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Department of Banking and Finance

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Sonny Perdue
Governor

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Commissioner

January 3, 2007

VIA CERTIFIED MAIL – 7001 1940 0006 6837 0877

Quality Mortgage Corporation
1775 The Exchange, Suite 155
Atlanta, Georgia 30339

License Number 14280

NOTICE OF INTENT TO REVOKE ANNUAL LICENSE

Pursuant to O.C.G.A. § 7-1-1017(a)(1), the Georgia Department of Banking and Finance ("Department") hereby notifies you of its intent to revoke the license issued to Quality Mortgage Corporation ("Quality Mortgage"). The Department has documentation showing that Quality Mortgage violated the Georgia Residential Mortgage Act ("GRMA"), O.C.G.A. § 7-1-1000 *et seq.* Specifically, the Department has evidence showing that Quality Mortgage made false statements or misrepresented material facts to lenders in violation of O.C.G.A. § 7-1-1013(1), (2) and (6); employed a felon in violation of O.C.G.A. § 7-1-1004(d); transacted business with persons who are unlicensed and unregistered, not exempt from licensing and registrations requirements and not employees of a mortgage broker or lender in violation of O.C.G.A. § 7-1-1002; and failed to properly maintain a mortgage loan transaction journal in violation of Department Rule 80-11-2-.03.

You may request a hearing to contest the decision of the Department to revoke your license. O.C.G.A. § 7-1-1017(b). The hearing will be held before an administrative law judge of the Office of State Administrative Hearings. You may retain counsel of your choice and subpoena witnesses and documentary evidence. The Office of the Attorney General will represent the Department.

The request for a hearing must be made in writing within 20 days of the date of this Notice. If you do not request a hearing within 20 days of the date of this Notice, the Department will enter a Final Order of Revocation that will be effective the date of issuance. Should you have any questions concerning this matter, please contact Helen O'Leary, Non-Depository Financial Institutions Division Attorney, at (770) 986-1648.

A handwritten signature in black ink, appearing to read "Rod Carnes", is written over a horizontal line.

Rod Carnes, CFE

Deputy Commissioner

Non-Depository Financial Institutions Division

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

FILED
AUG 19 2008
OFFICE OF STATE
ADMINISTRATIVE HEARINGS

KAY F. EZZELL,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

* Respondent.

Docket Number:
OSAH-DBF-MBL-0900369-33-Schroer

QUALITY MORTGAGE CORPORATION,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

Docket Number:
OSAH-DBF-MBL-0900371-33-Schroer

**ORDER CONSOLIDATING CASES¹ AND GRANTING
RESPONDENT'S MOTIONS FOR SUMMARY DETERMINATION**

These matters come before this Court as an appeal by Petitioner, Kay F. Ezzell, from an Order to Cease and Desist, and Petitioner, Quality Mortgage Corporation ("Quality Mortgage"), from a Notice of Intent to Revoke Annual License, issued to them by the Respondent, the Georgia Department of Banking and Finance ("Department"). On July 8, 2008, the Department moved for summary determination supported by affidavits and other probative evidence in both

¹ Pursuant to Office of State Administrative Hearings ("OSAH") Rule 12, this Court is empowered to consolidate proceedings if the proceedings involve common issues of law and fact and if consolidation "would serve to expedite or simplify consideration of those issues and that no party would be prejudiced thereby." GA. COMP. R. & REGS. r. 616-1-2-12(1). With these considerations in mind, this Court consolidates these two proceedings for the purpose of ruling on the Department's pending Motions for Summary Determination.

cases on the grounds that there exists no genuine issue of material fact and the Department is entitled to judgment as a matter of law. Petitioners have failed to file a response to the Department's Motions for Summary Determination.² For the reasons set forth below, the Department's Motions for Summary Determination are **GRANTED**.

I. UNDISPUTED FINDINGS OF FACT

1.

On January 3, 2007, the Department issued a "Notice of Intent to Revoke Annual License" to Quality Mortgage Corporation. (Resp't Mot.,³ Ex. A).

2.

On January 3, 2007, the Department issued an "Order to Cease and Desist" to Kay F. Ezzell. (Resp't Mot. in Kay F. Ezzell, Ex. A).

3.

Quality Mortgage timely requested a hearing. (Resp't Mot., Ex. B).

4.

Kay F. Ezzell timely requested a hearing. (Resp't Mot. in Kay F. Ezzell, Ex. B).

5.

Starting on September 25, 2006, the Department initiated an examination of Quality Mortgage. (Rcsp't Mot., Valenzuela Aff., ¶ 4).

² OSAH Rule 15 provides, "[w]hen 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." GA. COMP. R. & REGS. r. 616-1-2-.15(3).

³ The phrase "Department's Motion" refers to the Motion for Summary Determination filed by the Department in Quality Mortgage Corporation v. Georgia Department of Banking and Finance, Docket No. OSAH-DBF-MBL-0900371-33-Schroer. The citation "Resp't Mot. in Kay Ezzell" will be used when this Court refers to matters in the Department's Motion for Summary Determination filed in Kay F. Ezzell v. Georgia Department of Banking and Finance, Docket No. OSAH-DBF-MBL-0900369-33-Schroer.

6.

Kay F. Ezzell is the president and owner of Quality Mortgage. (Resp't Mot., Ex. C at 4-14, Valenzuela Aff., ¶ 5).

A. The Employment of Melanie Trammell

7.

Quality Mortgage employed Melanie Trammell as a loan officer beginning on June 30, 2004. (Resp't Mot., Ex. C at 4-14; Valenzuela Aff., ¶ 5).

8.

On August 15, 1995, Melanie Trammell pled guilty to first degree forgery, a felony. (Resp't Mot., Ex. D).

B. The Loans Obtained by Wayne Morris

9.

During the examination, the Department's examiner reviewed the loan file of Wayne Morris for a property located at 698 Shelton Avenue, Atlanta, Georgia 30310. Mr. Morris' loan applications, which were taken by Quality Mortgage and signed by Mr. Morris on September 1, 2006, indicated that the purpose of the loans was for Mr. Morris' primary residence. (Resp't Mot., Ex. E; Valenzuela Aff., ¶ 6).

10.

Mr. Morris' loans for the property located at 698 Shelton Avenue, Atlanta, Georgia 30310 closed on September 1, 2006 and were funded by First NLC Financial Services. (Resp't Mot., Hackett Aff., ¶ 5, Ex. 5).

11.

The Department's examiner also reviewed the loan file of Wayne Morris for the property located at 1587 Sylvan Road, Atlanta, Georgia 30310. Mr. Morris' loan applications, which were taken by Quality Mortgage and signed by Mr. Morris on October 13, 2006, indicated that the purpose of the loans was for Mr. Morris' primary residence. (Resp't Mot., Ex. F; Valenzuela Aff., ¶ 7).

12.

Mr. Morris' loans for the property located at 1587 Sylvan Road, Atlanta, Georgia 30310 closed on October 13, 2006 and were funded by Tower Mortgage and Financial Services Corporation. (Resp't Mot., Torres Aff., ¶ 4, Ex. 2).

13.

First NLC Financial Services and Tower Mortgage and Financial Services Corporation relied upon the information contained in the loan applications for Mr. Morris in deciding the terms of the loans. (Resp't Mot., Hackett Aff., ¶ 5, Torres Aff., ¶ 4).

14.

The fact of 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 First NLC Financial Services and Tower Mortgage and Financial Services Corporation as it affects the interest rate that the lenders will charge on a loan. (Resp't Mot., Hackett Aff., ¶ 5, Torres Aff., ¶ 4).

C. The Loan Obtained by Laquittia D. Johnson

15.

During the examination, the Department's examiner reviewed the loan file of Laquittia D. Johnson a/k/a Lequitta D. Johnson for a property located at 140 Chickasaw Trail, Cleveland, Georgia 30528. Ms. Johnson's loan application, which was taken by Melanic Trammell as an employee of Quality Mortgage, indicated that her monthly income was \$3,798.58. (Resp't Mot., Ex. H, Valenzuela Aff., ¶ 8).

16.

The Department's examiner also found pay stubs and W-2 statements in Ms. Johnson's loan file. The pay stubs indicated that Ms. Johnson earned \$3,798.58 per month from the White County Board of Education. The W-2 statements indicated that Ms. Johnson earned \$43,292.83 in 2004 and \$44,525.58 in 2005. (Resp't Mot., Ex. I, Valenzuela Aff., ¶ 8).

17.

The Department's examiner also discovered in Ms. Johnson's loan file a verification of employment from White County Board of Education indicating that Ms. Johnson earned \$3,798.58 a month. (Resp't Mot., Ex. J, Valenzuela Aff., ¶ 8).

18.

The W-2 statements and pay stubs are false documents that were not generated by the White County Board of Education. (Resp't Mot., Finley Aff., ¶ 4, Ex. 1). For the periods covered by the paystubs, specifically the period ending May 25, 2006 and the period ending June 26, 2006, Ms. Johnson earned approximately \$800.00 a month as opposed to \$3,798.58. (Resp't Mot., Finley Aff., ¶ 5). Further, Ms. Johnson earned \$6,126.44 in 2004 and \$9,279.68 in 2005 from the White County Board of Education. (Resp't Mot., Finley Aff., ¶ 6).

19.

A representative of the White County Board of Education completed a verification of employment for Ms. Johnson and sent it to Melanie Trammell at Quality Mortgage. The verification of employment was altered after it was sent to Quality Mortgage. The verification of employment was altered to inflate Ms. Johnson's income from the White County Board of Education for 2004, 2005, and 2006. (Resp't Mot., Finley Aff., ¶ 7, Ex. 2).

20.

Ms. Johnson earned approximately \$800.00 a month from the White County Board of Education – substantially less than the \$3,798.58 a month indicated on the loan application, the pay stubs, and the verification of employment. (Resp't Mot., Finley Aff., ¶ 5, Exs. H, I & J).

21.

Ms. Johnson's loan for the property located at 140 Chickasaw Trail, Cleveland, Georgia 30528 closed on July 26, 2006 and was funded by First NLC Financial Services. (Resp't Mot., Hackett Aff., ¶ 4, Ex. 3).

22.

In deciding to fund the loan, First NLC Financial Services relied on the loan application, the W-2 statements, and the pay stubs submitted to it by Quality Mortgage. (Resp't Mot., Hackett Aff., ¶ 4, Exs. 1 & 2).

23.

First NLC Financial Services would not have funded the loan for Ms. Johnson if it had known that the loan application and submitted supported financial documents were false. (Resp't Mot., Hackett Aff., ¶ 4).

D. The Relationship With Shannane Williams

24.

During the examination, the Department's examiner reviewed the loan file of Yashica Crawford for property located at 548 Ontario Avenue, Atlanta, Georgia 30310. (Resp't Mot., Valenzuela Aff., ¶ 9). The Department's examiner discovered in Ms. Crawford's loan file a Request for Verification of Rent or Mortgage. The document indicates that it was sent to Ms. Crawford's landlord by Shannane Williams at Quality Mortgage. (Resp't Mot., Ex. L, Valenzuela Aff., ¶ 9).

25.

Quality Mortgage submitted Ms. Crawford's loan package, including the loan application and the Request for Verification of Rent or Mortgage to First NLC Financial Services for funding. (Resp't Mot., Hackett Aff., ¶ 6). On February 22, 2006, First NLC Financial Services funded the loan. (Resp't Mot., Hackett Aff., ¶ 6).

26.

Shannane Williams was not employed by Quality Mortgage. (Resp't Mot., Ex. C, Valenzuela Aff., ¶ 5).

27.

Shannane Williams brokered Ms. Crawford's loan by obtaining the Request for Verification of Rent or Mortgage that was submitted to First NLC in connection with the funding of Ms. Crawford's loan. (Resp't Mot., Ex. L, Valenzuela Aff., ¶ 5).

28.

Shannane Williams has never been licensed or registered with the Department as a mortgage broker or mortgage lender. (Resp't Mot., Shelley Aff., ¶ 4).

II. CONCLUSIONS OF LAW

A. Summary Determination

1.

OSAH Rule 15 provides that on a 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). In this case, the Department's Motions for Summary Determination were properly made and supported, and Petitioners have not filed responsive pleadings or otherwise denied any of the allegations against them. Accordingly, this Tribunal finds that no genuine issues of material fact remain for determination.

B. The Employment of Melanie Trammell

2.

The Georgia Residential Mortgage Act ("Act") provides in pertinent part that:

The department may not issue or may revoke a license if it finds that the applicant, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court ... irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered ...

O.C.G.A. § 7-1-1004(d) (emphasis added). Thus, the express terms of the Act prohibit a licensee from employing an individual convicted of a felony involving moral turpitude.

3.

Petitioners violated O.C.G.A. § 7-1-1004(d) by employing Melanie Trammell on June 30, 2004, after she had pled guilty to first degree forgery, a felony. A crime involves moral turpitude if the crime is "contrary to justice, honesty, modesty, good morals or man's duty to man." Jarrard v. Clayton County Board of Registrars, 262 Ga. 759, 761 (1993). Furthermore, the crime of forgery has been specifically held to be a crime involving moral turpitude. Hinely v. State, 275 Ga. 777, 781 (2002); Hall v. State, 180 Ga. App. 210, 213 (1986).

C. The Loans Obtained by Wayne Morris

4.

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;

Pursuant to Code Section 7-1-1000, the term "misrepresent" 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).

5.

Pctitioners violated O.C.G.A. § 7-1-1013(1), (2), and (6) by misrepresenting material and substantive facts regarding the loan applications of Wayne Morris for the properties located at 698 Shelton Avenue and 1587 Sylvan Road. Quality Mortgage took these loan applications and submitted them to two different mortgage lenders for funding. Both sets of loan applications submitted to the lenders stated that the purpose of the loans were for Mr. Morris' primary residence. By its plain meaning, the term "primary" denotes something that is first in rank. Therefore, the term "primary residence" cannot be reasonably interpreted to include more than one residence. Because an individual can only have one primary residence, Quality Mortgage misrepresented the purpose of the loans to at least one of the mortgage lenders. Accordingly, because both mortgage lenders relied on the stated purpose of the loans in determining the interest rate that should be charged on the loans, Quality Mortgage's misrepresentations were material and substantive, and were not in good faith or fair dealing.

D. The Loan Obtained by Laquittia D. Johnson

6.

Petitioners violated O.C.G.A. § 7-1-1013(1), (2), and (6) by misrepresenting material and substantive facts regarding the loan application of Laquittia D. Johnson. Quality Mortgage took the loan application for Ms. Johnson and submitted it to a mortgage lender for funding. The loan application grossly overstated Ms. Johnson's income. Further, although not a required element for a violation of O.C.G.A. § 7-1-1013, Quality Mortgage knew that Ms. Johnson's income indicated on the loan application was false because it received a verification of employment from Ms. Johnson's employer which correctly stated her income. However, instead of refusing to continue to broker the loan, Quality Mortgage altered the verification of employment to be consistent with the loan application. After doing so, Quality Mortgage submitted the altered verification of employment along with the loan application to the mortgage lender. Quality Mortgage's misrepresentations were material and substantive, and were not in good faith and fair dealing, because the mortgage lender relied on the reported income in funding the loan. The mortgage lender would not have funded the loan if it had known that Ms. Johnson's income was not accurately reported.

E. The Relationship with Shannane Williams

7.

O.C.G.A. § 7-1-1002 provides in pertinent part that:

- (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.

8.

The 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). "Person" is defined in the Act 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 O.C.G.A. § 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 O.C.G.A. § 7-1-1002(a), the company is also guilty of violating O.C.G.A. § 7-1-1002(a). O.C.G.A. § 7-1-1002(c). Further, the "executive officer" of a company which violates O.C.G.A. § 7-1-1002(c) is culpable to the "same extent" as the company. O.C.G.A. § 7-1-1002(c).

9.

Petitioners violated O.C.G.A. § 7-1-1002(c) by having Shannane Williams act as a broker on the loan file of Yashica Crawford. Ms. Williams acted as a broker on Ms. Crawford's loan file by requesting and receiving a verification of rent or mortgage for Ms.

Crawford on behalf of Quality Mortgage. Ms. Williams has never been licensed or registered with the Department as a mortgage broker or mortgage lender. Thus, Ms. Williams was acting as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a).

10.

Employees of licensees are exempt from licensure under the Act. O.C.G.A. § 7-1-1001(11). However, Ms. Williams was not an employee of Quality Mortgage. Therefore, this exception does not apply. The exceptions contained in O.C.G.A. § 7-1-1001(3), (4), (5), (6), (8), (12), and (13) also apply to natural persons. However, these exceptions do not apply to natural persons who broker mortgage loans for licensed mortgage brokers.

11.

Ms. Williams was not a licensed mortgage broker or mortgage lender nor was she exempt from licensure because she was not an employee of Quality Mortgage. Therefore, Petitioners violated O.C.G.A. § 7-1-1002(c) by having Ms. Williams broker the loan of Ms. Crawford on its behalf.

12.

Pursuant to O.C.G.A. § 7-1-1017(a)(1):

The department may suspend or revoke an original or renewal license or registration on any ground on which it might refuse to issue an original license or registration or for a violation of any provision of this article or any rule or regulation issued under this article . . .

The Department can also refuse to issue a license and, thus, revoke a license, if it determines that an officer or broker is not of good character or ethical reputation. O.C.G.A. § 7-1-1004(a). As Quality Mortgage violated the prohibitions found in O.C.G.A. §§ 7-1-1002(c), 7-1-1004(d),

and 7-1-1013(1), (2), and (6), the Department's order revoking Quality Mortgage's license is valid.

13.

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 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 officer, 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). It is a violation of the law for an executive officer of a licensee to permit an individual who is not licensed or exempt from licensure requirements to broker loans by processing, soliciting, or negotiating them. Further, it is a violation of the law for a convicted felon to work in the mortgage industry. Finally, it is a violation of the law to misrepresent a loan applicant's income or an applicant's purpose in applying for a home loan. Ms. Ezzell, as the owner of Quality Mortgage, violated the prohibitions found in O.C.G.A. §§ 7-1-1002(c), 7-1-1004(d), and 7-1-1013(1), (2), and (6). Therefore, the Department's order requiring Ms. Ezzell to cease and desist from violating the law is valid.

III. DECISION

It is hereby **ORDERED** that that these two cases are consolidated. It is further **ORDERED** that the Department's Motions for Summary Determination are **GRANTED** and its

decisions to issue an Order to Cease and Desist Order to Kay F. Ezzell and to revoke Quality Mortgage's license for violating the Georgia Residential Mortgage Act are **AFFIRMED**.

SO ORDERED this 19th day of August 2008.



KIMBERLY SCHROER
Administrative Law Judge