



Department of Banking and Finance

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Sonny Perdue
Governor

Robert M. Braswell
Commissioner

March 4, 2010

VIA E-MAIL AND CERTIFIED MAIL – 91 7108 2133 3937 2540 5360

FILED

NOV 19 2010

Mr. Kaptain D. Kootnz, President
Mortgage America, LLC
3720 Farragut Avenue, Suite 500
Kensington, Maryland 20895

GEORGIA DEPARTMENT OF
BANKING AND FINANCE

AMENDED ORDER TO CEASE AND DESIST

Pursuant to O.C.G.A. § 7-1-1018(a), the Georgia Department of Banking and Finance (“Department”) hereby orders you, Kaptain D. Koontz, to cease and desist from engaging in activities in violation of the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 *et seq.* Specifically, the Department has evidence that you employed a felon in violation of O.C.G.A. § 7-1-1004(h) (formerly §7-1-1004(d)); purposefully withheld information from and made false statements or material misrepresentations to the Department in violation of O.C.G.A. § 7-1-1013(11); employed a person against whom a final cease and desist order was issued within the five preceding years for violations of O.C.G.A. §§ 7-1-1002 and 7-1-1004(h) in violation of O.C.G.A. § 7-1-1004(o)(formerly §7-1-1004(i)); operated unapproved branches in violation of O.C.G.A. § 7-1-1006(f) and (g); failed to properly maintain a mortgage loan transaction journal in violation of Department Rule 80-11-2-.03; and, transacted business in violation of O.C.G.A. § 7-1-1002(a) and (b) with a person who is unlicensed and unregistered, not exempt from licensing and registration requirements and who is not an employee of a mortgage broker or lender. Further, in violation of O.C.G.A. § 7-1-1002(c), you directly or indirectly controlled a person who violated O.C.G.A. § 7-1-1002(a) and (b).

Pursuant to the provisions of O.C.G.A. § 7-1-1018, you may request a hearing to contest this Order. 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 twenty days of the date of this Order. Please be advised that if you do not request a hearing in writing within twenty days of the date of this Order, this Order shall become a final order. As a result, a licensed mortgage broker or mortgage lender will be prohibited from employing you for a period of five years to perform any functions governed by the GRMA, O.C.G.A. § 7-1-1004. This restriction in no way prohibits you from engaging in business with a mortgage broker or mortgage lender that is not licensed or required to be licensed by this Department. Should you have any questions concerning this matter, please contact Felicia Faison-Holmes, Non-Depository Financial Institutions Division Attorney at (770) 986-1648.

Rod Carnes, CFE

Deputy Commissioner

Non-Depository Financial Institutions Division

FILED

NOV 19 2010

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA DEPARTMENT OF
BANKING AND FINANCE**

MORTGAGE AMERICA, LLC,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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Docket Number:
OSAH-DBF-MLL-1105373-60-Malihi



ORDER ON RESPONDENT’S MOTION FOR SUMMARY DETERMINATION

Respondent moved for summary determination. Petitioner failed to respond.

Respondent’s unopposed motion is granted.¹

**STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE EXISTS NO ISSUE**

1.

The Georgia Department of Banking and Finance (“Department”) issued a Notice of Intent to Revoke Annual License to Mortgage America, LLC (“Mortgage America”) on October 29, 2009. Exhibit B is a true and correct copy of the Notice of Intent to Revoke Annual License issued by the Department.

2.

Mortgage America timely requested a hearing in response to the Notice of Intent to Revoke Annual License. Exhibit C is a true and correct copy of Mortgage America’s request for a hearing.²

¹ The undisputed findings of fact and conclusions of law presented by Respondent are incorporated below with minor modifications.

² All exhibits are attached to Respondent’s Memorandum of Law.

3.

The Department issued an Amended Notice of Intent to Revoke Annual License to Mortgage America on March 4, 2010. Exhibit D is a true and correct copy of the Amended Notice of Intent to Revoke Annual License issued by the Department.

4.

Starting on February 26, 2009, the Department initiated an examination of Mortgage America. (Affidavit of Hester, ¶ 4).

5.

Kaptain D. Koontz, the 91% owner of Mortgage America, completed the Officer's Questionnaire on behalf of Mortgage America. Exhibit E is a true and correct copy of the Officer's Questionnaire completed by Mortgage America. (Affidavit of Hester, ¶ 4).

6.

Mortgage America employed Vance Bibb beginning on December 13, 2007. (Exhibit E).

7.

Vance Bibb pled guilty to six counts of sexual exploitation of children in violation of O.C.G.A. § 16-12-100 on December 15, 2005. Exhibit F is a certified copy of Mr. Bibb's felony conviction for sexual exploitation of children.

8.

Vance Bibb pled guilty to three counts of forged or counterfeited trademarks, service marks, or copyrighted or registered designs; unauthorized production in violation of O.C.G.A. § 10-1-454 on January 25, 2007. Exhibit G is a certified copy of Mr. Bibb's felony conviction for forged or counterfeited trademarks, service marks, or copyrighted or registered designs; unauthorized production.

9.

Vance Bibb pled guilty to two counts of offering for sale counterfeit goods in violation of O.C.G.A. § 10-1-454 on June 15, 2007. Exhibit H is a certified copy of Mr. Bibb's felony conviction for offering for sale counterfeit goods.

10.

During the examination, the Department's examiner discovered in the loan file of Torrence Maxey a settlement statement for the purchase of the premises located at 3009 Pritchards Trail, Douglasville, Georgia 30135. Exhibit K is a true and correct copy of the settlement statement produced to the Department by Mortgage America for Mr. Maxey's purchase of the premises located at 3009 Pritchards Trail, Douglasville, Georgia 30135. (Affidavit of Hester, ¶ 6).

11.

Mortgage America was compensated as a mortgage broker on Mr. Maxey's file. (Exhibit K).

12.

At the closing of Mr. Maxey's loan, \$595.00 was disbursed to A&R Consulting Concepts for "processing fees" related to Mr. Maxey's loan. (Exhibit K).

13.

A&R Consulting Concepts has never been licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4).

14.

During the examination, the Department's examiner discovered in the loan file of Torrence Maxey a loan application for the purchase of the premises located at 3009 Pritchards Trail, Douglasville, Georgia 30135. Exhibit L is a true and correct copy of the loan application produced to the Department by Mortgage America for Mr. Maxey's purchase of the premises located at 3009 Pritchards Trail, Douglasville, Georgia 30135. (Affidavit of Hester, ¶ 6)

15.

Mr. Maxey's loan application indicates that it was taken by Kendra Walker, an employee of Mortgage America, on March 17, 2008. (Exhibit L).

16.

Kendra Walker was employed by Mortgage America as a loan officer from April 10, 2008 through September 26, 2008. (Exhibit E, p. 4-23).

17.

According to the mortgage loan transaction journal produced by Mortgage America, Kendra Walker was the loan officer for the loan file of Mr. Maxey. Exhibit M is a true and correct copy of the mortgage loan transaction journal produced to the Department to Mortgage America. (Affidavit of Hester, ¶ 7). The loan application for Mr. Maxey was taken before Ms. Walker's employment with Mortgage America began. (Exhibits E, p. 4-23 and L).

18.

Kendra Walker brokered the loan for Torrence Maxey as she took his loan application and she was the loan officer assigned to the file by Mortgage America. (Exhibits E, p. 4-23, L, and M).

19.

Kendra Walker is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4).

20.

During the examination, the Department's examiner discovered in the loan file of Adam Carter a loan application for the purchase of the premises located at 5995 Fairing Drop, Lithonia, Georgia 30038. Exhibit N is a true and correct copy of the loan application produced to the Department by Mortgage America for Mr. Carter's purchase of the premises located at 5005 Fairing Drop, Lithonia, Georgia 30038. (Affidavit of Hester, ¶ 8)

21.

Mr. Carter's loan application indicates that it was taken by Teresa Whitehead, an employee of Mortgage America, on July 21, 2008. (Exhibit N).

22.

Teresa Whitehead was employed by Mortgage America as a loan officer starting on August 3, 2008. (Exhibit E, p. 4-23).

23.

According to the mortgage loan transaction journal produced by Mortgage America, Teresa Whitehead was the loan officer for the loan file of Mr. Carter. (Exhibit M). The loan application for Mr. Carter was taken before Ms. Whitehead's employment with Mortgage America began. (Exhibits E, p. 4-23 and N).

24.

Teresa Whitehead brokered the loan for Adam Carter as she took his loan application and she was the loan officer assigned to the file by Mortgage America. (Exhibits E, p. 4-23, M, and N).

25.

Teresa Whitehead is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4).

26.

During the examination, the Department's examiner discovered in the loan file of Dale Carreker a loan application for the purchase of the premises located at 3263 Triune Mill Road, Thomaston, Georgia 30286. Exhibit O is a true and correct copy of the loan application produced to the Department by Mortgage America for Mr. Carreker's purchase of the premises located at 3263 Triune Mill Road, Thomaston, Georgia 30286. (Affidavit of Hester, ¶ 9)

27.

Mr. Carreker's loan application indicates that it was taken by Sheryl Jones, an employee of Mortgage America, on July 23, 2008. (Exhibit O).

28.

Sheryl Jones was employed by Mortgage America as a loan officer starting on July 29, 2008. (Exhibit E, p. 4-23).

29.

According to the mortgage loan transaction journal produced by Mortgage America, Sheryl Jones was the loan officer for the loan file of Mr. Carreker. (Exhibit M). The loan application for Mr. Carreker was taken before Ms. Jones' employment with Mortgage America began. (Exhibits E, p. 4-23 and O).

30.

Sheryl Jones brokered the loan for Dale Carreker as she took the loan application and she was the loan officer assigned to the file by Mortgage America. (Exhibits E, p. 4-23, M, and O).

31.

Sheryl Jones is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4).

32.

During the examination, the Department's examiner discovered in the loan file of Jonas Terry his loan application for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168. Exhibit P is a true and correct copy of the loan application produced to the Department by Mortgage America for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168. The Department's examiner also discovered in Mr. Terry's file a settlement statement from the closing of the loan. Exhibit Q is a true and correct copy of the settlement statement produced to the Department by Mortgage America for Mr. Terry's purchase of the premises located at 115 Silver Arrow Circle, Austell, Georgia 30168. The settlement statement indicates that Mortgage America was paid a processing fee of \$542.50 related to Mr. Terry's loan and that the loan was funded by Countrywide Bank. (Affidavit of Hester, ¶ 10; Exhibits P and Q).

33.

The Department's examiner discovered in Mr. Terry's loan file a Processors Certification. The Processors Certification, which is on Mortgage America letterhead, is signed by Bill

Nicholson. Exhibit R is a true and correct copy of the Processors Certification produced to the Department by Mortgage America related to Mr. Terry's loan for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168. (Affidavit of Hester, ¶ 10; Exhibit R).

34.

During the examination, the Department's examiner discovered in the loan file of Gisel and Rafael Garcia their loan application for the property located at 96 Joy Drive, Douglasville, Georgia 30134. Exhibit S is a true and correct copy of the loan application produced to the Department by Mortgage America for the property located at 96 Joy Drive, Douglasville, Georgia 30134. The Department's examiner also discovered in Mr. and Ms. Garcia's file a settlement statement from the closing of the loan. Exhibit T is a true and correct copy of the settlement statement produced to the Department by Mortgage America for Mr. and Ms. Garcia's purchase of the premises located at 96 Joy Drive, Douglasville, Georgia 30134. The settlement statement indicates that Mortgage America was paid a processing fee of \$495.00 related to Mr. and Ms. Garcia's loan and that the loan was funded by Taylor Bean & Whitaker Mortgage Company. (Affidavit of Hester, ¶ 11; Exhibits S and T).

35.

The Department's examiner discovered in Mr. and Ms. Garcia's loan file a Processors Certification. The Processors Certification, which is on Mortgage America letterhead, is signed by Bill Nicholson. Exhibit U is a true and correct copy of the Processors Certification produced to the Department by Mortgage America related to Mr. and Ms. Garcia's loan for the property located at 96 Joy Drive, Douglasville, Georgia 30134. (Affidavit of Hester, ¶ 11; Exhibit U).

36.

Bill Nicholson was not employed by Mortgage America. (Exhibit E, p. 4-23).

37.

Bill Nicholson brokered Mr. Terry's loan and Mr. and Ms. Garcia's loan by processing them. (Exhibits R and U).

Bill Nicholson is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4).

ARGUMENT

A. By having an employee who committed felonies involving moral turpitude, Mortgage America violated the prohibition in O.C.G.A. § 7-1-1004(d) (2005).

The Department is empowered to revoke a mortgage lender's license if a licensed entity has an employee that has been convicted of a felony involving moral turpitude. O.C.G.A. § 7-1-1004(d) (2005)³ provides in pertinent part that:

The department may not issue or may revoke a license if it finds that the applicant or licensee, 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, unless and until ... 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.

(Emphasis added).

Starting on February 26, 2009, the Department initiated its examination of Mortgage America, a licensed mortgage lender. (Affidavit of Hester, ¶ 4). During the examination, the

³ Effective July 1, 2009, the law precluding licensees from employing felons was slightly modified and re-codified. Compare O.C.G.A. § 7-1-1004(h); 2005 Ga. Laws 826, 842-43.

Department requested that Kaptain D. Koontz, the 91% owner of Mortgage America,⁴ complete the Officer's Questionnaire. Exhibit E is a true and correct copy of the Officer's Questionnaire completed by Mr. Koontz. (Affidavit of Hester, ¶ 4). As indicated in the employee portion of the Officer's Questionnaire, Vance Bibb was employed by Mortgage America as a loan officer since December 13, 2007. (Exhibit E, p. 4-23).

Prior to his employment at Mortgage America, Vance Bibb had multiple felony convictions. Vance Bibb pled guilty to six counts of sexual exploitation of children in violation of O.C.G.A. § 16-12-100 on December 15, 2005. Exhibit F is a certified copy of Mr. Bibb's felony conviction for the sexual exploitation of children. In addition, Vance Bibb pled guilty to three counts of forged or counterfeited trademarks, service marks, or copyrighted or registered designs; unauthorized reproductions in violation of O.C.G.A. § 10-1-454 on January 25, 2007. Exhibit G is a certified copy of Mr. Bibb's felony conviction for forged or counterfeit trademarks, service mark or copyrighted or registered design; unauthorized reproductions. Finally, Vance Bibb pled guilty to two counts of offering for sale counterfeit goods in violation of O.C.G.A. § 10-1-454 on June 15, 2007. Exhibit H is a certified copy of Mr. Bibb's felony conviction for offering for sale counterfeit goods. All of these convictions were felony convictions because Mr. Bibb was sentenced to confinement for one year or more on each conviction. (See Exhibits F, G, and H). O.C.G.A. § 16-1-3(5). Although the Georgia Residential Mortgage Act prohibits licensees from employing felons, Mortgage America employed a felon in direct violation of O.C.G.A. § 7-1-1004(d) (2005). Mortgage America's employment of Mr. Bibb is especially troubling in light of the fact that Mortgage America had the ability and legal responsibility to determine Mr. Bibb's criminal history.

⁴ This level of ownership in Mortgage America by Mr. Koontz was reflected in the Officer's Questionnaire he completed for the Department. (Exhibit E, pp. 4-10).

As part of the examination, the Department's examiner reviewed Mr. Bibb's employee file. (Affidavit of Hester, ¶ 5). The Department's examiner discovered a form executed by Mr. Bibb that authorized Mortgage America to conduct a criminal history background check. Exhibit I is a true and correct copy of the criminal history record consent form produced to the Department by Mortgage America. (Affidavit of Hester, ¶ 5). At the time Mr. Bibb was hired in December of 2007, the Georgia Residential Mortgage Act mandated that "[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." O.C.G.A. § 7-1-1004(f) (2007).⁵ Notwithstanding this statutory requirement, the Department's examiner was unable to locate the criminal background check run by Mortgage America even though this documentation is required to be maintained by the licensee. Department Rule 80-11-2-.02(1)(n). (Affidavit of Hester, ¶ 5).⁶ Quite simply, Mortgage America elected to not run a timely criminal background check, as required by law, which resulted in the impermissible employment of a felon.

Mr. Bibb's convictions on six counts of sexual exploitation of children, three counts of forged or counterfeited trademarks, service marks, or copyrighted or registered designs; unauthorized reproductions and two counts of offering for sale counterfeit goods are felony

⁵ Effective July 1, 2009, the law requiring licensed mortgage lenders to conduct background checks was re-codified. Compare O.C.G.A. § 7-1-1004(k); 2007 Ga. Laws 502, 527.

⁶ Mortgage America ultimately produced a criminal background check for Mr. Bibb generated in August of 2009. Exhibit J is a true and correct copy of the criminal background check produced to the Department by Mortgage America. (Affidavit of Hester, ¶ 5). The criminal background check on Mr. Bibb was run over a year and a half after he was employed and six months after the Department began its examination. See Exhibit J. The Department notes that the criminal background check it obtained from Mortgage America was not generated by the Georgia Crime Information Center ("GCIC"). See Exhibit J. Georgia law requires that the background checks on employees of licensees be conducted by GCIC. O.C.G.A. §§ 7-1-1004(f) and (g) (2007).

convictions involving moral turpitude. 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). In short, a crime designated as a felony is a crime involving moral turpitude. Lewis v. State, 243 Ga. 443, 445 (1979). Thus, in light of Mr. Bibb’s felony convictions for crimes involving moral turpitude, Mortgage America was prohibited by law from employing him.

O.C.G.A. § 7-1-1004(d) (2005) was enacted to protect the citizens of this State. In determining the intent of the General Assembly, the courts shall keep in mind “the old law, the evil, and the remedy.” O.C.G.A. § 1-3-1(a). The intent of the General Assembly can be determined from the caption of an act as well as the body of an act. Sovereign Camp Woodmen of the World v. Beard, 26 Ga. App. 130, 131 (1921). In the preamble to the Act, which became O.C.G.A. § 7-1-1000 et seq., the General Assembly stated that the purpose was “to provide for the licensing of mortgage lenders and mortgage brokers; . . . to provide for licensing requirements and fees; . . . to provide for the suspension and revocation of licenses; . . .” 1993 Ga. Laws 543, 543-44. O.C.G.A. § 7-1-1004(d) (2005) was enacted to protect the citizens and businesses of this State from individuals of poor moral character who are involved in the mortgage business. The General Assembly in enacting legislation sought to prevent all individuals of poor moral character from having the ability to access citizens’ sensitive financial information that a mortgage broker or lender would possess. This is seen by the broad prohibition against licensed entities retaining a convicted felon as a “director, officer, partner, agent, employee, or ultimate equitable owner of 10% or more.” O.C.G.A. § 7-1-1004(d) (2005). Employees of mortgage lenders are in a position to obtain critical financial information and cause irreparable harm to the citizens of this State.

Due to Mr. Bibb's criminal convictions, he was ineligible to work at Mortgage America. Notwithstanding this employment limitation, Mortgage America employed Mr. Bibb in violation of O.C.G.A. § 7-1-1004(d) (2005). (Exhibit E, p. 4-23). Pursuant to O.C.G.A. § 7-1-1017(a)(1) (2005):⁷

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 . . .

As Mortgage America violated the prohibition found in O.C.G.A. § 7-1-1004(d) (2005) by employing a convicted felon, the Department's order revoking Mortgage America's license is valid and must be upheld.

B. By directly or indirectly controlling unlicensed mortgage brokers, Mortgage America violated O.C.G.A. § 7-1-1002 (2003).

O.C.G.A. § 7-1-1002 (2003)⁸ 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

⁷ Effective July 1, 2009, the law regarding license revocations was slightly modified to address the revocation of entities approved to provide mortgage broker education. Compare O.C.G.A. § 7-1-1017(a)(1) (2009); 2005 Ga. Laws 826, 845.

⁸ Effective July 1, 2009, the law related to conducting business without a license was modified. Compare O.C.G.A. § 7-1-1002 (2009); 2003 Ga. Laws 843, 852-53.

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.

The Georgia Residential Mortgage 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) (1996)⁹ (emphasis added). “Person” is defined in the Georgia Residential Mortgage 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) (1996).¹⁰ In short, pursuant to O.C.G.A. § 7-1-1002(a) (2003), a corporation or natural person is prohibited from processing, soliciting or negotiating mortgage loans unless the corporation or natural person 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) (2003), the company is also guilty of violating O.C.G.A. § 7-1-1002(a) (2003). O.C.G.A. § 7-1-1002(c) (2003).

1. A&R Consulting Concepts.

As part of the examination of Mortgage America, the Department reviewed the loan file of Torrence Maxey for the property located at 3009 Pritchards Mill Trail, Douglasville, Georgia 30135. Exhibit K is a true and correct copy of the settlement statement generated from the closing of Mr. Maxey’s loan for the property located at 3009 Pritchards Mill Trail, Douglasville, Georgia 30135 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 6).

⁹ Effective July 1, 2009, the definition of mortgage broker was re-codified. Compare O.C.G.A. § 7-1-1000 (19); 1996 Ga. Laws 848, 857.

¹⁰ Effective July 1, 2009, the definition of person was re-codified. Compare O.C.G.A. § 7-1-1000(25); 1996 Ga. Laws 848, 858.

The settlement statement indicates that Mortgage America was compensated as a mortgage broker on Mr. Maxey's loan. (See Exhibit K, lines 801, 811, 812, 813). However, as indicated on the settlement statement, A&R Consulting Concepts was paid a \$595.00 "processing fee" related to Mr. Maxey's loan application. (Exhibit K, line 808).

A&R Consulting Concepts is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4). In fact, A&R Consulting Concepts has never been individually licensed or registered with the Department as a mortgage lender or mortgage broker. (Affidavit of Shelley, ¶ 4). An individual or entity that processes a mortgage loan satisfies the definition of mortgage broker. O.C.G.A. § 7-1-1000(11) (1996). A&R Consulting Concepts processed the loan application for Mr. Maxey on behalf of Mortgage America. In short, A&R Consulting Concepts was transacting business in this state as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a) (2003). O.C.G.A. § 7-1-1002(c) (2003) makes it a violation of law for a licensee to directly or indirectly control a company that violates O.C.G.A. § 7-1-1002(a) (2003). Mortgage America violated the prohibition in O.C.G.A. § 7-1-1002(c) (2003) by having A&R Consulting Concepts, an unlicensed entity, process a loan on its behalf.

2. Natural persons.

As set forth in O.C.G.A. § 7-1-1002(a)(3) (2003), employees of licensed mortgage brokers and mortgage lenders can work in the mortgage industry without having to obtain a mortgage broker's or lender's license if they satisfy the employee exemption set forth in O.C.G.A. § 7-1-1001(11) (2003).¹¹ O.C.G.A. § 7-1-1001(11) (2003) provides in pertinent part that "[a] natural person employed by a licensed mortgage broker [or] a licensed

¹¹ Effective July 1, 2009, the law related to exemptions for employees was modified and recodified. Compare O.C.G.A. § 7-1-1001(a)(14) (2009); 2003 Ga. Laws 843, 852.

mortgage lender ... when acting within the scope of employment and under the supervision of the licensee ... as an employee” is exempted from the licensure requirement of the Georgia Residential Mortgage Act. Department Rule 80-11-4-.03(2) provides in pertinent part that:

The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(11) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:

- (a) An employee must be employed by just one licensee or exemptee and must work exclusively for that person;
- (b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;
- (c) An employee’s procedures and activities must be supervised by the licensee or exemptee on a daily basis, and the licensee or exemptee is responsible for the actions of such employees. ...

In short, a corporation can do business with an employee, without running afoul of the prohibition against doing business with unlicensed parties, as long as the individual satisfies the requirements set forth in O.C.G.A. § 7-1-1001(11) (2003) as clarified by Department Rule 80-11-4-.03(2).

a. Kendra Walker

While conducting its review of the loan file of Torrence Maxey for the property located at 3009 Pritchards Mill Trail, Douglasville, Georgia 30135, the Department discovered that the loan application indicated it was taken by Ms. Walker. Exhibit L is a true and correct copy of Mr. Maxey’s loan application for the property located at 3009 Pritchards Mill Trail, Douglasville, Georgia 30135 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 6). The loan application indicates that it was taken by Kendra Walker, an employee of Mortgage America, on March 17, 2008. (See Exhibit L). However, the

Officer's Questionnaire produced to the Department indicates that Ms. Walker was employed by Mortgage America as a loan officer from April 10, 2008 through September 26, 2008. (Exhibit E, p. 4-23). Thus, according to the Officer's Questionnaire produced to the Department by Mortgage America, the loan application for Torrence Maxey was taken by Ms. Walker approximately three (3) weeks prior to being employed by Mortgage America. Therefore, based on the information provided to the Department by Mortgage America during the examination, Ms. Walker did not satisfy the employee exemption from licensure when Mr. Maxey's loan application was taken.

Kendra Walker was employed at Mortgage America from April 10, 2008 through September 26, 2008. (Exhibit E, p. 4-23). Prior to her employment at Mortgage America, Kendra Walker acted as a mortgage broker on behalf of Mortgage America on Mr. Maxey's mortgage loan. (Exhibit L). Kendra Walker is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4). In fact, Kendra Walker has never been individually licensed or registered with the Department as a mortgage lender or mortgage broker. (Affidavit of Shelley, ¶ 4). O.C.G.A. § 7-1-1000(11) (1996) defines "mortgage broker" as "any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others." By taking Mr. Maxey's loan application, Mr. Walker satisfied the definition of mortgage broker. (Exhibit L).

Kendra Walker did not satisfy any of the exemptions contained in O.C.G.A. § 7-1-1001 (2007) when she brokered a loan before her employment commenced at Mortgage America. Pursuant to O.C.G.A. § 7-1-1001(11) (2003), employees of licensees are exempt from licensure. However, Kendra Walker was not an employee of Mortgage America when she brokered Mr. Maxey's loan, and, therefore, this exception cannot apply to this loan. (Exhibit

E, p. 4-23). In addition to O.C.G.A. § 7-1-1001(11) (2003), the exceptions contained in O.C.G.A. § 7-1-1001(3), (4), (5), (6), (8), (12), (13) and (14) (2007) appear to apply to any natural person. However, these exceptions on their face do not apply to individuals who are brokering mortgage loans for licensed mortgage brokers. In short, Kendra Walker was transacting business in this state as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a) (2003).

As part of the examination, Mortgage America produced its mortgage loan transaction journal¹² to the Department's examiner. Exhibit M is a true and correct copy of the mortgage loan transaction journal produced to the Department. (Affidavit of Hester, ¶ 7). The mortgage loan transaction journal produced by Mortgage America reveals that Ms. Walker was the loan officer¹³ on Mr. Maxey's loan file that was opened prior to her employment at Mortgage America. (Exhibit E, p. 4-23, Exhibit M). By listing Ms. Walker as the loan officer, Mortgage America has acknowledged that she was the individual responsible for the loan file and that she took the loan application on behalf of Mortgage America. Department Rule 80-11-2-.03. O.C.G.A. § 7-1-1002(c) (2003) makes it a violation of law for a licensee to directly or indirectly control an individual that violates O.C.G.A. § 7-1-1002(a) (2003). Mortgage America violated O.C.G.A. § 7-1-1002(c) (2003) as it let Ms. Walker act as the "loan officer" on Mr. Maxey's loan file when she was not employed by Mortgage America.

¹² Department Rule 80-11-2-.03 mandates that all licensees maintain a mortgage loan transaction journal which must contain the full name of the borrower and co-borrower, social security numbers, the application date, "name of the loan officer responsible for the loan application whose name also appears on the application," the disposition of the loan application, and the date of disposition.

¹³ The mortgage loan transaction journal indicates that Ms. Walker is the "LO." In light of the fact that Department Rule 80-11-2-.03 mandates licensees to list the name of the loan officer for each file on the mortgage loan transaction journal, it stands to reason that the abbreviation "LO" means loan officer.

b. Teresa Whitehead

As part of the examination of Mortgage America, the Department reviewed the loan file of Adam Carter for the property located at 5995 Fairing Drop, Lithonia, Georgia 30038. Exhibit N is a true and correct copy of Mr. Carter's loan application for the property located at 5995 Fairing Drop, Lithonia, Georgia 30038 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 8). The loan application indicates that it was taken by Teresa Whitehead, an employee of Mortgage America, on July 21, 2008. (See Exhibit N). However, the Officer's Questionnaire produced to the Department indicates that Ms. Whitehead was employed by Mortgage America as a loan officer starting on August 3, 2008. (Exhibit E, p. 4-23). Thus, according to the Officer's Questionnaire produced to the Department by Mortgage America, the loan application for Adam Carter was taken by Ms. Whitehead approximately two (2) weeks prior to being employed by Mortgage America. Therefore, based on the information provided to the Department by Mortgage America during the examination, Ms. Whitehead did not satisfy the employee exemption from licensure when Mr. Carter's loan application was taken.

Teresa Whitehead was employed at Mortgage America starting on August 3, 2008. (Exhibit E, p. 4-23). Prior to her employment at Mortgage America, Teresa Whitehead acted as a mortgage broker on behalf of Mortgage America on Mr. Carter's mortgage loan. (Exhibit N). Teresa Whitehead is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4). In fact, Teresa Whitehead has never been individually licensed or registered with the Department as a mortgage lender

or mortgage broker. (Affidavit of Shelley, ¶ 4). O.C.G.A. § 7-1-1000(11) (1996) defines “mortgage broker” as “any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others.” By taking Mr. Carter’s loan application, Ms. Whitehead satisfied the definition of mortgage broker. (Exhibit N).

Teresa Whitehead did not satisfy any of the exemptions contained in O.C.G.A. § 7-1-1001 (2007) when she brokered a loan before her employment at Mortgage America. Pursuant to O.C.G.A. § 7-1-1001(11) (2003), employees of licensees are exempt from licensure. However, Teresa Whitehead was not an employee of Mortgage America when she brokered Mr. Carter’s loan, and, therefore, this exception cannot apply to this loan. (Exhibit E, p. 4-23). In addition to O.C.G.A. § 7-1-1001(11) (2003), the exceptions contained in O.C.G.A. § 7-1-1001(3), (4), (5), (6), (8), (12), (13) and (14) (2007) appear to apply to any natural person. However, these exceptions on their face do not apply to individuals who are brokering mortgage loans for licensed mortgage brokers. In short, Teresa Whitehead was transacting business in this state as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a) (2003).

The mortgage loan transaction journal produced to the Department by Mortgage America reveals that Ms. Whitehead was the loan officer¹⁴ on Mr. Carter’s loan file that was opened prior to her employment at Mortgage America. (Exhibit E, p. 4-23; Exhibit M). By listing Ms. Whitehead as the loan officer, Mortgage America has acknowledged that she was the individual responsible for the loan file and that she took the loan application on behalf of Mortgage America. Department Rule 80-11-2-.03. O.C.G.A. § 7-1-1002(c) (2003) makes it a violation of law for a licensee to directly or indirectly control an individual that violates

¹⁴ The mortgage loan transaction journal indicates that Ms. Whitehead is the “LO.” In light of the fact that Department Rule 80-11-2-.03 mandates licensees to list the name of the loan officer for each file on the mortgage loan transaction journal, it stands to reason that the abbreviation “LO” means loan officer.

O.C.G.A. § 7-1-1002(a) (2003). Mortgage America violated O.C.G.A. § 7-1-1002(c) (2003) as it let Ms. Whitehead act as the “loan officer” on Mr. Carter’s loan file when she was not employed by Mortgage America.

c. Sheryl Jones

As part of the examination of Mortgage America, the Department reviewed the loan file of Dale Carreker for the property located at 3263 Triune Mill Road, Thomaston, Georgia 30286. Exhibit O is a true and correct copy of Mr. Carreker’s completed loan application for the property located at 3263 Triune Mill Road, Thomaston, Georgia 30286 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 9). The loan application indicates that it was taken by Sheryl Jones, an employee of Mortgage America, on July 23, 2008. (See Exhibit O). However, the Officer’s Questionnaire produced to the Department indicates that Ms. Jones was employed by Mortgage America as a loan officer starting on July 29, 2008. (Exhibit E, p. 4-23). Thus, according to the Officer’s Questionnaire produced to the Department by Mortgage America, the loan application for Dale Carreker was taken by Ms. Jones approximately one week prior to being employed by Mortgage America. Therefore, based on the information provided to the Department by Mortgage America during the examination, Ms. Jones did not satisfy the employee exemption from licensure when Mr. Carreker’s loan application was taken.

Sheryl Jones was employed at Mortgage America starting on July 29, 2008. (Exhibit E, p. 4-23). Prior to her employment at Mortgage America, Sheryl Jones acted as a mortgage broker on behalf of Mortgage America on Mr. Carreker’s mortgage loan. (Exhibit O). Sheryl Jones is not licensed or registered with the Department as a mortgage broker or mortgage lender. (Affidavit of Shelley, ¶ 4). In fact, Sheryl Jones has never been

individually licensed or registered with the Department as a mortgage lender or mortgage broker. (Affidavit of Shelley, ¶ 4). O.C.G.A. § 7-1-1000(11) (1996) defines “mortgage broker” as “any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others.” By taking Mr. Carreker’s loan application, Ms. Jones’ satisfied the definition of mortgage broker. (Exhibit O).

Sheryl Jones did not satisfy any of the exemptions contained in O.C.G.A. § 7-1-1001 (2007) when she brokered a loan before her employment at Mortgage America. Pursuant to O.C.G.A. § 7-1-1001(11) (2003), employees of licensees are exempt from licensure. However, Sheryl Jones was not an employee of Mortgage America when she brokered Mr. Carreker’s loan, and, therefore, this exception cannot apply to this loan. (Exhibit E, p. 4-23). In addition to O.C.G.A. § 7-1-1001(11) (2003), the exceptions contained in O.C.G.A. § 7-1-1001(3), (4), (5), (6), (8), (12), (13) and (14) (2007) appear to apply to any natural person. However, these exceptions on their face do not apply to individuals who are brokering mortgage loans for licensed mortgage brokers. In short, Sheryl Jones was transacting business in this state as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a) (2003).

The mortgage loan transaction journal produced to the Department by Mortgage America reveals that Ms. Jones was the loan officer¹⁵ on Mr. Carreker’s loan file that was opened prior to her employment at Mortgage America. (Exhibit E, p. 4-23; Exhibit M). By listing Ms. Jones as the loan officer, Mortgage America has acknowledged that she was the individual responsible for the loan file and that she took the loan application on behalf of Mortgage America. Department Rule 80-11-2-.03. O.C.G.A. § 7-1-1002(c) (2003) makes it a

¹⁵ The mortgage loan transaction journal indicates that Ms. Jones is the “LO.” In light of the fact that Department Rule 80-11-2-.03 mandates licensees to list the name of the loan officer for each file on the mortgage loan transaction journal, it stands to reason that the abbreviation “LO” means loan officer.

violation of law for a licensee to directly or indirectly control an individual that violates O.C.G.A. § 7-1-1002(a) (2003). Mortgage America violated O.C.G.A. § 7-1-1002(c) (2003) as it let Ms. Jones act as the “loan officer” on Mr. Carreker’s loan file when she was not employed by Mortgage America.

d. Bill Nicholson

As part of the examination of Mortgage America, the Department reviewed the loan file of Jonas Terry for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168. Exhibit P is a true and correct copy of Mr. Terry’s loan application for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 10). The loan application indicates that it was taken by Mortgage America. (See Exhibit P). In addition, the Department discovered in Mr. Terry’s loan file a settlement statement from the closing of Mr. Terry’s loan. Exhibit Q is a true and correct copy of the settlement statement generated from the closing of Mr. Terry’s loan for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 10). The settlement statement indicates that Mortgage America was paid a processing fee of \$542.50 related to Mr. Terry’s loan. (Exhibit Q, line 809).

The Department also discovered in Mr. Terry’s loan file a Processors Certification from Mortgage America. Exhibit R is a true and correct copy of the Processors Certification related to Mr. Terry’s loan for the property located at 115 Silver Arrow Circle, Austell, Georgia 30168 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 10). The Processors Certification, on Mortgage America’s letterhead, is signed by Bill Nicholson. (See Exhibit R). Mr. Terry’s loan was ultimately funded by Countrywide Bank. (See Exhibit Q).

As part of the examination of Mortgage America, the Department also reviewed the loan file of Gisel and Rafael Garcia for the property located at 96 Joy Drive, Douglasville, Georgia 30134. Exhibit S is a true and correct copy of Mr. and Ms. Garcia's loan application for the property located at 96 Joy Drive, Douglasville, Georgia 30134 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 11). The loan application indicates that it was taken by Mortgage America. (See Exhibit S). In addition, the Department discovered in Mr. and Ms. Garcia's loan file a settlement statement from the closing of the loan. Exhibit T is a true and correct copy of the settlement statement generated from the closing of Mr. and Ms. Garcia's loan for the property located at 96 Joy Drive, Douglasville, Georgia 30134 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 11). The settlement statement indicates that Mortgage America was paid a processing fee of \$495.00 related to Mr. and Ms. Garcia's loan. (Exhibit T, line 808).

The Department also discovered in Mr. and Ms. Garcia's loan file a Processors Certification from Mortgage America. Exhibit U is a true and correct copy of the Processors Certification related to Mr. and Ms. Garcia's loan for the property located at 96 Joy Drive, Douglasville, Georgia 30134 provided to the Department by Mortgage America. (Affidavit of Hester, ¶ 11). The Processors Certification, on Mortgage America's letterhead, is signed by Bill Nicholson. (See Exhibit U). Mr. Terry's loan was ultimately funded by Taylor Bean & Whitaker Mortgage Company. (See Exhibit T).

In the Officer's Questionnaire provided to the Department, Bill Nicholson is not listed as an employee. (See Exhibit E, p. 4-23). Although not listed as an employee, Bill Nicholson acted as a mortgage broker on behalf of Mortgage America. (See Exhibits R and U). Bill Nicholson is not licensed or registered with the Department as a mortgage broker or

mortgage lender. (Affidavit of Shelley, ¶ 4). In fact, Bill Nicholson has never been individually licensed or registered with the Department as a mortgage lender or mortgage broker. (Affidavit of Shelley, ¶ 4). O.C.G.A. § 7-1-1000(11) (1996) defines “mortgage broker” as “any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others.” Bill Nicholson processed Mr. Terry’s and Mr. and Ms. Garcia’s mortgage loans. (See Exhibits R and U).

Bill Nicholson does not satisfy any of the exemptions from licensure contained in O.C.G.A. § 7-1-1001 (2007). Pursuant to O.C.G.A. § 7-1-1001(11) (2003), employees of licensees are exempt from licensure. However, Mortgage America has provided information to the Department indicating that Bill Nicholson was not an employee of Mortgage America, and, therefore, this exception cannot apply. (See Exhibit E, p. 4-23). In addition to O.C.G.A. § 7-1-1001(11) (2003), the exceptions contained in O.C.G.A. § 7-1-1001(3), (4), (5), (6), (8), (12), & (13) (2007) appear to apply to any natural person. However, these exceptions on their face do not apply to individuals who are brokering mortgage loans for licensed mortgage brokers. In short, Bill Nicholson was transacting business in this state as a mortgage broker in violation of O.C.G.A. § 7-1-1002(a) (2003).

Mortgage America produced the mortgage loan file of Mr. Terry and Mr. and Ms. Garcia to the Department. (Affidavit of Hester, ¶¶ 10 and 11). Bill Nicholson completed the Processors Certification for both loan files on behalf of Mortgage America. (See Exhibits R and U). Both loans were ultimately funded by mortgage lenders. (See Exhibits Q and T). O.C.G.A. § 7-1-1002(c) makes it a violation of law for a licensee to directly or indirectly control an individual that violates O.C.G.A. § 7-1-1002(a). Mortgage America violated

O.C.G.A. § 7-1-1002(c) by obtaining funding for loans that Bill Nicholson brokered by processing the loan information.

3. Summary

Pursuant to O.C.G.A. § 7-1-1017(a)(1) (2005), the Department may revoke a license for any violation of the Georgia Residential Mortgage Act. Mortgage America violated the prohibition in O.C.G.A. § 7-1-1002(c) (2003) by directly or indirectly controlling four natural persons and a company that violated O.C.G.A. § 7-1-1002(a) (2003). Therefore, the Department's order revoking Mortgage America's license is valid and the revocation must be upheld.

CONCLUSION

There is no dispute that Mortgage America employed a felon in violation of O.C.G.A. § 7-1-1004(d) (2005). Likewise, there is no dispute that Mortgage America directly or indirectly controlled an entity and/or natural persons that violated O.C.G.A. § 7-1-1002(a) (2003) and, thus, violated O.C.G.A. § 7-1-1002(c) (2003). Accordingly, it is determined that Mortgage America committed these violations and that the revocation issued by the Georgia Department of Banking and Finance pursuant to O.C.G.A. § 7-1-1017 (2005) is proper.

October 12, 2010.


MICHAEL M. MALIHI, Judge