for in the preceding paragraph, the Respondents shall also pay restitution to the Proponent equal to the sum of all monies they collected from Maryland consumers for student loan services and/or debt relief services, including but not limited to all up-front and subsequent installment payments and all monthly fees paid by the consumers, as well as the amount of other economic damages that consumers suffered as a result of the Respondents' activities related to consumers' student loans, including but not limited to reimbursing consumers for all student loan payments that consumers made when they were told

by the Respondents or otherwise under the belief caused by the representations of the Respondents that the consumers were making qualifying payments under a loan forgiveness program. The payments made to the Agency under this paragraph shall be placed in the Restitution Account.

20. The Restitution Account shall be maintained by the Proponent. The Proponent may make disbursements from the Restitution Account to pay restitution to eligible consumers and to pay the costs of the claims process approved by the Proponent.

21. Within thirty (30) days after the date of this Order, the Respondents shall provide the Proponent with a list of all Maryland consumers from whom the Respondents have collected any amount for student loan services and/or debt relief services (the "Consumer List"). For each consumer, the Respondents shall provide the following information in the form of a spreadsheet, with each item in a separate field:

- (a) the consumer's first name;
- (b) the consumer's last name;
- (c) the consumer's street address;
- (d) the consumer's city, state, and zip code;
- (e) the consumer's telephone number;
- (f) the date(s) the consumer purchased the student loan services and/or debt relief services;
- (g) a description of the student loan services and/or debt relief services offered or provided to the consumer;
- (h) the total amount the consumer paid for the student loan services and/or debt relief services;
- (i) the total amount that the Respondents collected in student loan payments; and
- (j) the amount of any refund provided to the consumer.

The Respondents shall provide the Consumer List required under this paragraph in electronic format and, if requested by the Proponent, paper format. The Respondents shall also provide a copy of each contract with each consumer and all addenda thereto and a copy of any check or receipt or other proof of payment associated with any refund provided to a consumer.

22. A Claims Administrator may perform a claims process, the purpose of which would

be to identify, locate, and pay restitution to consumers who may be eligible to receive restitution under this Cease and Desist Order. The Claims Administrator may be an independent contractor or an employee of the Proponent and shall perform the above duties under the supervision and control of the Proponent.

23. Within thirty (30) days from the date of this Order, the Respondents shall pay the Agency an initial payment of One Thousand Dollars and Zero Cents (\$1,000.00), which shall be used by the Agency to pay for the claims procedure provided under this Order. The Claims Administrator shall notify the parties of all costs incurred in connection with the claims process. If at any stage of the claims process it is determined that the Restitution Account will require additional payments to satisfy all restitution due under this Cease and Desist Order and to pay the costs of the claims process, the Respondents shall deposit additional money in the amount specified by the Proponent within thirty (30) days of being notified by the Proponent of the additional amount.

24. If it is possible to determine a consumer's entitlement to restitution from sources other than the consumer, restitution may be provided to the consumer without the necessity of the consumer submitting information in the claims process.

25. The Claims Administrator shall perform the tasks necessary to ensure a thorough and efficient determination of consumers' claims pursuant to the terms of this Order.

26. The Respondents shall give the Claims Administrator complete access to all records, data, and personnel necessary for the Claims Administrator to complete his or her duties.

27. If there are insufficient funds collected to provide full restitution to all consumers who may be eligible to receive restitution, benefits may be distributed to consumers on a *pro rata* basis.

28. The Chief of the Agency shall resolve any disputes about the administration of the claims process and enter any supplemental orders needed to effectuate its purpose.

29. If a hearing is held pursuant to § 13-403(d)(3) and (4) of the CPA, the Respondents are subject to a civil penalty in accordance with § 13-410(a), (c), and (d) of the CPA, as determined following the hearing.

30. Within thirty (30) days from the date of this Order, the Respondents shall pay the Proponent Five Thousand Dollars and Zero Cents (\$5,000.00) for the Proponent's costs incurred investigating and prosecuting this matter.

31. The Respondents are jointly and severally responsible for all payments due hereunder.

Resolution of Disputes

32. The Chief of the Agency or his designee shall resolve any disputes regarding this Order and enter any supplemental orders needed to effectuate its purpose.

Notice to the Respondents

33. Pursuant to Md. Code Ann., Com. Law § 13-403(d)(3) and (4), the Respondents may request a hearing on these issues, which hearing shall be held within seven (7) days after the request is received. A request for hearing must be directed to William D. Gruhn, Chief, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, MD 21202 and must be received no later than thirty (30) days after the date of this Cease and Desist Order. If no request for a hearing is made within thirty days after the date of this Cease and Desist Order, the Cease and Desist Order shall become final, pursuant to Md. Code Ann., Com. Law § 13-403(d)(5).

34. Pursuant to Md. Code Ann., Com. Law § 13-403, the Respondents are hereby notified that if the Consumer Protection Division determines that the Respondents have failed to

comply with this Cease and Desist Order within thirty (30) days following this Cease and Desist Order becoming final, the Consumer Protection Division shall proceed with enforcement of the Cease and Desist Order pursuant to Title 13 of the Commercial Law Article.

THIS ORDER IS EFFECTIVE IMMEDIATELY

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

Date: 9/28/17

By: William D. Gruhn
William D. Gruhn
Chief