

ORDER SUMMARY
Consumer Services Division Case Number C-22-3401

Consent Orders resolve investigations. In these, companies and individuals work with us to agree to terms that resolve the alleged issues in the investigation.

Names	Free Mortgage Modification Counseling, LLC Alrick Albert Bainton
Order Number	C-22-3401-23-CO01
Date issued	June 30, 2023

What does this Consent Order require?

- Must pay a fine of \$60,000, with monthly payments of \$1,000 beginning August 1, 2023. *\$50,000 of this fine is stayed (doesn't have to be paid) until June 30, 2026, as long as Respondents comply with the order. The remaining fine goes away on that date if Respondents have complied.*
- Must pay an investigation fee of \$2,460 (investigation fees cover the cost of DFI staff time working on the investigation).
- Must refund \$17,530 to 10 members of the public.
- Respondents aren't allowed to participate in mortgage broker or consumer loan activity in Washington until June 30, 2028.
- Respondents must cease and desist from engaging in conduct that violates the Mortgage Broker Practices Act of Washington.

Need more information?

You can contact the Consumer Services Division, Enforcement unit at (360) 902-9703 or cseforcecomplaints@dfi.wa.gov. *Please remember that we cannot provide financial or legal advice to members of the public. We also cannot release confidential information.*

1 Order to fully resolve the Statement of Charges. Respondents agree not to contest the Statement of
2 Charges in consideration of the terms of this Consent Order.

3 Based upon the foregoing:

4 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
5 of the activities discussed herein.

6 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
7 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all
8 administrative and judicial review of the issues raised in this matter, or of the resolution reached
9 herein. Accordingly, Respondents, by their signatures and the signature of their representatives
10 below, withdraw their appeal to the Office of Administrative Hearings.

11 C. **Cease and Desist.** It is AGREED that Respondents shall cease and desist from all
12 conduct that violates the Act, including, but not limited to, offering residential mortgage loan
13 modification services to Washington consumers, and conducting the business of a mortgage broker
14 and loan originator, without a mortgage broker and loan originator license.

15 D. **Prohibition from Industry.** It is AGREED that for a period of five years from the date
16 of entry of this Consent Order Respondents are prohibited from participation, in any manner, in the
17 conduct of the affairs of any mortgage broker or consumer loan company licensed by the Department
18 or subject to licensure or regulation by the Department.

19 E. **Fine (Partially Stayed).** It is AGREED that Respondents Free Mortgage Modification
20 Counseling, LLC, and Alrick Albert Bainton are jointly and severally liable to pay a fine to the
21 Department in the amount of \$60,000, with \$10,000 paid (Paid Fine) and \$50,000 stayed (Stayed
22 Fine). The Paid Fine shall be paid pursuant to Paragraph G. The Stayed Fine shall be stayed for a
23 period of three (3) years from the date of entry of this Consent Order contingent on Respondents'

1 compliance with the Act, and this Consent Order. Absent any action by the Department to lift the
2 Stayed Fine pursuant to Paragraph I, the Stayed Fine shall expire and be vacated three (3) years from
3 the date of entry of this Consent Order without further action or notice by the Department.

4 **F. Investigation Fee.** It is AGREED that Respondents shall pay an investigation fee of
5 \$2,640 to the Department.

6 **G. Payments.** It is AGREED that Respondents shall pay to the Department prior to entry of
7 this Consent Order the Investigation Fee of \$2,640 in the form of a cashier's check made payable to
8 the "Washington State Treasurer." It is further AGREED that beginning on August 1, 2023,
9 Respondents shall make monthly payments of \$1,000 to the Department by the 1st day of each month
10 in the form of cashier's checks payable to the "Washington State Treasurer" until the entire Paid Fine
11 has been paid. Respondents may elect to pay the outstanding balance of the Paid Fine at any time.

12 **H. Refunds.** It is AGREED that Respondents shall pay refunds totaling \$17,530 to the
13 Washington consumers identified in Appendix A in the form of cashier's checks made payable to the
14 consumers in the amounts indicated in Appendix A. Prior to entry of the Consent Order,
15 Respondents shall give the Department a copy of all refund checks and proof the refunds were mailed
16 to the consumers at the addresses indicated in Appendix A using a mail service that includes tracking.
17 If any refunds are undeliverable, Respondents shall call the phone number on file for the consumer
18 and attempt to obtain a current address for re-mailing. If after making diligent efforts to locate a
19 current address for re-mailing, Respondents are unable to locate a current address, Respondents shall
20 submit the refund to the Washington State Department of Revenue Unclaimed Property Program.

21 **I. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED that:

- 22 **1.** If during the stay, the Department determines that Respondents have not complied
23 with the Act, related rules, or this Consent Order, and the Department seeks to lift the
24 stay and impose the Stayed Fine, the Department will first serve Respondents with a
written notice of alleged noncompliance.

- 1
- 2 **2.** The notice will include:
- 3 **a.** A description of the alleged noncompliance;
- 4 **b.** A statement that the Department seeks to lift the stay and impose the Stayed
- 5 Fine;
- 6 **c.** Notice that either Respondents can contest the Department’s determination
- 7 of noncompliance either in an adjudicative hearing before an Administrative
- 8 Law Judge (ALJ) of the Office of Administrative Hearings (OAH), or by
- 9 submitting a written response to the Department contesting the alleged
- 10 noncompliance; and
- 11 **d.** Notice that the notification and adjudicative hearing process provided in this
- 12 Paragraph applies only to this Consent Order in the event either Respondent
- 13 chooses to contest the Department’s determination of noncompliance.

14 **3.** Any Respondent who wishes to contest the Department’s determination of

15 noncompliance will have twenty (20) days from the date of receipt of the

16 Department’s notice to submit a written request to the Department for an

17 adjudicative hearing.

18 **4.** The scope and issues of the adjudicative hearing are limited solely to whether or not

19 Respondents are in violation of the terms of this Consent Order.

20 **5.** At the conclusion of the hearing, the ALJ will issue an initial decision. Either party

21 may file a Petition for Review of the initial decision with the Director of the

22 Department.

23 **6. DEFAULT:** If any Respondent does not timely either request an adjudicative

24 hearing, or timely submit a written response contesting the alleged noncompliance,

 the Department will impose the Stayed Fine and pursue whatever other enforcement

 action it deems necessary to enforce the Act and Consent Order.

J. Rights of Non-Parties. It is AGREED that the Department does not represent or have the

 consent of any person or entity not a party to this Consent Order to take any action concerning their

 personal legal rights. It is further AGREED that for any person or entity not a party to this Consent

 Order, this Consent Order does not limit or create any private rights or remedies against Respondents,

 limit or create liability of Respondents, or limit or create defenses of Respondents to any claims.

K. Authority to Execute Order. It is AGREED that the undersigned have represented and

 warranted that they have the full power and right to execute this Consent Order on behalf of the

 parties represented.

1 L. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
2 abide by the terms and conditions of this Consent Order may result in further legal action by the
3 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
4 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

5 M. **Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
6 Consent Order, which is effective when signed by the Director's designee.


7 N. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
8 this Consent Order in its entirety and fully understand and agree to all of the same.

9 O. **Counterparts.** This Consent Order may be executed by the parties in any number of
10 counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be deemed
11 to be an original, but all of which, taken together, shall constitute one and the same Consent Order.

12 **RESPONDENTS:**

Free Mortgage Modification Counseling, LLC

13 By:

14 

15 ALRICK ALBERT BAINTON
Owner

Date

16 

17 ALRICK ALBERT BAINTON
Individually

Date

19 Approved for Entry:

20 

21 JEFFERY WHEAT, Attorney at Law
22 Wheat Legal, PLLC WSBA No. 54228
23 Attorney for Respondents

June 13, 2023

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 30th DAY OF June, 2023.



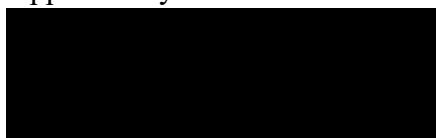
LUCINDA FAZIO, Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



KENDALL FREED
Financial Legal Examiner Supervisor

Approved by:



JACK McCLELLAN
Enforcement Chief

Appendix A

Consumer Name(s) and Address	Total Refund
[REDACTED]	\$1,240
[REDACTED]	\$3,500
[REDACTED]	\$2,250
[REDACTED]	\$5,750
[REDACTED]	\$650
[REDACTED]	\$1,450
[REDACTED]	\$1,650
[REDACTED]	\$350
[REDACTED]	\$350
[REDACTED]	\$340

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
5 Mortgage Broker Practices Act of Washington by:
6
7 **FREE MORTGAGE MODIFICATION
COUNSELING, LLC, and**
8
9 **ALRICK ALBERT BAINTON, Sole Member and**
10 **Owner,**
11
12 **Respondents.**

No. C-22-3401-22-SC01
13 **STATEMENT OF CHARGES and**
14 **NOTICE OF INTENT TO ENTER AN**
15 **ORDER TO CEASE AND DESIST**
16 **BUSINESS, PROHIBIT FROM**
17 **INDUSTRY, ORDER RESTITUTION,**
18 **IMPOSE FINE, COLLECT**
19 **INVESTIGATION FEE, and RECOVER**
20 **COSTS AND EXPENSES**

21 **INTRODUCTION**

22 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial
23 Institutions of the State of Washington (Director) is responsible for the administration of chapter
24 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation
pursuant to RCW 19.146.235, and based upon the facts available as of the date of this Statement of
Charges, the Director, through his designee, Division of Consumer Services Director Lucinda Fazio,
institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Respondent Free Mortgage Modification Counseling, LLC (Respondent FMCC), has
never been licensed by the Department of Financial Institutions of the State of Washington
(Department) to conduct business as a mortgage broker. Respondent FMCC, its representatives, or
third parties acting on its behalf, are all hereinafter referred to as Respondent FMCC. Respondent
FMCC paid third parties to perform residential mortgage loan modification services and to hold
themselves out as being able to perform residential mortgage loan modification services on behalf of
FMCC.

1 **B. Respondent Arlick Albert Bainton (Respondent Bainton)** is the sole member and owner
2 of Respondent FMCC. Respondent Bainton has never been licensed by the Department to conduct
3 business as a mortgage broker or loan originator.

4 **1.2 Unlicensed Activity.** Between September of 2020 and at least as recent as April of 2022,
5 Respondents offered residential mortgage loan modification services to Washington consumers related
6 to real property located in Washington State. Respondents entered into a relationship with at least 10
7 Washington consumers to provide those services.

8 **1.3 Advertising.** Between at least March 8, 2022, and October 12, 2022, Respondent FMCC
9 advertised, marketed, or offered to provide, residential mortgage loan modification services on the
10 internet, including through the use of the website freemmc.com. Despite Respondent FMCC’s name
11 representing that their services were “free,” and Respondent FMCC’s website representing their
12 services were “free and easy” and that they offered a “free case analysis,” Respondent FMCC asked
13 for or received payment from Washington consumers.

14 **1.4 Collected Advanced Fees.** Respondent FMCC asked for or received payment for residential
15 mortgage loan modification services from at least 10 Washington consumers prior to the consumers
16 executing written agreements with their mortgage servicer that incorporate the offer of mortgage
17 assistance relief Respondent FMCC obtained, if at all, from the consumer’s mortgage servicer. A list
18 of Washington consumers with whom Respondents conducted business as a mortgage broker or loan
19 originator, and the amount collected from each as an advance fee is appended hereto as Appendix A
20 and incorporated herein by reference. The Washington consumers paid Respondents at least \$23,690
21 in advance fees for providing or offering to provide residential mortgage loan modification services.

22 **1.5 Misrepresentations and Omissions.** Respondents represented that they were licensed to
23 provide the residential mortgage loan modification services or omitted disclosing that they were not
24 licensed to provide those services.

1 **1.6 False, Deceptive, and Misleading Claims.** Respondent FMCC told at least one Washington
2 consumer to make monthly payments to Respondent FMCC and said that Respondent FMCC would
3 submit monthly mortgage payments to the consumer's mortgage servicer and that Respondent FMCC
4 would keep a portion of the payment for their services. Respondent FMCC also told the consumer not
5 to accept a loan modification offer that was made by the consumer's mortgage servicer and instead
6 Respondent FMCC represented that they could obtain a loan modification with a lower interest rate
7 and a portion of the loan balance forgiven. Respondent FMCC did not submit payments to the
8 consumer's mortgage servicer, nor did Respondent FMCC assist the consumer in obtaining a loan
9 modification with a lower interest rate, or a portion of the loan balance forgiven.

10 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the
11 Act by Respondents continues to date.

12 **II. GROUNDS FOR ENTRY OF ORDER**

13 **2.1 Mortgage Broker Defined.** Pursuant to RCW 19.146.010(14), "Mortgage broker" means any
14 person who for direct or indirect compensation or gain, or in the expectation of direct or indirect
15 compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan
16 or performs residential mortgage loan modification services or (b) holds himself or herself out as being
17 able to assist a person in obtaining or applying to obtain a residential mortgage loan or provide
18 residential mortgage loan modification services.

19 **2.2 Loan Originator Defined.** Pursuant to RCW 19.146.010(11)(b), "Loan originator" means a
20 natural person who for direct or indirect compensation or gain or in the expectation of direct or
21 indirect compensation or gain performs residential mortgage loan modification services or holds
22 himself or herself out as being able to perform residential mortgage loan modification services.

23 **2.3 Requirement to Obtain and Maintain Mortgage Broker License.** Based on the Factual
24 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.200(1)

1 for engaging in the business of a mortgage broker for Washington residents or property without first
2 obtaining a license to do so.

3 **2.4 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual
4 Allegations set forth in Section I above, Respondents' paid third parties to perform the activities of a
5 loan originator without a license in apparent violation of RCW 19.146.200(1). Pursuant to RCW
6 19.146.200(3), a principal or owner who has supervisory authority over a mortgage broker is
7 responsible for a licensee's employee's, or independent contractor's violations of the Act or rules if: (a)
8 The designated broker, principal, or owner directs or instructs the conduct or, with knowledge of the
9 specific conduct, approves or allows the conduct; or (b) the designated broker, principal, or owner who
10 has supervisory authority over the licensed mortgage broker knows or by the exercise of reasonable
11 care and inquiry should have known of the conduct, at a time when its consequences can be avoided or
12 mitigated and fails to take reasonable remedial action.

13 **2.5 Prohibition Against Taking Advance Fees.** Based on the Factual Allegations set forth in
14 Section I above, Respondents are in apparent violation of RCW 19.146.0201(11) and 12 C.F.R.
15 §1015.5(a) for requesting or receiving payment of any fee or other consideration before the consumer
16 has executed a written agreement between the consumer and the consumer's mortgage servicer that
17 incorporates the offer of mortgage assistance relief that Respondents obtained from the consumer's
18 mortgage servicer.

19 **2.6 Additional Prohibited Acts.** Based on the Factual Allegations set forth in Section I above,
20 Respondents are in apparent violation of RCW 19.146.0201(2) for engaging in an unfair or deceptive
21 practice toward any person; RCW 19.146.0201(3) for obtaining property by fraud or
22 misrepresentation; and RCW 19.146.0201(11) and 12 C.F.R. §1015.3(b)(1) for misrepresenting,
23 expressly, or by implication, any material aspect of any mortgage assistance relief service, including,
24 but not limited to, the likelihood of negotiating, obtaining, or arranging any result.

1 **2.7 Application of the Consumer Protection Act.** Pursuant to 19.146.100, any violation of the
2 Act is not reasonable in relation to the development and preservation of business and is an unfair or
3 deceptive act or practice and unfair method of competition in the conduct of trade or commerce in
4 violation of RCW 19.86.020.

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(3), the
7 Director may issue orders directing any person subject to the Act to cease and desist from conducting
8 business.

9 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(4), the Director may
10 issue orders prohibiting from participation in the conduct of the affairs of a licensed mortgage broker
11 any person subject to licensing under the Act for any violation of the Act.

12 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may order
13 restitution and refunds be made by any person subject to the Act for any violation of the Act.

14 **3.4 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines
15 against any person subject to the Act for any violation of the Act.

16 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-
17 550(4)(a), the Department will charge \$48 per hour for an examiner's time devoted to an investigation
18 of any person subject to the Act.

19 **3.6 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director
20 may recover the state's costs and expenses for prosecuting violations of the Act.

21 //

22 //

23 //

24 //

1 **IV. NOTICE OF INTENT TO ENTER ORDER**

2 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as
3 set forth above constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221,
4 and RCW 19.146.223. Therefore, it is the Director's intent to ORDER that:

- 5 **4.1** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton cease and
6 desist engaging in the business of a mortgage broker or loan originator.
- 7 **4.2** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton be prohibited
8 from participation, in any manner, in the conduct of the affairs of any mortgage broker
9 subject to licensure by the Director for a period of seven years.
- 10 **4.3** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton, within 30
11 days of entry of a Final Order in this matter, jointly and severally pay restitution to the
12 seven (7) consumers identified in Appendix B to this Statement of Charges in the
13 amounts set forth therein, ¹ and that Respondents Free Mortgage Modification, LLC, and
14 Arlick Albert Bainton jointly and severally pay restitution to all other Washington
15 consumers with whom they offered or provided residential mortgage loan modification
16 services related to real property or consumers located in the state of Washington equal
17 to the amount collected from each Washington consumer for those services.
- 18 **4.4** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton jointly and
19 severally pay a fine, which as of the date of this Statement of Charges totals \$60,000.
- 20 **4.5** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton jointly and
21 severally pay an investigation fee, which as of the date of this Statement of Charges
22 totals \$2,164.80.
- 23 **4.6** Respondents Free Mortgage Modification, LLC, and Arlick Albert Bainton maintain
24 records in compliance with the Act and provide the Department with the location of the
books, records and other information relating to Respondents' provision of residential
mortgage loan modification services in Washington, and the name, address and
telephone number of the individual responsible for maintenance of such records in
compliance with the Act.
- 4.7** Respondent Free Mortgage Modification, LLC, and Arlick Albert Bainton pay the
Department's costs and expenses for prosecuting violations of the Act in an amount to
be determined at hearing or by Declaration with supporting documentation in event of
default by any Respondent.

¹ Four consumers listed on Appendix A are not included in Appendix B because as of the date of this Statement of Charges, it appears based on Respondents representations to the Department that these four consumers were previously given a refund of amounts paid to Respondent FMMC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

V. AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING AND TO DEFEND accompanying this Statement of Charges.

Dated this 27th day of October, 2022.



Lucinda Fazio, Director
Division of Consumer Services
Department of Financial Institutions

P [Redacted signature]

KENDALL FREED
Financial Legal Examiner

Approved by:
[Redacted signature]

JACK McCLELLAN
Enforcement Chief

Appendix A

Consumer Name(s) and Address	Amounts Paid	Dates Paid	Amount Refunded and Date
[REDACTED]	\$1,240	10/28/2020	
[REDACTED]	\$3,500	04/13/2021	
[REDACTED]	\$2,600	1/7/2021	\$2,600 on 8/5/2021
[REDACTED]	\$1,100	3/31/2021	
[REDACTED]	\$1,150	5/25/2021	
[REDACTED]	\$650	12/1/2021	
[REDACTED]	\$3,300	12/17/2021	
[REDACTED]	\$3,300'	01/10/2022	
[REDACTED]	\$1800	2/10/2022	
[REDACTED]	\$1,000	5/24/2021 6/15/2021	\$2,000 on 8/21/2021
[REDACTED]	\$1,000	6/15/2021	
[REDACTED]	\$1,300	5/4/2021	\$1,300 on 9/26/2021
[REDACTED]	\$1,300	5/6/2021	\$1,300 on 8/3/2021
[REDACTED]	\$650	2/3/2021	
[REDACTED]	\$1,450	10/04/2021	
[REDACTED]	\$550	12/22/2021	
[REDACTED]	\$550	1/26/2022	
[REDACTED]	\$550	3/3/2022	

Appendix B

Consumer Name(s) and Address	Amounts Paid	Dates Paid	Total Restitution
[REDACTED]	\$1,240	10/28/2020	\$1,240
[REDACTED]	\$3,500	04/13/2021	\$3,500
[REDACTED]	\$1,100	3/31/2021	\$2,250
	\$1,150	5/25/2021	
[REDACTED]	\$650	12/1/2021	\$5,750
	\$3,300	12/17/2021	
	\$3,300'	01/10/2022	
	\$1800	2/10/2022	
[REDACTED]	\$650	2/3/2021	\$650
[REDACTED]	\$1,450	10/04/2021	\$1,450
[REDACTED]	\$550	12/22/2021	\$1,650
	\$550	1/26/2022	
	\$550	3/3/2022	