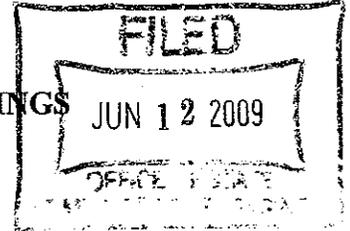


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



STEVE BERNSTEIN,  
Petitioner,

v.

DEPARTMENT OF BANKING AND  
FINANCE,  
Respondent.

:  
:  
:  
: Docket No.: OSAH-DBF-MBL-0928546-60-  
: Howells

GEORGIA MORTGAGE & REALTY, LLC,  
Petitioner,

v.

DEPARTMENT OF BANKING AND  
FINANCE,  
Respondent.

:  
:  
: Docket No.: OSAH-DBF-MBL-0928446-60-  
: Howells

**INITIAL DECISION**

These matters were filed with this Tribunal on April 21, 2009 and consolidated on April 24, 2009. On April 25, 2009, the Georgia Department of Banking and Finance (“Department” or “Respondent”) filed motions for summary determination in both matters. The Department’s motions were received by the clerk on April 28, 2009. On or about May 26, 2009, Petitioners filed a Statement of Material Facts Stating That There Are Genuine Issues to be Tried, a Motion in Opposition to Respondent’s Motion for Summary Judgment (sic), a Memorandum of Law, and an Affidavit of Steven W. Bernstein, which were received by the clerk on May 27, 2009. For the reasons stated below, the Department’s motions for summary determination are **GRANTED.**

## I. Findings of Fact

The following facts are undisputed:

1.

On January 2, 2008, the Department initiated its examination of Georgia Mortgage & Realty, LLC (“Georgia Mortgage” or “Petitioner”), a licensed mortgage broker. (Affidavit of Turner, ¶ 4.) During the examination, the Department requested that Mr. Steven Bernstein, the president and owner of Georgia Mortgage, complete the Officer’s Questionnaire. (Affidavit of Turner, ¶ 5.) According to the Officer’s Questionnaire completed by Georgia Mortgage, Steven Bernstein is the president and 100% owner of Georgia Mortgage.<sup>1</sup>

2.

On or about August 25, 1989, Steven Bernstein (“Bernstein” or “Petitioner”) pleaded guilty to a violation of 18 U.S.C. § 496 (forgery of customs forms) in the United States District Court for the Eastern District of Louisiana. The Judgment and Probation/Commitment Order states: “Defendant has been convicted as charged of the offense(s) of violation of 18 USC 496[,] FORGERY OF CUSTOMS FORMS AS CHARGED IN THE SUPERSEDING INDICTMENT.”<sup>2</sup> The sentence was suspended. Bernstein was placed on active probation for five (5) years and fined \$2,000.00. (Exhibit E.)

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<sup>1</sup> (See Exhibit D, pp. 4-4, 4-15, and 4-17.) The Officer’s Questionnaire indicates that Mr. Bernstein has been the owner of Georgia Mortgage since 1990. (See Exhibit D, p. 4-15.)

<sup>2</sup> According to the Superseding Indictment for False Customs Documents, Bernstein was associated with West German Trading Company as a salesman. The indictment further states that Bernstein “did forge, counterfeit, and falsely alter a Customs Form 7501, ‘Entry Summary’ form #1650, falsely reflecting that Robert C. Stern was the owner/importer of foreign vehicle number WDB12328312004358, in order to title said automobile with the State of Louisiana, Office of Motor Vehicles; all in violation of Title 18, United States Code, Section 496.” (Exhibit E, at Superseding Indictment for False Customs Documents, ¶ A. 2. & Count 15.)

3.

On or about March 24, 1993, Bernstein submitted an application for a mortgage broker's license on behalf of Georgia Mortgage Assistance.<sup>3</sup> Question 25 of the application asks:

Has the applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10% or more of the applicant, been convicted of a felony or misdemeanor involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony or misdemeanor involving moral turpitude under the laws of this state? If so, detail on a separate page.

(Exhibit F, question 25.) In response to this question, Bernstein marked the box "No" and typed the following statement on the application: "[a]s a used car dealer in the state of Louisiana I was fined \$2,000 resulting from the sale of a used Mercedes without a catalytic converter." (Exhibit F.)

4.

In his affidavit, Bernstein states that he applied for a presidential pardon and "the First Offenders Act" in 1993. (Affidavit of Bernstein, ¶ 5.) However, Petitioners have presented no evidence that Bernstein has received a pardon, presidential or otherwise. Nor have Petitioners presented any evidence that Bernstein received first offender treatment.

5.

During the Department's examination, the Department's examiner reviewed, at Georgia Mortgage's place of business, the loan file of Bernstein for the property located at 1428 Valley View Road, Dunwoody, Georgia 30338. (Affidavit of Turner, ¶ 6.) The loan application for this

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<sup>3</sup> Bernstein originally applied for and obtained a mortgage broker's license in the name of Georgia Mortgage Assistance. (Affidavit of Shelley, ¶ 4.) The Department approved the name change request of Georgia Mortgage Assistance to Georgia Mortgage & Realty, Inc. on or about November 26, 1997. Thereafter, on or about October 14, 2003, the Department approved the name change request of Georgia Mortgage & Realty, Inc. to Georgia Mortgage & Realty, LLC. (Affidavit of Shelley, ¶ 5.) For convenience, any reference to Georgia Mortgage refers to Georgia Mortgage & Realty, LLC or any of its predecessor entities.

property indicates that David Smejkal,<sup>4</sup> an employee of Georgia Mortgage, took the loan application on behalf of Georgia Mortgage. (Exhibit G.) In Bernstein's loan file at Georgia Mortgage's place of business, the Department's examiner discovered a document entitled Commitment Schedule B Requirements. (Exhibit H; Affidavit of Turner, ¶ 6.) Among other items, the Commitment lists as a requirement for closing on Bernstein's loan the "payoff, cancellation and satisfaction of a lien, Florence J. Lytle, P.C., Plaintiff v. Steven W. Bernstein, Defendant, dated June 5, 2003, recorded June 11, 2003 at deed book 14736, page 558, DeKalb County, Georgia records, in the principal amount of \$2,596.86, plus penalties and interest" (hereinafter the "Lytle lien"). (Exhibit H.)

6.

At the closing of Bernstein's loan for the property located at 1428 Valley View Road, Dunwoody, Georgia 30338, Bernstein produced a document purporting to cancel the Lytle lien as of November 1, 2007. (Exhibit I; Affidavit of Pueschel, ¶ 4, Exhibit 1.) The document produced by Bernstein was purportedly prepared by an attorney named Moses E. Brinson, Jr. and states that the Lytle lien was "satisfied" on October 29, 2007. (Exhibit I.) More specifically, the document states that the lien has been "PAID IN FULL." *Id.* In light of the documentation indicating that the Lytle lien had been satisfied, Bernstein's loan, in the amount of \$400,000.00, closed on November 2, 2007 with Terrace Mortgage Company ("Terrace"). (Affidavit of Pueschel, ¶ 4; Affidavit of Shortridge, ¶ 4, Exhibit 3.) Georgia Mortgage was paid an appraisal fee and a processing fee as a result of the closing. (Affidavit of Shortridge, Exhibit 3.)

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<sup>4</sup> According to the Officer's Questionnaire Mr. Smejkal has been employed as a "processor" by Georgia Mortgage since 1993. (See Exhibit D, p. 4-15.)

7.

On November 18, 2007, over two weeks *after* the closing on Mr. Bernstein's loan, Florence J. Lytle received a letter from Bernstein offering to satisfy the Lytle lien. (Exhibit J; Affidavit of Lytle, ¶ 5, Exhibit 2.) The letter states in pertinent part that "I hereby offer you \$2,000.00 for release of [the Lytle] lien. If this is not Acceptable on Monday, November 19, 2007 I will be filing a Bar complaint." (Exhibit J.) Thus, Bernstein offered to satisfy the Lytle lien even though he produced documentation at the closing two weeks earlier stating that the Lytle lien had been "paid in full" and "satisfied."

8.

On November 29, 2007, Ms. Lytle executed an Affidavit of Fraudulent Cancellation of Lien regarding the cancellation of the Lytle lien. (Exhibit K; Affidavit of Lytle, ¶ 6, Exhibit 3.) In the Affidavit of Fraudulent Cancellation of Lien, Ms. Lytle affirmed "that the lien was never satisfied, no payment was received by me at any time to satisfy said lien and I don't know any attorney named Moses E. Brinson, Jr." (Exhibit K.) In fact, as of March 23, 2009, Ms. Lytle had not received payment on the Lytle lien. (Affidavit of Lytle, ¶ 7.) Furthermore, the purported cancellation of the Lytle lien indicates that it was prepared by Moses E. Brinson, Jr. (Exhibit I.) However, Ms. Lytle has never dealt with an attorney named Moses E. Brinson, Jr., or any attorney with a remotely similar name, regarding payment of the Lytle lien. (Affidavit of Lytle, ¶ 6.) The State Bar of Georgia has no record indicating that Moses E. Brinson, *Jr.* is a member of the bar. (Affidavit of Cleghorn.) Although there is no record of Moses E. Brinson, *Jr.* being a member of the State Bar of Georgia, Mr. Moses E. Brinson who works with the law firm of Cox, Corwin & Niedrach, P.C. in Rome, Georgia, is a member of the State Bar of Georgia. However, Mr. Moses E. Brinson did not sign or prepare the document purporting to cancel the Lytle lien.

(Affidavit of Brinson, ¶ 4.) In light of these facts, the document produced by Mr. Bernstein at the closing, which indicates that the Lytle lien was satisfied and cancelled of record, was a false document.

9.

Petitioner Bernstein admits that he “in no way authorized any third party or parties to cancel any lien on [his] behalf.” (Affidavit of Bernstein, ¶ 10.) Nevertheless, at the closing of his loan, he provided the document purporting to cancel the lien because it had been satisfied.

10.

Georgia Mortgage submitted Bernstein’s loan package to Terrace for funding. (Affidavit of Shortridge, ¶ 4.) Terrace reviewed the information in the submitted loan package and informed Georgia Mortgage that it would fund Bernstein’s loan as long as the conditions set forth in the Commitment Schedule B Requirements were satisfied. (Affidavit of Shortridge, ¶ 4.) Those requirements included, but were not limited to, the satisfaction of the Lytle lien. (Affidavit of Shortridge, ¶ 4.) The satisfaction and cancellation of a lien which Terrace has identified as a condition of closing is an important factor to Terrace in deciding to fund a loan, as it impacts the priority afforded Terrace’s security interest in the subject property. (Affidavit of Shortridge, ¶ 5.) If Terrace had known that the Lytle lien was not satisfied at the time of the closing, then Terrace would not have funded Mr. Bernstein’s loan. (Affidavit of Shortridge, ¶ 5.)

11.

On April 17, 2008, the Department issued a Notice of Intent to Revoke Annual License to Georgia Mortgage and an Order to Cease and Desist to Bernstein. (Exhibits A to the respective summary determination motions.) Petitioners timely requested a hearing to contest the Department’s decision to issue the Notice of Intent to Revoke Annual License to Georgia

Mortgage and the Order to Cease and Desist to Bernstein. Thereafter, on October 6, 2008, the Department issued an Amended Notice of Intent to Revoke Annual License to Georgia Mortgage and an Amended Order to Cease and Desist to Bernstein. (Exhibits C, to the respective summary determination motions.)

## 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).

### *Violation of O.C.G.A. § 7-1-1004(d)*

2.

The Department asserts that Georgia Mortgage and Bernstein violated the prohibition contained in Georgia Code Section 7-1-1004(d) by having Bernstein as the owner and president of Georgia Mortgage. Section 7-1-1004(d) provides, in pertinent part:

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 or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee, 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, unless and until such plea of guilty, or such

decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon . . . .

O.C.G.A. § 7-1-1004(d) (Emphasis added). The express terms of Section 7-1-1004(d) prohibit a licensee from having an officer, owner, or employee that has been convicted of a felony, unless the conviction has been abrogated or pardoned or the felon received first offender treatment and has completed his probation or sentence.

3.

There is no dispute that Bernstein served as Georgia Mortgage's owner and president. Nor is there any dispute that in August of 1989 Bernstein pleaded guilty to a violation of 18 U.S.C. § 496 (forgery of customs forms). Violation of United States Code, Title 18, Section 496 is a felony. See 18 U.S.C.S. § 496; see also 18 U.S.C.S. § 3559. Felonies are considered crimes of moral turpitude. See Lewis v. State, 243 Ga. 443, 445 (1979) (felonies are infamous crimes and therefore are crimes of moral turpitude). Additionally, forgery is a crime of moral turpitude. Hall v. State, 180 Ga. App. 210, 213 (1986). Therefore, by allowing Bernstein to serve as Georgia Mortgage's owner and president, Georgia Mortgage and Bernstein violated the prohibition contained in Section 7-1-1004(d).<sup>5</sup>

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<sup>5</sup> Although Petitioners assert that Bernstein *applied* for a presidential pardon and for the First Offender Act, Petitioners have failed to provide any evidence that Bernstein ever received a pardon or was afforded first offender treatment. Thus, the exceptions contained in Section 7-1-1004(d) do not apply.

*Violation of O.C.G.A. § 7-1-1013(1), (2) & (6)*

4.

The Department asserts that Georgia Mortgage and Bernstein violated Georgia Code Sections 7-1-1013(1), (2) & (6) when Bernstein provided a false document at the closing of a loan on his personal property. Georgia Code Section 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, or sale of any mortgage loan[.]

O.C.G.A. § 7-1-1013. Pursuant to Georgia Code Section 7-1-1000(10) the term “Misrepresent” means to make a false statement of a substantive fact. Misrepresent may also mean to 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.

There is no dispute that the document tendered by Bernstein, purporting to satisfy an outstanding lien, was a false document. See Findings of Fact ¶ 8. Nor is there any dispute that as of the date

of the closing the lien had not been satisfied. Id. Furthermore, Terrace had notified Georgia Mortgage that it would fund Bernstein's loan *as long as* the conditions in the Commitment Schedule B Requirements were satisfied. Those conditions included the payoff, satisfaction, and cancelling of the Lytle lien. Terrace would not have funded the Bernstein loan if it had known that the Lytle lien had not been satisfied. See Findings of Fact ¶ 10. Accordingly, Georgia Mortgage and Bernstein violated Georgia Code Section 7-1-1013(1) by submitting a false document that was likely to influence or induce the lender (i.e., mortgagee) to fund the loan. Bernstein admits that he did not authorize anyone to cancel any lien on his behalf. Moreover, Bernstein's letter to Ms. Lytle over two weeks after the closing is evidence that Bernstein had not personally satisfied the lien prior to the closing. Yet, at the closing Bernstein provided the lender with a document stating that the lien had been "paid in full" and "satisfied." The satisfaction of the lien was a material factor in closing the loan. Therefore, at the closing of Bernstein's loan, Georgia Mortgage and Bernstein violated Section 7-1-1013(2) by misrepresenting that the Lytle lien had been paid in full and satisfied. Finally, by submitting a false document stating that the Lytle lien had been satisfied, Georgia Mortgage and Bernstein engaged in a practice that was not in good faith or fair dealing in violation of Section 7-1-1013(6).

6.

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. § 7-1-1000 *et seq.* O.C.G.A. §§ 7-1-1017(a)(1), 7-1-1000(6.1). For unlicensed individuals, such as officers, director, employees, or agents of a licensed broker, the Department may issue a cease and desist order when it appears that the

unlicensed individual has violated any laws of this state or any order or regulation of the Department. See O.C.G.A. § 7-1-1018(a).

### III. Decision

Based on the undisputed material facts, Petitioners Georgia Mortgage and Bernstein violated Georgia Code Sections 7-1-1004(d) and 7-1-1013(1), (2), and (6). Accordingly, the Department's Amended Cease and Desist Order issued to Bernstein pursuant to Section 7-1-1018(a) and its Amended Notice of Intent to Revoke Annual License issued to Georgia Mortgage were proper as to the violations herein established. The Department's motions for summary determination are **GRANTED**. The license of Georgia Mortgage is hereby **REVOKED**, and the Amended Cease and Desist Order issued to Bernstein is **UPHELD**. This matter is hereby removed from the June 30, 2009 hearing calendar and **DISMISSED**.

SO ORDERED June 12, 2009.



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**STEPHANIE M. HOWELLS**  
Administrative Law Judge