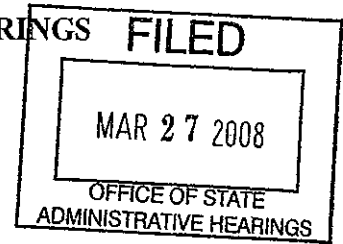


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



GEORGIA PREMIER LENDING
CORPORATION,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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* Docket Number:
* OSAH-DBF-MBL-0818772-67-Howells
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INITIAL DECISION

Respondent filed its affidavit supported Motion for Summary Determination on January 31, 2008. Petitioner did not file a response to the motion. For the reasons stated below, Respondent's Motion for Summary Determination is **GRANTED**.

I. FINDINGS OF FACT

The following facts are undisputed:

1.

Starting on June 20, 2005, the Department initiated its examination of Georgia Premier Lending Corporation ("Georgia Premier"), which was licensed as a mortgage broker on January 7, 2005. (Hester Aff. ¶ 4). During the examination, the Department requested that Mr. Alvaro Cubias, the owner of Georgia Premier, complete the Officer's Questionnaire for Georgia Premier. (Hester Aff. ¶ 5; *see* Ex. C). As indicated in the Officer's Questionnaire provided to the Department, Alvaro Cubias is the sole owner and president of Georgia Premier. (*See* Ex. C at 4-5, 4-18 & 4-19).

Evelin Morales' "Work" at Georgia Premier Lending Corporation

2.

During the examination, Mr. Cubias identified a desk at Georgia Premier's place of business belonging to Evelin Morales a/k/a Evelyn Morales. (Hester Aff. ¶ 6). While in Ms. Morales' office, the Department's examiner discovered a stack of bank statements – some of which contained hand written computations. (Hester Aff. ¶ 6, Exs. D-1, D-2 & D-3). In addition, the examiner discovered various other mortgage related documents in Ms. Morales' office, including a settlement statement, a payoff statement, and a response from Bank of America regarding a verification of deposit request. (Hester Aff. ¶ 6, Ex. E). When the examiner returned to Georgia Premier the next day to continue the exam, the bank statements were no longer in Ms. Morales' office. (Hester Aff. ¶ 6). Despite repeated requests for those statements, Mr. Cubias did not produce the documents. (*Id.*)

3.

Although Ms. Morales had an office at Georgia Premier and mortgage related documents were located in her office, the Officer's Questionnaire completed by Georgia Premier does not list Ms. Morales as a current or former employee. (*See* Ex. C at 4-19). The examiner asked Mr. Cubias to explain this discrepancy. (Hester Aff. ¶ 7). Mr. Cubias stated that Ms. Morales reviewed the bank statements of loan applicants for Georgia Premier. (*Id.*) Mr. Cubias also provided a written response to the examiner's inquiry which was received by the Department on June 28, 2005. (*Id.*; *see* Ex. F). The letter states that "Evelyn Morales was originally supposed to commence working with my company 'Georgia Premier Lending' when it first started running." (Ex. F). According to Mr. Cubias, Ms. Morales never completed an employment application. (*Id.*) However, he elaborated that Sherila Caquias, an employee of Georgia Premier, "allowed

Evelyn Morales to come to [Georgia Premier's] office and use a company computer knowing well that she was not an employee." (Ex. F). Mr. Cubias also indicated that Ms. Morales removed the bank statements from Georgia Premier's office. (*See id.* ("[f]rom the day our examination was complete to this day I have been trying to get a hold of Evelyn Morales so that she may complete her employment application and hand me the original bank statements as per your request[]")).

4.

Evelyn Morales a/k/a Evelin Morales is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Shelley Aff. ¶ 4). Ms. Morales has never been individually licensed or registered with the Department as a mortgage lender or mortgage broker. (*Id.*)

5.

Ms. Morales processed the loan applications for at least three borrowers – Jose Pineda, Felipe Vasquez, and Jose Arqueta – on behalf of Georgia Premier by “reviewing” their bank statements. (Hester Aff. ¶¶ 6-7; *see* Exs. D-1, D-2, & D-3; Stimac Aff. ¶¶ 4 - 5; Ricard Aff. ¶ 4).

Loan of Jose Pineda

6.

During the examination, the Department reviewed the loan file of Jose Pineda for the property located at 5923 Jim Crow Road, Flowery Branch, Georgia 30542. (Hester Aff. ¶ 8). The loan application for this property indicates that Alvaro Cubias took the loan application on behalf of Georgia Premier. (Ex. G; Hester Aff. ¶ 8). The loan application states that Mr. Pineda had \$4,533.00 on deposit in Bank of America account number 009514719048. (*See* Ex. G). In addition, the examiner discovered in Mr. Pineda's loan file two bank statements indicating that

Mr. Pineda had in excess of \$4,500.00 on deposit at Bank of America. One bank statement for the period of January 24, 2005 through February 23, 2005 indicated that Mr. Pineda had an ending balance of \$4,898.20, while the other bank statement for the period of February 24, 2005 through March 23, 2005 indicated that Mr. Pineda had an ending balance of \$4,532.69. (Hester Aff. ¶ 8; *see* Ex. H).

7.

However, the bank statements discovered by the Department were not legitimate records of Bank of America, N.A. (*See* Jan. 8, 2008 Trapp Aff. ¶ 2). Contrary to the representation in one of the bank statements that Mr. Pineda's account was open as of January 24, 2005, bank account number 009514719048 was not opened until March 23, 2005. (*Id.*) Because account number 009514719048 was not opened until March 23, 2005, the bank statements for January 24, 2005 through February 23, 2005 and February 24, 2005 through March 23, 2005 are necessarily false or fabricated statements. Furthermore, because the account was not opened until March 23, 2005, the balance information in the fabricated statements is also false. Finally, the account balance on the loan application is also false because it is supported by the false February 24, 2005 through March 23, 2005 bank statement. (*See* Stimac Aff. ¶ 4, Exs. 1, 2).

8.

A bank statement for Mr. Pineda for the period of January 21, 2005 through February 23, 2005 was among the bank statements discovered by the examiner in Ms. Morales' office at Georgia Premier.¹ The number in the column of "Other Subtractions" on that statement had been blacked out and annotated with the hand written notation "268.09 = 67.56." (Ex. D-1). The statement did not have a heading for "ATM and Debit Card Subtractions." (*See id.*) These handwritten

¹ (Hester Aff. ¶ 6, Ex. D-1). Because Mr. Pineda did not open this account at Bank of America until March 23, 2005, the underlying document found in Ms. Morales' office by the examiner was false. (Trapp Aff. ¶ 2).

notations were incorporated into the altered bank statement for the period of January 24, 2005 through February 23, 2005 found in the loan file of Mr. Pineda and submitted to the lender. (Ex. H; Stimac Aff. ¶ 4, Ex. 2). The bank statement for January 24, 2005 through February 23, 2005 in Mr. Pineda's loan file indicates that he had "ATM and Debit Card Subtractions" in the amount of \$268.09 and "Other Subtractions" in the amount of \$67.56. (Ex. H; Stimac Aff., Ex. 2).

9.

Georgia Premier submitted Mr. Pineda's loan package to Irwin Mortgage Corporation ("Irwin") for funding. (Stimac Aff. ¶ 4). On April 27, 2005, Irwin funded Mr. Pineda's loan. (Stimac Aff. ¶ 4). Irwin relied on the information in the loan file including the information in the loan application as well as the produced bank statements to decide to fund Mr. Pineda's loan. (Stimac Aff. ¶ 4, Exs. 1 & 2). A borrower's bank account balance is a material factor to Irwin in determining whether to fund a loan and, if the loan is funded, the amount of interest charged on the loan. (Stimac Aff. ¶ 4). It is a material factor because it is an indication of the borrower's liquidity and, therefore, the borrower's ability to make his or her mortgage payments in the event of a financial crisis, such as the loss of a job. (*Id.*) If Irwin had known that the account balance listed on the bank statement and the loan application was false, then Irwin would not have funded the loan. (*Id.*)

Loan of Jose Argueta

10.

During the examination, the Department reviewed the loan file of Jose Argueta for the property located at 2920 Evergreen Hollow Drive, Gainesville, Georgia 30507. (Hester Aff. ¶ 9). The loan application for this property indicates that Alvaro Cubias took the loan application on behalf of Georgia Premier. (Hester Aff. ¶ 9; Ex. I). The loan application states that Mr. Argueta had

\$4,791.62 on deposit in Bank of America account number 003340148587. (Ex. I). In addition, the examiner discovered in Mr. Argueta's loan file two bank statements indicating that Mr. Argueta had in excess of \$4,700.00 on deposit at Bank of America. One bank statement for the period of February 23, 2005 through March 22, 2005 indicated that Mr. Argueta had an ending balance of \$5,216.83, while the other bank statement for the period of March 23, 2005 through April 22, 2005 indicated that Mr. Argueta had an ending balance of \$4,791.62. (Hester Aff. ¶ 9; Ex. J).

11.

However, the bank statements discovered by the Department were not legitimate records of Bank of America, N.A. (See Jan. 4, 2008 Trapp Aff. ¶ 2). Contrary to the representation in one of the bank statements that Mr. Argueta's account was open as of February 23, 2005, bank account number 003340148587 was not opened until May 9, 2005. (*Id.*) Because account number 003340148587 was not opened until May 9, 2005, the bank statements for February 23, 2005 through March 22, 2005 and March 23, 2005 through April 22, 2005 are necessarily false or fabricated statements. Furthermore, because the account was not opened until May 9, 2005, the balance information in the fabricated statements is also false. Finally, the account balance on the loan application is also false because it is supported by the false March 23, 2005 through April 22, 2005 bank statement. (See Stimac Aff. ¶ 5, Exs. 4, 5).

12.

A bank statement for Mr. Argueta for the period of February 23, 2005 through March 22, 2005 was among the bank statements discovered by the examiner in Ms. Morales' office at Georgia Premier.² The number in the column of "ATM and Debit Card Subtractions" on that statement is

² (Hester Aff. ¶ 6, Ex. D-2). Because Mr. Argueta did not open this account at Bank of America until May 9, 2005, the underlying document found in Ms. Morales' office by the examiner was false. (Marshall Aff. ¶ 2).

\$467.31. (Ex. D-2). Next to this number is the handwritten notation "317.31". (*Id.*) In addition, the statement includes the handwritten notation "Other Withdraws 150.00." (*Id.*) The ending balance according to this statement is \$4,216.83. (*Id.*) These handwritten notations were incorporated into the altered bank statement for the period of February 23, 2005 through March 22, 2005 found in the loan file of Mr. Argueta and submitted to the lender. (Ex. J; Stimac Aff. ¶ 5, Ex. 5). The bank statement in Mr. Argueta's loan file for February 23, 2005 through March 22, 2005 indicates that he had "ATM and Debit Card Subtractions" in the amount of \$317.31 and "Other Subtractions" in the amount of \$150.00. (Ex. J). In addition, the bank statement in Mr. Argueta's loan file indicates that he had an ending balance of \$5,216.83. (*Id.*)

13.

Georgia Premier submitted Mr. Argueta's loan package to Irwin Mortgage Corporation ("Irwin") for funding. (Stimac Aff. ¶ 5). On June 15, 2005, Irwin funded Mr. Argueta's loan. (*Id.*) Irwin relied on the information in the loan file including the information in the loan application as well as the produced bank statement to decide to fund Mr. Argueta's loan. (Stimac Aff. ¶ 5, Exs. 4 & 5). A borrower's bank account balance is a material factor to Irwin in determining whether to fund a loan and, if the loan is funded, the amount of interest charged on the loan. (Stimac Aff. ¶ 5). It is a material factor because it is an indication of the borrower's liquidity and, therefore, the borrower's ability to make his or her mortgage payments in the event of a financial crisis, such as the loss of a job. (*Id.*) If Irwin had known that the account balance listed on the bank statement and the loan application was false, then Irwin would not have funded the loan. (*Id.*)

Loan of Felipe Vasquez

14.

During the examination, the Department reviewed the loan file of Felipe Vasquez for the property located at 714 Catherine Street, Forest Park, Georgia 30297. (Hester Aff. ¶ 10). The loan application for this property indicates that Alvaro Cubias took the loan application on behalf of Georgia Premier. (Hester Aff. ¶ 10; *see* Ex. K). The loan application states that Mr. Vasquez had \$17,467.00 on deposit in Bank of America account number 003258986605. (Ex. K). In addition, the examiner discovered in Mr. Vasquez's loan file a bank statement for the period of March 11, 2005 through April 8, 2005 indicating that Mr. Vasquez had an ending balance of \$17,879.61 in this account. (Hester Aff. ¶ 10; Ex. L).

15.

However, the bank statement discovered by the Department was not a legitimate record of Bank of America, N.A. (*See* Marshall Aff. ¶ 2). Contrary to the representations in the loan application and the bank statement that Mr. Vasquez had an account balance in excess of \$17,000.00, the highest balance in Mr. Vasquez's checking account for this period was \$2,499.42. (*Id.*)

16.

A bank statement for Mr. Vasquez for the period of March 11, 2005 through April 8, 2005 was among the bank statements discovered by the examiner in Ms. Morales' office at Georgia Premier. (Hester Aff. ¶ 6, Ex. D-3). The number in the column of "Qualifying Balance" had been blacked out and replaced with the hand written notation "18,805.71." (Ex. D-3). The number in the column of "Total" had been crossed out and replaced with the hand written notation "18,805.71." (*Id.*) These handwritten notations were incorporated into the altered bank statement found in the loan file of Mr. Vasquez and submitted to the lender. (Ex. L; Ricard Aff.

¶ 4, Ex. 2). The bank statement in Mr. Vasquez's loan file indicates that he had a "Qualifying Balance" in the amount of \$18,805.71 and "Total" in the amount of \$18,805.71. (Ex. L).

17.

Georgia Premier submitted Mr. Vasquez's loan package to Webster Bank, N.A. ("Webster") for funding. (Ricard Aff. ¶ 4). On June 14, 2005, Webster funded Mr. Vasquez's loan. (*Id.*) Webster relied on the information in the loan file including the information in the loan application as well as the produced bank statement to decide to fund Mr Vasquez's loan. (Ricard Aff. ¶ 4, Exs. 1 & 2). A borrower's bank account balance is a material factor to Webster in determining whether to fund a loan and, if the loan is funded, the amount of interest charged on the loan. (Ricard Aff. ¶ 4). It is a material factor because it is an indication of the borrower's liquidity and, therefore, the borrower's ability to make his or her mortgage payments in the event of a financial crisis, such as the loss of a job. (*Id.*) If Webster had known that the account balance listed on the bank statement and the loan application was false, then Webster would not have funded the loan. (*Id.*)

Loan of Javier Sanchez

18.

During the examination, the Department reviewed the loan file of Javier Sanchez for the property located at 2930 Willow Ridge Circle, SW, Gainesville, Georgia 30504. (Hester Aff. ¶ 11). The loan application for this property indicates that Alvaro Cubias took the loan application on behalf of Georgia Premier. (Hester Aff. ¶ 11; Ex. M). The loan application states that Mr. Sanchez had \$6,773.38 on deposit in Wachovia account number 1010096589728. (Ex. M). In addition, the examiner discovered in Mr. Sanchez's loan file a bank statement for the period of December 31,

2004 through January 28, 2005 indicating that Mr. Sanchez had an ending balance of \$6,773.38. (Hester Aff. ¶ 11; *see* Ex. N).

19.

However, the bank statement discovered by the Department was not a legitimate record of Wachovia Bank, N.A. (Quinones-Perry Aff. ¶ 5, Ex. 2). Contrary to the representations in the loan application and the bank statement that Mr. Sanchez had an account balance of \$6,773.38, the highest balance in Mr. Sanchez's checking account for this period was \$1,093.94. (Quinones-Perry Aff. ¶ 4, Ex. 1).

20.

Georgia Premier submitted Mr. Sanchez's loan package to Irwin for funding. (Stimac Aff. ¶ 6). On April 20, 2005, Irwin funded Mr. Sanchez's loan. (*Id.*) Irwin relied on the information in the loan file including the information in the loan application as well as the produced bank statement to decide to fund Mr Sanchez's loan. (Stimac Aff. ¶ 6, Exs. 7 & 8). A borrower's bank account balance is a material factor to Irwin in determining whether to fund a loan and, if the loan is funded, the amount of interest charged on the loan. (Stimac Aff. ¶ 6). It is a material factor because it is an indication of the borrower's liquidity and, therefore, the borrower's ability to make his or her mortgage payments in the event of a financial crisis, such as the loss of a job. (*Id.*) If Irwin had known that the account balance listed on the bank statement and the loan application was false, then Irwin would not have funded the loan. (*Id.*)

Loan of Luciano Paz

21.

During the examination, the Department reviewed the loan file of Luciano Paz for the property located at 311 Engle Drive, Tucker, Georgia 30084. (Hester Aff. ¶ 12). The loan application for

this property indicates that Alvaro Cubias took the loan application on behalf of Georgia Premier. (Hester Aff. ¶ 12; *see* Ex. O). The loan application states that Mr. Paz had \$3,386.00 on deposit in Wachovia account number 1010116613163. (*See* Ex. O). In addition, the examiner discovered in Mr. Paz's loan file a bank statement for the period of February 26, 2005 through March 29, 2005 indicating that Mr. Paz had an ending balance of \$3,563.38. (Hester Aff. ¶ 12; Ex. P).

22.

However, the bank statements discovered by the Department were not legitimate records of Wachovia Bank, N.A. (Quinones-Perry Aff. ¶ 7). Contrary to the representations in the loan application and the bank statement that Mr. Paz had an account balance in excess of \$3,300.00, the highest balance in Mr. Paz's account for this period was \$200.00. (Quinones-Perry Aff. ¶ 6, Ex. 3).

23.

Georgia Premier submitted Mr. Paz's loan package to Irwin for funding. (Stimac Aff. ¶ 7). On May 26, 2005, Irwin funded Mr. Paz's loan. (*Id.*). Irwin relied on the information in the loan file including the information in the loan application as well as the produced bank statement to decide to fund Mr Paz's loan. (Stimac Aff. ¶ 7, Exs. 10 & 11). A borrower's bank account balance is a material factor to Irwin in determining whether to fund a loan and, if the loan is funded, the amount of interest charged on the loan. (Stimac Aff. ¶ 7). It is a material factor because it is an indication of the borrower's liquidity and, therefore, the borrower's ability to make his or her mortgage payments in the event of a financial crisis, such as the loss of a job. (*Id.*) If Irwin had known that the account balance listed on the bank statement and the loan application was false, then Irwin would not have funded the loan. (*Id.*)

As a result of the investigation, the Department issued a Notice of Intent To Revoke Annual License to Georgia Premier on February 10, 2006. (*See Ex. A*). Petitioner timely requested a hearing before this Tribunal pursuant to O.C.G.A. § 7-1-1018. (*See Ex. B*).

II. CONCLUSIONS OF LAW

1.

On motion for summary determination, the moving party must show by supporting affidavits or other probative evidence that there is no genuine issue of material fact for determination. GA. COMP. R. & REGS. r. 616-1-2-.15(1). When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show by supporting affidavit(s) or other probative evidence that there is a genuine issue of material fact for determination. GA. COMP. R. & REGS. r. 616-1-2-.15(3).

2.

Respondent asserts that Georgia Premier violated Georgia Code Section 7-1-1002(c) by directly or indirectly controlling a person who violated Code Section 7-1-1002(a). Code Section 7-1-1002 states, in pertinent part:

(a) On and after July 1, 1993, it is prohibited for any person to transact business in this state directly or indirectly as a mortgage broker or a mortgage lender unless such person:

(1) Is licensed or registered as such by the department;

(2) Is a person exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001; or

(3) In the case of an employee of a mortgage broker or mortgage lender, such person has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (11) of Code Section 7-1-1001.

* * *

(c) On or after July 1, 1996, every person who directly or indirectly controls a person who violates subsection (a) or (b) of this Code section, every general

partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

O.C.G.A. § 7-1-1002 (2007).

3.

The Georgia Residential Mortgage Act defines “mortgage broker” to include “any person who directly or indirectly solicits, *processes*, places, or negotiates mortgage loans for others”

O.C.G.A. § 7-1-1000(11) (emphasis added). “Person” is defined as “any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.” O.C.G.A. § 7-1-1000(14). Thus, pursuant to Code Section 7-1-1002(a), an individual is prohibited from processing, soliciting or negotiating mortgage loans unless the individual is licensed or is exempted from the licensing requirement. In the event a company directly or indirectly controls a person who violates Code Section 7-1-1002(a), then the company also violates Code Section 7-1-1002(a). O.C.G.A. § 7-1-1002(c).

Violation Related to Evelin Morales’ “Work” at Georgia Premier Lending Corporation

4.

Ms. Morales processed the loan applications for at least three borrowers, Jose Pineda, Felipe Vasquez, and Jose Arqueta on behalf of Georgia Premier by “reviewing” their bank statements. (See Findings of Fact ¶ 5). Ms. Morales has never been licensed or registered with the Department as a mortgage broker or mortgage lender. (See Findings of Fact ¶ 4). Thus, Ms. Morales was transacting business as a mortgage broker in violation of Code Section 7-1-1002(a).

5.

Employees of licensees are exempt from registration. O.C.G.A. § 7-1-1001(11). However, Mr. Cubias informed the Department that Ms. Morales was not an employee of Georgia Premier. (See Findings of Fact ¶ 3). Therefore, this exception does not apply. The exceptions contained in Code Sections 7-1-1001(3), (4), (5), (6), (8), (12), and (13) apply to natural persons. O.C.G.A. §§ 7-1-1001(3), (4), (5), (6), (8), (12) & (13). However, these exceptions do not apply to individuals who broker mortgage loans for licensed mortgage brokers. *See id.*

6.

By handling documents relevant to the loan files of Jose Pineda, Felipe Vasquez, and Jose Arqueta, Ms. Morales “directly or indirectly” processed these loans. Ms. Morales was not a licensed mortgage broker, nor was she exempt from the license requirement because she was not an “employee” of Georgia Premier. Accordingly, Georgia Premier violated Code Section 7-1-1002(c) by having Ms. Morales process three loans on its behalf.

7.

Pursuant to Code Section 7-1-1017(a)(1), the Department may revoke a license for any violation of the Georgia Residential Mortgage Act. O.C.G.A. § 7-1-1017(a). Georgia Premier violated the prohibition found in Code Section 7-1-1002(c) by directly or indirectly controlling an individual who violated Code Section 7-1-1002(a). Therefore, the Department’s decision to revoke Georgia Premier’s license based on a violation of Code Section 7-1-1002(c) was valid.

Violations Related to the Loans of Jose Pineda, Jose Arqueta, Felipe Vasquez, Javier Sanchez, and Luciano Paz

8.

Respondent asserts that Georgia Premier violated the prohibitions found in Georgia Code Sections 7-1-1013(1), (2) and (6) by submitting false information regarding the deposit history of

several borrowers to two lenders. Prior to May 5, 2005, Code Section 7-1-1013 stated, in pertinent part:

It is prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts or make false statements or promises likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or pursue a course of misrepresentation to the department or anyone through agents or otherwise;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

* * *

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, or sale of any mortgage loan[.]

O.C.G.A. § 7-1-1013 (2004).

9.

Subsequent to a 2005 amendment, which became effective May 5, 2005, Code Section 7-1-1013 stated, in pertinent part:

It is prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts, made false statements or promises, or submit false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

* * *

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan[.]

O.C.G.A. § 7-1-1013 (amended 2005).

10

Prior to May 5, 2005, Code Section 7-1-1000(10) stated that the term “[m]isrepresent” means to make a false statement of a substantive fact or to engage in, with the intent to deceive or mislead, any conduct which leads to a false belief which is material to the transaction.” O.C.G.A. § 7-1-1000(10) (2004).

11.

The 2005 Amendment rewrote Code Section 7-1-1000(10). Subsequent to the amendment, which became effective May 5, 2005, Code Section 7-1-1013 stated “[m]isrepresent” means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.” O.C.G.A. § 7-1-1000(10) (amended 2005).

12

By submitting the loan applications and the bank statements which misrepresented the bank account balances for Mr. Pineda, Mr. Argueta, Mr. Vasquez, Mr. Sanchez, and Mr. Paz – Georgia Premier misrepresented the funds available to these individuals. The lenders would not have funded the loans for these individuals if they had known that their bank account

information was false. (See Findings of Fact ¶¶ 9, 13, 17, 20 & 23). Georgia Premier's misrepresentations caused the lenders to take loans on terms that they would otherwise not have taken. Accordingly, Georgia Premier violated Section 7-1-1013(1).

13.

A borrower's bank balance is a material factor to lenders in deciding whether to fund a loan or the amount of interest to charge. (See Findings of Fact ¶¶ 9, 13, 17, 20 & 23). By misrepresenting the funds available to Mr. Pineda, Mr. Argueta, Mr. Vasquez, Mr. Sanchez, and Mr. Paz in connection with the mortgage loan applications submitted to the lenders, Georgia Premier misrepresented material factors to the lenders and, therefore, violated Section 7-1-1013(2). (*Id.*)

14.

Additionally, by submitting to the lenders the loan applications and bank statements for Mr. Pineda, Mr. Argueta, Mr. Vasquez, Mr. Sanchez, and Mr. Paz – all of which contained false account balances – Georgia Premier engaged in a practice which was not in good faith or fair dealing with the lenders in violation of O.C.G.A. § 7-1-1013(6).

15.

Finally, Georgia Premier actively participated in the falsification of bank statements for Mr. Pineda, Mr. Argueta, and Mr. Vasquez. (See Findings of Fact ¶¶ 8, 12 & 16). Ms. Morales' office – located within Georgia Premier – contained draft bank statements used to alter these individuals' bank statements. (*Id.*) The handwritten proposed alterations to the false bank statements found in Ms. Morales' office were incorporated into the false bank statements found in the loan files that were submitted to the lenders. (*Id.*). By submitting to the lenders these loan applications and bank statements containing false account balances, Georgia Premier engaged in

a practice which was not in good faith or fair dealing with the lenders in violation of Code Section 7-1-1013(6).

16.

Pursuant to Code Section 7-1-1017, the Department may revoke a license for any violation of the Georgia Residential Mortgage Act. O.C.G.A. § 7-1-1017(a)(1) (2007).

17.

By submitting to lenders multiple loan applications that misrepresented the bank account balances of borrowers as well as false bank statements to support the asserted bank account balances, Georgia Premier violated Code Sections 7-1-1013(1), (2), and (6).³ Further, although not a necessary element for a violation of Code Sections 7-1-1013 (1), (2), and (6), Georgia Premier knew or should have known that the bank statements for at least three of the borrowers were false because it actively participated in the alteration of the documents.⁴ Because Georgia Premier violated Code Sections 7-1-1013 (1), (2) and (6), the Department's decision to revoke Georgia Premier's license pursuant to Code Section 7-1-1017 was valid.

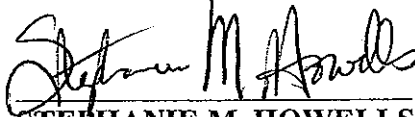
³ In 2005, the legislature amended Georgia Code Section 7-1-1000(10) and portions of Section 7-1-1013. Some of Georgia Premier's actions occurred prior to May 5, 2005 and some occurred after the 2005 amendment became effective. Notwithstanding, under either version of the law, Georgia Premier's actions violated Code Sections 7-1-1013(1), (2), and (6).

⁴ As noted *supra*, bank statements with handwritten computations were found on the premises of Georgia Premier, in the office of Ms. Morales. Those handwritten computations were incorporated into the bank statements that Georgia Premier submitted to lenders. Given that the bank statements submitted to the lenders were not the legitimate records of the various banks, the inescapable conclusion is that the bank statements with the handwritten computations were the early drafts of the falsified documents.

DECISION

Based on the undisputed material facts, Petitioner violated Code Sections 7-1-1002(c) and 7-1-1013(1), (2), and (6). Accordingly, Respondent's decision to revoke Petitioner's license pursuant to Code Section 7-1-1017(a)(1) was proper. Respondent's motion for summary determination is hereby **GRANTED**, and Respondent's decision to revoke Petitioner's license is **UPHELD**.

SO ORDERED, this 2nd day of March 2008.


STEPHANIE M. HOWELLS
Administrative Law Judge

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GEORGIA PREMIER LENDING CORPORATION;
ALVARO CUBIAS,
Petitioner,

v.

DEPARTMENT OF BANKING AND FINANCE,
Respondent.

:
:
:
: Docket No.: OSAH-DBF-MBL-0818777-67-Howells
:
: Agency Reference No.: 0818777
:

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Jennifer Martin, jmartin@osah.ga.gov
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Banking and Finance
Attn: Commissioner
2990 Brandywine Road, Suite 200
Atlanta, Georgia 30341.

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).

CERTIFIED MAIL

RE: GEORGIA PREMIER LENDING CORPORATION; ALVARO CUBIAS, Petitioner

DOCKET NO.: OSAH-DBF-MBL-0818777-67-Howells

MAIL TO:

☐ GEORGIA PREMIER LENDING CORP. NOTICE & DECISION REG. & CERT MAIL
ALVARO CUBIAS, PRESIDENT
5300 OAKBROOK PARKWAY SUITE 385
NORCROSS, GA 30071

GEORGIA PREMIER LENDING CORP.
ALVARO CUBIAS, PRESIDENT
1829 AUSTINS POINT DRIVE
LAWRENCEVILLE, GA 30043

☒ GEORGIA DEPARTMENT OF BANKING AND FINANCE (DECISION)
2990 BRANDYWINE ROAD SUITE 200
ATLANTA GA 30341

☐ OSCAR FEARS
ASSISTANT ATTORNEY GENERAL
40 CAPITOL SQ, SW
ATLANTA, GA 30334-1300