

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



AMERICA'S FIRST HOME MORTGAGE :
COMPANY, INC., :
Petitioner, :
v. : Docket No.: OSAH-DBF-MLL-1008467-60-
Howells
DEPARTMENT OF BANKING AND :
FINANCE, :
Respondent. :

FILED

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GEORGIA DEPARTMENT OF
BANKING AND FINANCE

INITIAL DECISION

This matter was filed with this Tribunal on September 28, 2009. On October 2, 2009, the Georgia Department of Banking and Finance ("Department" or "Respondent") filed a motion for summary determination. America's First Home Mortgage Company, Inc. ("America's First" or "Petitioner") has not filed a response. For the reasons stated below, the Department's motion for summary determination is **GRANTED**.

I. Findings of Fact

The following facts are undisputed:

1.

On March 3, 2009, the Department initiated its examination of licensed mortgage lender America's First. (Affidavit of Valenzuela, ¶ 4.) During the examination, the Department requested that Mr. Vernon Pledger, the president and 100% shareholder of America's First, complete the Officer's Questionnaire. (Affidavit of Valenzuela, ¶ 4.) According to the completed Officer's Questionnaire, Terry Holmes and Sonny Strong, employees of America's First, have had felony convictions. Both Mr. Holmes and Mr. Strong have subsequently received

pardons. (Exhibit D at 4-13; Exhibit E; Exhibit G.) However, they were not pardoned until over four years after America's First hired them. (Exhibit D, at 4-23; Exhibit E; Exhibit G.) Coincidentally, America's First did not perform criminal background checks on Mr. Holmes and Mr. Strong until over four years after their respective hire dates. (Exhibit D, at 4-23.)

2.

On May 4, 2009, the Department issued to America's First a Notice of Intent to Revoke Annual License. (Exhibit A.) Petitioner timely requested a hearing to contest the Department's decision to issue the Notice of Intent to Revoke Annual License to America's First. (Exhibit B.) Thereafter, on May 28, 2009, the Department issued to America's First an Amended Notice of Intent to Revoke Annual License. (Exhibit C.)

Terry Holmes

3.

On or about March 5, 1997, Terry Holmes pleaded guilty to the felony offense of Criminal Issuance of a Bad Check. According to the accusation, Mr. Holmes presented a check drawn on the account of TLH Mortgage Corp., d/b/a A-1 Ace Mortgage, to an individual in exchange for the consideration of office space, knowing that the check would not be honored. Mr. Holmes was sentenced to five years confinement, to be served on probation. Additionally, he was ordered to pay restitution in the amount of \$701.25 and a probation fee of \$20.00 per month. (Exhibit E.)

4.

On or about June 7, 2000, Terry Holmes pleaded guilty to two counts of the felony offense of Forgery in the First Degree. Mr. Holmes was sentenced to five years of confinement, of which six months were to be served in confinement and the remaining four years and six months were

to be served on probation. Additionally, he was ordered to pay a fine in the amount of \$250.00, a probation fee of \$23.00 per month, and to complete the Victim Impact Awareness Program. (Exhibit F.)

5.

Mr. Holmes was hired by America's First on September 30, 2002 and was still employed with America's First as of March 4, 2009. (Exhibit D.) On February 2, 2007, he received a pardon for the March 1997 felony Criminal Issuance of a Bad Check conviction and the June 2000 conviction for two counts of felony Forgery in the First Degree. (Exhibit E.) According to the Officer's Questionnaire, America's First did not perform a criminal background check on Mr. Holmes until February 9, 2007, one week after he received his pardon. (Exhibit D.)

Sonny Strong a/k/a Milton Strong

6.

On September 17, 1990, Milton Strong pleaded guilty to Violation of Georgia Controlled Substances Act – Possession of Cocaine, which is a felony.¹ He was sentenced to four years of confinement, to be served on probation. Additionally, he was ordered to pay a fine in the amount of \$500.00. (Exhibit G.)

7.

Mr. Strong was hired by America's First on September 15, 2003 and was still employed by the company as of March 4, 2009. (Exhibit D.) On October 10, 2007, Mr. Strong received a pardon for his September 1990 felony Possession of Cocaine conviction. (Exhibit G.) According to the

¹ On the Officer's Questionnaire, America's First admitted that "Sonny" Strong had a felony conviction. (Exhibit D, at 4-13.) Personnel records for America's First list Mr. Strong's name as Sonny Milton Strong. (Exhibit H.) Additionally, in response to an inquiry from the Department's examiner, Michelle Strong, Vice President of America's First, references Sonny Strong's felony charge for possession of cocaine. (Exhibit I.) The Final Disposition and pardon refer to the same criminal offense, but the name of the criminal defendant is listed as Milton Hubert Strong, Jr. or Milton Strong, Jr. Based on these facts, this Tribunal finds that Sonny Strong and Milton Strong Jr. are one in the same.

Officer's Questionnaire, America's First did not perform a criminal background check on Mr. Strong until October 10, 2007, the day he received his pardon. (Exhibit D.) Furthermore, America's First was aware of Mr. Strong's felony conviction prior to hiring him. (Exhibit I.)

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 America's First violated the prohibition contained in Georgia Code Section 7-1-1004(d) by employing two convicted felons. 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 at the time Mr. Holmes and Mr. Strong were hired they both had felony convictions. 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). Thus, Mr. Strong's specific crime was a crime of moral turpitude. Furthermore, although Mr. Holmes and Mr. Strong did ultimately receive pardons, they had not been pardoned prior to being hired by America's First. Both Mr. Holmes and Mr. Strong had been employed with America's First for over four years before they received their pardons. Therefore, by employing Mr. Holmes and Mr. Strong prior to their pardons, America's First violated the prohibition contained in Section 7-1-1004(d).²

4.

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-

² Moreover, while section 7-1-1004 (d) does not appear to require the licensee to have actual knowledge that it was employing convicted felons, the evidence presented establishes that America's First knew or should have known that Mr. Holmes and Mr. Strong were convicted felons when they were hired. See Findings of Fact ¶¶ 1, 5, 7; see also O.C.G.A. § 7-1-1004(f) ("Every licensee and applicant shall be authorized and *required* to obtain background checks on covered employees. . . . A background check must be initiated for a person in the employ of a licensee or applicant within ten days of the date of initial hire and be completed with satisfactory results within the first 90 days of employment.") (emphasis added).

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, Petitioner America's First violated Georgia Code Section 7-1-1004(d). Accordingly, the Department's Amended Notice of Intent to Revoke Annual License issued to America's First was proper as to the violations herein established. The Department's motion for summary determination is **GRANTED**. The license of America's First is hereby **REVOKED**. This matter is hereby removed from the November 12, 2009 hearing calendar and **DISMISSED**.

Respondent's pending Motion for Continuance is **DENIED** as moot.

SO ORDERED this 26th day of October, 2009.


STEPHANIE M. HOWELLS
Administrative Law Judge