

OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

RAMSEY SUPHI AGAN d/b/a RSA  
FINANCIAL,

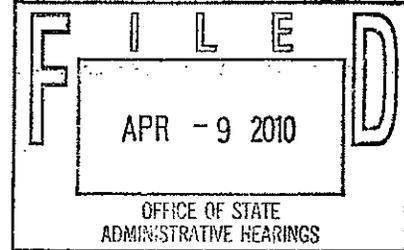
Petitioner,

:  
: Docket No.: OSAH-DBF-MBL-1007450-60-  
: RW  
:

v.

GEORGIA DEPARTMENT OF BANKING  
AND FINANCE,

Respondent.



INITIAL DECISION

I. Introduction

Respondent, Georgia Department of Banking and Finance, issued Petitioner, Ramsey Suphi Agan d/b/a RSA Financial, a Notice of Intent to Revoke Annual License on July 6, 2009. Petitioner timely requested a hearing pursuant to O.C.G.A. § 7-1-1017. On October 21, 2009, Respondent issued an Amended Notice of Intent to Revoke Annual License,<sup>1</sup> and Petitioner again timely requested a hearing. Following denial of the parties' cross-motions for summary determination, a hearing took place on February 10, 2010. After the submission of the hearing transcript and post-hearing briefs, the record closed on March 11, 2010. For the following reasons, Petitioner's license hereby is **REVOKED**.

II. Findings of Fact

A. Initial Application

1.

On September 3, 2008, Petitioner submitted a mortgage lender's license application to Respondent. In the application, Petitioner answered "Yes" to the question asking whether he had been convicted of or pled guilty or nolo contendere ("no contest") to a felony in a domestic, foreign, or military court. *Respondent's Exhibit 1*.

<sup>1</sup> Respondent filed an Amended OSAH Form 1 on November 12, 2009. A Case Management Order presented by the parties permitted the filing of these documents outside the timelines prescribed by the OSAH Rules.

2.

The application specified that Petitioner should “provide complete details of all events or *proceedings* in an attachment, including as applicable; name and location of court, docket or case number, and status and summary of event or *proceeding*; copies of applicable charges(s), orders(s) and/or consent agreement(s).” Petitioner did not submit any of the requested material to Respondent with his application. However, as Petitioner indicated in the application that he had been convicted of a felony, Respondent contacted Petitioner and asked that he provide the paperwork detailing any dispositions in his case. *Respondent’s Exhibits 1, 2, 3*; Transcript at pp. 23, 24-25 (hereinafter “T-”).

3.

In response to Respondent’s request, Petitioner sent Respondent a document indicating that he had received a pardon from the Georgia State Board of Pardons and Paroles for three counts of bribery in the case of *State v. Agan*, Criminal Case No. 87CR3093, Superior Court of Dekalb County (1988). *Respondent’s Exhibits 2, 3*; T-24-25. Relying on the documentation submitted, Respondent issued Petitioner a mortgage license on September 26, 2008. T-28; 43-44.

4.

In September of 2009, Respondent learned Petitioner had also pled guilty in federal court to two felony counts of making a false statement for the purpose of influencing the action of a bank insured by the FDIC in violation of 18 U.S.C. § 1014 in 1982.<sup>2</sup> Petitioner had not disclosed this conviction as part of his original application or in any other communications to Respondent. *Respondent’s Exhibits 2, 3 4*; T-24-25, 221, 224, 239. Although Respondent had submitted a Georgia Crime Information Center criminal background check in 2008, the background check did not reveal Petitioner’s federal conviction. T-25, 44-45, 63.

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<sup>2</sup> According to the indictment filed by the United States, Petitioner’s federal conviction for false statements was in connection with a loan and line of credit which “misstated the nature of Adana [Mortgage Bankers, Inc.] assets.” *Respondent’s Exhibit 4*. Further, Petitioner “stated to representatives of the [bank] that Adana Mortgage Bankers,

5.

Until September of 2009, Respondent was unaware of Petitioner's federal conviction. T-23-25, 39, 43-45. If Petitioner had disclosed his federal conviction to Respondent, Respondent would not have issued him a mortgage lender's license. T-45, 124-125.

6.

After learning of Petitioner's federal conviction, Respondent contacted Petitioner. T-44-45, 124-125. Petitioner offered a slew of contradictory and increasingly absurd reasons as to why he had failed to provide Respondent with any information regarding his federal conviction in his original application for licensure. Initially, Petitioner claimed that he had pled nolo contendere to the federal charge and believed that the conviction had been expunged. *Respondent's Exhibit 9*; T-125, 139, 225-228. Petitioner then suggested that Respondent had "institutional knowledge" of his federal felony conviction based on a prior administrative proceeding against Adana Mortgage Bankers, Inc., T-15, and that in any event Respondent should have found out about the conviction when it performed the criminal background check. T-220, 221. Petitioner also attempted to justify his failure to disclose the federal conviction by stating that he did not have any documentation regarding this conviction; however, the application for licensure asked not only for documentation but for complete details of all events or proceedings in an attachment. T-178. The undersigned finds Petitioner's explanations are persuasive only as to his propensity for dishonesty.<sup>3</sup>

## **B. Renewal Application**

7.

On March 30, 2009, Petitioner submitted his license renewal application to Respondent through the Nationwide Mortgage Licensing System and Registry ("NMLS") for the period of July 1, 2009 through December 31, 2009 (hereinafter the "2009 renewal"). *Respondent's Exhibits 5, 6*; T-50. The 2009 renewal application asked if Petitioner had ever "been convicted of or pled

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Inc. had not received the proceeds from certain specified mortgages....when in truth and fact, as he then and there well knew, Adana Mortgage Bankers, Inc., had in fact received the proceeds." *Id.*

<sup>3</sup> Although not at issue in this proceeding, Petitioner also failed to respond truthfully to another question on his application regarding previous regulatory action taken against him. T-245, 247. A correct answer to this question would have implicated his federal conviction. T-253.

guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony?” Petitioner responded “No” to this question. *Respondent’s Exhibits 5, 6*; T-198, 231, 232.

8.

Beginning for the renewal period of July 1, 2009, through December 31, 2009, Respondent received all original and renewal applications for mortgage lenders and mortgage brokers through NMLS. T-48-49. After receiving Petitioner’s renewal application, NMLS forwarded this application Respondent electronically. *Respondent Exhibit 6*; T-46-47, 53. Respondent processed and approved the 2009 renewal of Petitioner’s mortgage lender’s license on April 15, 2009, and issued Petitioner a renewal license in early June of 2009. *Respondent’s Exhibit 6*; T-55.

9.

Petitioner claimed that he had erred in answering “No” to the question on the renewal application regarding prior felony convictions because the renewal form itself was confusing. *Respondent’s Exhibits 5, 6*; T-198, 231, 232. Petitioner also asserts that he believed he did not have to answer “Yes” again, because he had answered “Yes” to the identical question in the initial application and “that application stays there. You don’t send the same thing every year... [i]f this form means that you’ve got to do it every year, it’s news to me.” T-232-233; 237. Nonetheless, less than two weeks after Petitioner submitted his 2009 renewal application to Respondent, Petitioner disclosed his federal conviction to the United States Department of Housing and Urban Development (“HUD”). *Respondent’s Exhibits 5, 13*; T-50, 229, 230. The undersigned finds Petitioner’s explanation for his dishonest answer to be unpersuasive. To the contrary, the evidence suggests Petitioner has not been truthful to Respondent on numerous occasions.

10.

On October 6, 2009, after the initiation of this administrative proceeding and over one year after obtaining his original license, Petitioner received a restoration of rights for his federal felony conviction from the Georgia State Board of Pardons and Paroles. *Petitioner’s Exhibit 5*.

### III. Conclusions of Law

1.

Respondent bears the burden of proof. GA. COMP. R. & REGS. r. 616-1-2-.07(1). The standard of proof is preponderance of the evidence. GA. COMP. R. & REGS. r. 616-1-2-.21(4).

2.

This matter is governed by the provisions of the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 *et seq.*

3.

At the time Respondent issued Petitioner an initial license, in September of 2008, the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1004 (d) (2007) provided, in pertinent part:

The department may not issue or may revoke a license if it finds that 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...unless the person convicted of the crime shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

4.

Effective July 1, 2009, the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1004(h) (2009) was amended to provide, in pertinent part:

The department shall not issue or may revoke a license or registration if it finds that the ... mortgage lender applicant or licensee...has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony 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...unless the person convicted of the crime ... shall have received an official certification or pardon granted by the state's pardoning body in the jurisdiction where the conviction occurred. Any pardon of a conviction shall not be a conviction for purposes of this subsection.

5.

Petitioner argues that when he submitted his original application for licensure, the language of O.C.G.A. § 7-1-1004(d) permitted Respondent to exercise its discretion and issue him a license notwithstanding his felony conviction.<sup>4</sup> Even if Petitioner is correct in arguing that the statute provided Respondent such discretion, the evidence at the hearing proved that Respondent would not have exercised such discretion in favor of granting Petitioner a license. At the time of his initial application, Respondent was convicted of a felony crime of moral turpitude<sup>5</sup> and had not received an official certification from the state's pardoning body. Indeed, Petitioner's federal conviction for false statements weighed heavily in favor of denying Petitioner a license as it occurred in connection with a loan and line of credit which, according to the indictment, "misstated the nature of Adana [Mortgage Bankers, Inc.] assets." *See Respondent's Exhibit 4.*

6.

The Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1017(a)(1)(2009)<sup>6</sup> provides, in pertinent part:

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

7.

Even if Respondent had discretion to issue Petitioner an original license, the statute allows it to revoke Petitioner's original or renewal license for the same reason it "might refuse to issue an original license...." O.C.G.A. § 7-1-1017(a)(1) (emphasis added). At the time Respondent initiated this proceeding to revoke Petitioner's license, Petitioner was a convicted felon. As detailed under O.C.G.A. § 7-1-1004(h), Respondent could have either refused to issue Petitioner

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<sup>4</sup> Petitioner also raises a number of constitutional challenges in his post-hearing submission. As the ALJ is not permitted to adjudicate these challenges, Petitioner's arguments are preserved for the record. *See GA. COMP. R. & REGS. r. 616-1-2-.22(2).*

<sup>5</sup> A conviction for violating 18 U.S.C. § 1014 is a felony involving moral turpitude. *See, e.g., In re Brannon*, 249 Ga. 404 (1982); *In re Hester*, 247 Ga. 791(1981).

either the original or renewal license; accordingly, O.C.G.A. § 7-1-1017(a)(1) permits Respondent to revoke his licensure on identical grounds. This stands as an additional independent ground warranting revocation of Petitioner's license.

8.

By initiating administrative proceedings against Petitioner, Respondent seeks to revoke Petitioner's license. As it was only after Respondent filed a Notice of Intent to Revoke Annual License and the instant administrative proceedings were underway that Petitioner received a restoration of rights from the State Board of Pardons and Paroles, Petitioner's argument that this restoration of rights moots this proceeding is unavailing. As stated in *Georgia Department of Agriculture v. Brown*, "[c]ompliance contemplated by the statute is compliance with lawful requirements at the time of the alleged violations, not subsequent compliance after notice has been given." 270 Ga. App. 646, 648 (2004); see also *Hulgan v. Thornton*, 205, Ga. 753, 758 (1949) (pardon "should not reach back and annul an ineligibility"). Otherwise, applicants would be free to make misrepresentations on applications for licensure and simply attempt to cure such misrepresentations only if they were discovered and the agency initiated an administrative proceeding.

9.

Prior to July 1, 2009, the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1013(11) (2005) provided, 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 any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(11) Purposely withhold, delete, destroy or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department.<sup>7</sup>

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<sup>6</sup> Effective July 1, 2009 the law regarding license revocation was slightly modified to address the revocation of approval issued to entities that provide mortgage broker education. Compare O.C.G.A. § 7-1-1017(a)(1)(2007):

<sup>7</sup> Effective July 1, 2009, the statute was amended to provide that it shall be prohibited to make false statements or material misrepresentations to the department "or the Nationwide Mortgage Licensing System and Registry or in

10.

Aside from the revocation of Petitioner's license, by failing to provide documentation or information regarding his federal felony conviction to Respondent in his initial application, Petitioner made material misrepresentations to Respondent in violation of the prohibitions found in O.C.G.A. § 7-1-1013(11). Moreover, Petitioner responded to the questions regarding his criminal convictions in the 2009 renewal by indicating he had no criminal convictions. As the undersigned finds Petitioner's false answers were intentionally and knowingly put forward, they were made in violation of O.C.G.A. § 7-1-1013(11) and stand as an independent ground upon which revocation is warranted.<sup>8</sup> See *Georgia Real Estate Commission v. Syfan*, 192 Ga. App. 3 (1989) (in order to take administrative action for a false statement it must be "intentionally and knowingly put forward"). Either of these misrepresentations serves as an independent ground upon which revocation is warranted.

11.

Relying on Department of Banking and Finance rule 80-11-3-.01, which addresses the imposition of administrative fines, Petitioner suggests that the only administrative action Respondent can take against him for violations of O.C.G.A. § 7-1-1013(11) is the imposition of a \$1,000.00 fine. O.C.G.A. § 7-1-1017(a)(1) allows Respondent to suspend or revoke an original or renewal license for a violation of "any provision of this article...." Given that Petitioner made false statements to Respondent, Respondent has the express statutory authority to revoke his license, in addition to its authority to prescribe administrative fines for violations. See O.C.G.A. §§ 7-1-1017(a)(1); 7-1-1018(g).

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connection with any investigation conducted by the department or another governmental agency." O.C.G.A. § 7-1-1013(11) (2009).

<sup>8</sup> Petitioner's argument that he received inadequate notice of this violation is not supported by the record. Respondent's Amended OSAH Form 1 offered Petitioner timely and more than adequate notice of the violations charged by Respondent.

**IV. Decision**

For the aforementioned reasons, Petitioner's license is **REVOKED**.

SO ORDERED, this 9 day of April, 2010.



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**RONIT WALKER**  
**Administrative Law Judge**



CERTIFIED MAIL

RE: RAMSEY SUPHI AGAN D/B/A RSA FINANCIAL, Petitioner

DOCKET NO.: OSAH-DBF-MBL-1007450-60-Walker

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