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

FILED
JUN 20 2008
OFFICE OF STATE
ADMINISTRATIVE HEARINGS

LATAUNYA TILSTRA,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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Docket Number:
OSAH-DBF-MBL-0828776-75-Malihi

ORDER ON MOTION FOR SUMMARY DETERMINATION

Respondent, the Georgia Department of Banking and Finance, pursuant to OSAH Rule 616-1-2-.15, moved for summary determination in the above-styled case alleging that there exists no genuine issue of material fact and that Respondent is entitled to judgment as a matter of law. In support of its Motion for Summary Determination, Respondent relies on all pleadings on file in this case, the Memorandum of Law, Statement of Material Facts as to Which There Exists No Issue, Affidavit of Betty Thomas, Affidavit of Sandra Sheley, Affidavit of Peter Lisowski, Affidavit of Sandra Sheley, Affidavit of Kristine Lowe and Affidavit of Jacqueline Melone-Smith. Petitioner, LaTaunya Tilstra, failed to respond to the Motion for Summary Determination.¹ For the reasons indicated below, Respondent's Motion is **GRANTED**.

¹ OSAH Rule 616-1-2-.15(3) provides, "When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion...must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing."

I. UNDISPUTED MATERIAL FACTS

Respondent issued an Order to Cease and Desist to Petitioner on October 25, 2006.

Respondent's Exhibit A. Petitioner timely requested a hearing before this Tribunal pursuant to O.C.G.A. § 7-1-1018. Respondent's Exhibit B.

Starting on January 5, 2006, Respondent initiated an examination of WorldWide Financial Group, Inc. ("WorldWide"), a licensed mortgage broker. (Affidavit of Lisowski, ¶ 4). As part of the examination, Respondent's examiner requested that Xavier D. Gray, the chief executive officer of WorldWide, complete the Officer's Questionnaire. (Affidavit of Lisowski, ¶ 5).

Mr. Gray provided Respondent's examiner with a completed Officer's Questionnaire.

(Affidavit of Lisowski, ¶ 5). Respondent's Exhibit C. The Officer's Questionnaire indicates that Petitioner had been employed as a loan officer for WorldWide since January 26, 2005.

Respondent's Exhibit C, p. 4-14.

During the examination, Respondent's examiner reviewed the loan file of Damian and Tracie Douglas for the property located at 802 Leesburg Place, Jonesboro, Georgia 30236 that was provided by WorldWide. (Affidavit of Lisowski, ¶ 6). The loan application indicates that the application was taken by Petitioner as an employee of WorldWide on April 21, 2005.

Respondent's Exhibit D, a copy of Mr. and Ms. Douglas' loan application for the property located at 802 Leesburg Place, Jonesboro, Georgia 30236, was discovered in his loan file.

(Affidavit of Lisowski, ¶ 6). The loan application discovered by Respondent indicates that the purpose of the loan is for Mr. and Ms. Douglas' primary residence. Respondent's Exhibit D.

The loan was closed on April 21, 2005, with Accredited Home Lenders. ("Accredited").

(Affidavit of Lowe, ¶ 4).

Respondent's examiner also reviewed the loan file of Damian and Tracie Douglas for the property located at 1450 Lakeshore Drive, Snellville, Georgia 30078 that was produced by WorldWide as part of the examination. (Affidavit of Lisowski, ¶ 7). The loan application indicates that the application was taken by Petitioner as an employee of WorldWide on April 21, 2005. Respondent's Exhibit E, Mr. and Ms. Douglas' loan application for the property located at 1450 Lakeshore Drive, Snellville, Georgia 30078, was discovered in their loan file. (Affidavit of Lisowski, ¶ 7). The application indicates that the purpose of the loan is for Mr. and Ms. Douglas' primary residence. Respondent's Exhibit E. The loan was closed by Fieldstone Mortgage Company ("Fieldstone") on April 27, 2005. (Affidavit of Melone-Smith, ¶ 4).

Accredited funded Mr. and Ms. Douglas' loan for the property located at 802 Leesburg Place, Jonesboro, Georgia 30236 on April 21, 2005. (Affidavit of Lowe, ¶ 4). Accredited relied on the information in the loan application to decide to fund Mr. and Ms. Douglas' loan. (Affidavit of Lowe, ¶ 4). Whether a borrower intends on using the property in question as a primary residence, secondary residence, or as an investment is a material factor to Accredited in deciding to fund a loan as it affects the interest rate Accredited will charge on a loan. (Affidavit of Lowe, ¶ 4). As a general rule, the interest rate charged on a primary residence is lower than the interest rate charged on a secondary residence or investment property. (Affidavit of Lowe, ¶ 4). The interest rate is lower because, all things being equal, the credit risk on a secondary residence of investment property is higher than on a primary residence. (Affidavit of Lowe, ¶ 4). If Mr. and Ms. Douglas did not intend on using the property as his primary residence, then Accredited would have denied the loan or charged a higher interest rate on the loan. (Affidavit of Lowe, ¶ 4).

Fieldstone funded Mr. and Ms. Douglas' loan for the property located at 1450 Lakeshore Drive, Snellville, Georgia 30078 on April 27, 2005. (Affidavit of Melone-Smith, ¶ 4).

Fieldstone relied on the information in the loan applications in deciding to fund Mr. and Ms. Douglas' loan. (Affidavit of Melone-Smith, ¶ 4). Whether a borrower intends on using the property in question as a primary residence, secondary residence, or as an investment is a material factor to Fieldstone in deciding to fund a loan as it affects the interest rate or points Fieldstone will charge on a loan. (Affidavit of Melone-Smith, ¶ 4). As a general rule, the interest rate charged on a primary residence is lower than the interest rate charged on a secondary residence or investment property. (Affidavit of Melone-Smith, ¶ 4). The interest rate is lower because, all things being equal, the credit risk on a secondary residence or investment property is higher than on a primary residence. (Affidavit of Melone-Smith, ¶ 4).

If Mr. and Ms. Douglas did not intend on using the property as his primary residence, then Fieldstone would have applied its pricing and underwriting guidelines for a secondary residence or investment property in funding the loan. (Affidavit of Melone-Smith, ¶ 4). The application of the pricing and underwriting guidelines would have resulted, in all likelihood, in the charging of a higher interest rate on the loan. (Affidavit of Melone-Smith, ¶ 4).

Petitioner took Mr. and Ms. Douglas' loan application for the property located at 802 Leesburg Place, Jonesboro, Georgia 30236 and Mr. and Ms. Douglas' loan application for the property located at 1450 Lakeshore Drive, Snellville, Georgia 30078. Respondent's Exhibits D and E. These two loans closed six days apart. (Affidavit of Lowe, ¶ 4, Exhibit 2; Affidavit of Melone-Smith, ¶ 4, Exhibit 2). The loan application for the property located at 802 Leesburg Place, Jonesboro, Georgia 30236 indicated that it was for Mr. and Ms. Douglas' primary residence. Respondent's Exhibit D. The loan application for the property located at 1450

Lakeshore Drive, Snellville, Georgia 30078 also indicated it was for Mr. and Ms. Douglas' primary residence. Respondent's Exhibit E. Further, Petitioner took Mr. and Ms. Douglas' loan applications for the property at 1450 Lakeshore Drive, Snellville, Georgia 30078 on April 21, 2005 the same day Accredited funded the Mr. and Ms. Douglas loan for thee property at 802 Leesburg Place, Jonesboro, Georgia 30236. (Affidavit of Lowe, ¶ 4, Exhibit 2; Respondent's Exhibit E). It is impossible that both loans were for Mr. and Ms. Douglas' primary residence as an individual cannot have two primary residences. Based on the conflicting information in the applications for the two properties, Petitioner knew that both sets of loans were not for Mr. and Ms. Douglas' primary residence, yet both sets of loan applications were submitted to lenders to be funded anyway.

II. LEGAL AUTHORITY

Petitioner violated the prohibitions found in O.C.G.A. §§ 7-1-1013 (1), (2) and (6) by taking loan applications that concealed the true use of the property.

O.C.G.A. § 7-1-1013 states in pertinent part that:

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, make 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;

Ga. L. 2000, p. 174, § 32; Ga. L. 2005, p. 826, § 38.² Pursuant to O.C.G.A. § 7-1-1000(10), the term “‘misrepresent’ 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.”³

By taking loan applications for Damian and Tracie Douglas that misrepresented the use of the property, Petitioner misrepresented material facts to the mortgage lenders in question. The lenders would have charged a higher interest rate if they had known the real intended use of the property and thus the true credit risk. A misrepresentation that causes a mortgagor to take a loan on terms that the mortgagor would otherwise not have taken violates O.C.G.A. § 7-1-1013(1). In addition, Petitioner violated O.C.G.A. § 7-1-1013(2) by misrepresenting the intended use of the property. Further, by submitting the loan packages for Mr. and Ms. Douglas’ loans, even though the applications clearly contained conflicting information, Petitioner 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).

O.C.G.A. § 7-1-1018(a) states in pertinent part that:

Whenever it shall appear to the department that any person required to be licensed ... under this article ... or any person employed by a licensee or registrant pursuant to Code Section 7-1-1001 has violated any law of this state or any order or regulation of the department, the department may issue an initial written

² The current law is substantially similar to the law in effect prior to May 5, 2005. O.C.G.A. § 7-1-1013; Ga. L. 2005, p. 826, §35.

³ The current law is substantially similar to the law in effect prior to May 5, 2005. O.C.G.A. §7-1-1000(10); Ga. L. 2005, p. 826, §29.

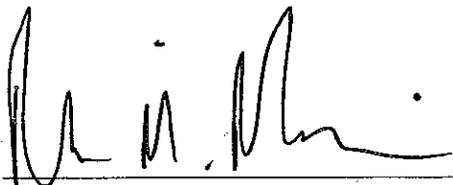
order requiring such person to cease and desist immediately from such unauthorized practices.

For the purposes of O.C.G.A. § 7-1-1018, "person" is defined as "any, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section." O.C.G.A. § 7-1-1018(f) (emphasis added). It is a violation of the law for a licensee or an individual that is exempt from the licensing requirements⁴ to make false statements to a lender in order to close a loan. O.C.G.A. §§ 7-1-1013(1), (2) and (6). As Petitioner violated O.C.G.A. §§ 7-1-1013 (1), (2) and (6), Respondent's order requiring Petitioner to cease and desist from violating the law is valid.

III. CONCLUSIONS OF LAW

Petitioner committed prohibited acts in violation of O.C.G.A. §§ 7-1-1013(1), (2) and (6). Respondent's Order to Cease and Desist issued by the Georgia Department of Banking and Finance pursuant to O.C.G.A. § 7-1-1018 was proper. Respondent's Motion for Summary Determination is **GRANTED**. All issues are resolved in favor of Respondent in this case and the hearing set for June 25, 2008 at 8:30 a.m. is **DISMISSED**.

SO ORDERED this 20th day of June 2008.



Michael M. Malihi, Judge

⁴ Petitioner was exempt from the licensing requirements of the Georgia Residential Mortgage Act during the applicable timeframe as she was an employee of WorldWide Financial Group, Inc. a licensed mortgage broker. O.C.G.A. § 7-1-1001(11).

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

LATAUNYA TILSTRA, :
Petitioner, :
 :
v. : Docket No.: OSAH-DBF-MBL-0828776-75-Malihi
 :
DEPARTMENT OF BANKING AND FINANCE, : Agency Reference No.: 0828776
Respondent. :

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).

RE: LATAUNYA TILSTRA, Petitioner

DOCKET NO.: OSAH-DBF-MBL-0828776-75-Malihi

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