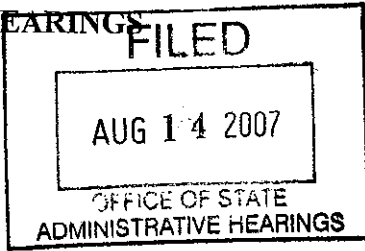


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



RICHARD STEELE,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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* Docket Number:
* OSAH-DBF-MBL-0731114-147-Howells
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INITIAL DECISION

Respondent filed its affidavit supported Motion for Summary Determination on June 14, 2007. Petitioner did not file a response to the motion. For the reasons stated below, Respondent's Motion for Summary Determination is **GRANTED**.

Findings of Fact

The following facts are undisputed:

1.

On June 1, 2006, the Department initiated an off-site examination of Global Mortgage of Delaware, Inc. ("Global Mortgage"), a licensed mortgage broker.¹ (Affidavit of Koeppel, ¶ 4). As part of the examination, the Department's examiner requested that Henry E. Moses, Jr., Director of Compliance for Global Mortgage, complete the Officer's Questionnaire. (Affidavit of Koeppel, ¶5). Mr. Moses provided the Department's examiner with a completed Officer's Questionnaire. (Affidavit of Koeppel, ¶ 5).

¹ As a result of the findings made during the examination, the Department issued a Notice of Intent to Revoke Annual License to Global Mortgage on December 21, 2006. (Affidavit of Sheley, ¶ 4). The mortgage broker's license of Global Mortgage was revoked effective February 7, 2007. (Affidavit of Sheley, ¶ 4).

2.

At the time of the Department's examination, Petitioner Richard Steele was employed as a branch manager by Global Mortgage. He was hired by Global Mortgage on July 7, 2004. (See Exhibit C, first page of employee list attached to Officer's Questionnaire).

3.

During the off-site examination, the Department's examiner reviewed Global Mortgage's loan file for Steven Hall's purchase of the property located at 1379 Aniwaka Avenue, Atlanta, Georgia 30311. (Affidavit of Koeppel, ¶ 6). The loan application was taken by Mr. Steele as an employee of Global Mortgage on March 21, 2005. See Exhibit D. The loan application indicates that the purpose of the loan is for Mr. Hall's primary residence. *Id.* The loan was closed on April 13, 2005, by Long Beach Mortgage Company ("Long Beach"), of which Washington Mutual became the ultimate successor on July 1, 2006. (Affidavit of Shaw, ¶ 4).

4.

The Department's examiner also reviewed Global Mortgage's loan file for Steven Hall's purchase of the property located at 2426 Crestview Drive, Decatur, Georgia 30032, as part of its off-site examination of Global Mortgage. (Affidavit of Koeppel, ¶ 7). The loan application was taken by Mr. Steele as an employee of Global Mortgage on March 29, 2005. The application indicates that the purpose of the loan is for Mr. Hall's primary residence. See Exhibit E. The loan was closed by New Century Mortgage Corporation ("New Century") on April 19, 2005. (Affidavit of Lindsay, ¶ 4).

5.

Long Beach funded Mr. Hall's loan for the property located at 1379 Aniwaka Avenue, Atlanta, Georgia 30311 on April 13, 2005. (Affidavit of Shaw, ¶ 4). Long Beach relied on the information in the loan application in deciding to fund Mr. Hall's loan. (Affidavit of Shaw, ¶ 4). Whether a borrower intends to use property as a primary residence, a secondary residence, or as an investment, is a material factor to Long Beach in deciding to fund a loan,

because it affects the interest rate Long Beach will charge on a loan. (Affidavit of Shaw, ¶ 4). As a general rule, the interest rate charged on a primary residence is lower than the interest rate charged on a secondary residence or investment property. (Affidavit of Shaw, ¶ 4). The interest rate is lower because, all things being equal, the credit risk on a secondary residence or investment property is higher than on a primary residence. (Affidavit of Shaw, ¶ 4). If Mr. Shaw did not intend to use the property as his primary residence, then Long Beach would have charged a higher interest rate on the loan. (Affidavit of Shaw, ¶ 4).

6.

New Century funded Mr. Hall's loan for the property located at 2426 Crestview Drive, Decatur, Georgia 30032 on April 19, 2005. (Affidavit of Lindsay, ¶ 4). New Century relied on the information in the loan application in deciding to fund Mr. Hall's loan. (Affidavit of Lindsay, ¶ 4). Whether a borrower intends to use property as a primary residence, a secondary residence, or as an investment, is a material factor to New Century in deciding to fund a loan, because it affects the interest rate New Century will charge on a loan. (Affidavit of Lindsay, ¶ 4). As a general rule, the interest rate charged on a primary residence is lower than the interest rate charged on a secondary residency or investment property. (Affidavit of Lindsay, ¶ 4). The interest rate is lower because, all things being equal, the credit risk on a secondary residence or investment property is higher than on a primary residence. (Affidavit of Lindsay, ¶ 4). If Mr. Hall did not intend to use the property as his primary residence, then New Century would have charged a higher interest rate on the loan. (Affidavit of Lindsay, ¶ 4).

7.

Mr. Steele took Mr. Hall's loan application for the property located at 1379 Aniwaka Avenue, Atlanta, Georgia 30311 and Mr. Hall's loan application for the property located at 2426 Crestview Drive, Decatur, Georgia 30032. See Exhibits D and E. These loans closed six days apart. (See Affidavit of Shaw, ¶ 4; Affidavit of Lindsay, ¶ 4). The loan application for the property located at 1379 Aniwaka Avenue, Atlanta, Georgia 30311 indicated that it was for Mr. Hall's primary residence. See Exhibit D. The loan application for the property located at 2426 Crestview Drive, Decatur, Georgia 30032 also indicated that it was for Mr. Hall's primary residence. See Exhibit E. Further, Mr. Steele took Mr. Hall's loan application for the property at 2426 Crestview Drive, Decatur, Georgia 30032 on March 29, 2005—15 days before Long Beach funded Mr. Hall's loan for the property at 1379 Aniwaka Avenue, Atlanta, Georgia 30311. (See Affidavit of Shaw, ¶ 4; Exhibit E). It is impossible that both loans were for Mr. Hall's primary residence, as an individual cannot have two primary residences. Based on the conflicting information in the applications, Mr. Steele knew that both loans were not for Mr. Hall's primary residence, yet both of these loan applications were submitted to lenders to be funded anyway.

8.

As a result of the investigation, the Department issued a Cease and Desist Order to Petitioner on January 22, 2007. See Exhibit A. Petitioner timely requested a hearing before this Tribunal pursuant to O.C.G.A. § 7-1-1018.

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).

2.

Mr. Steele violated the prohibitions found in Georgia Code Sections 7-1-1013 (1), (2), and (6) by taking loan applications that concealed the true use of at least one of the two properties in question. Section 7-1-1013 states, 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 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 or make false statements or promises likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or pursue a course of misrepresentation to the department or anyone through agents or otherwise;

(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.

3.

Pursuant to Georgia Code Section 7-1-1000(10) the term “‘misrepresent’ means to make a false statement of a substantive fact or to engage in, with the intent to deceive or mislead, any conduct which leads to a false belief which is material to the transaction.” O.C.G.A. § 7-1-1000(10).

4.

By taking the loan applications for Steven Hall that misrepresented the use of at least one of the two properties, Mr. Steele misrepresented material facts to at least one of the two mortgage lenders in question. Each of the lenders would have charged a higher interest rate if they had known the real intended use of the property and thus the true credit risk. (See Findings of Fact ¶¶ 5, 6). A misrepresentation that causes a mortgagor to take a loan on terms that the mortgagor would otherwise not have taken violates Section 7-1-1013(1).

5.

In addition, Mr. Steele violated Section 7-1-1013(2). By misrepresenting the intended use of at least one of the two properties to at least one of the mortgage lenders, Mr. Rice misrepresented a material factor, term, or condition of the loan to which a mortgage lender was a party. (See Findings of Fact ¶¶ 5, 6).

6.

Further, by taking the loan packages for both of Mr. Hall's loans, even though the applications clearly contained conflicting information, Mr. Steele engaged in a practice that was not in good faith or fair dealing with the lenders in violation of Section 7-1-1013(6).

7.

Georgia Code Section 7-1-1018(a) states in pertinent part that:

Whenever it shall appear to the department that any person required to be licensed ... under this article ... or any person employed by a licensee or registrant pursuant to Code Section 7-1-1001 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices.


O.C.G.A. § 7-1-1018(a). For the purposes of Section 7-1-1018, "person" is defined as "any, director, employee, agent, or other person participating in the conduct of the affairs of the

person subject to the orders issued pursuant to this Code section.” O.C.G.A. § 7-1-1018(f) (emphasis added). It is a violation of the law for a licensee or an individual that is exempt from the licensing requirements² to make false statements to a lender in order to close a loan. O.C.G.A. § 7-1-1013(1), (2) and (6). As Mr. Steele violated O.C.G.A. § 7-1-1013 (1), (2) and (6), the Department’s order requiring Mr. Steele to cease and desist from violating the law is valid.³

Decision

Based on the undisputed material facts, Petitioner violated Georgia Code Sections 7-1-1013(1), (2), and (6). Accordingly, Respondent’s Cease and Desist Order issued pursuant to Section 7-1-1-18(a) was proper. Respondent’s motion for summary determination is hereby **GRANTED**, and the Cease and Desist Order is **UPHELD**.

SO ORDERED, this 14th day of August 2007.


STEPHANIE M. HOWELLS
Administrative Law Judge

² Mr. Steele was exempt from the licensing requirements of the Georgia Residential Mortgage Act during the applicable timeframe as he was an employee of Global Mortgage, a licensed mortgage broker. O.C.G.A. § 7-1-1001(11).

³ The only administrative action that the Department can take against an employee of a licensee is the issuance of a Cease and Desist Order under O.C.G.A. § 7-1-1018(a). Since Mr. Steele does not have a license, the Department cannot revoke or suspend his license. Likewise, the Department’s rules and regulations do not permit the imposition of fines to an employee of a licensee. Department of Banking and Finance Rule and Regulation 80-11-3-.01 (“[e]xcept as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7”). Therefore, the lone administrative action that the Department can take against Mr. Steele for engaging in a prohibited act barred by O.C.G.A. § 7-1-1013 is to issue a Cease and Desist Order.

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

RICHARD STEELE,
Petitioner,

v.

DEPARTMENT OF BANKING AND FINANCE,
Respondent.

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Docket No.: OSAH-DBF-MBL-0731114-147-Howells

Agency Reference No.: 0731114

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk

Office of State Administrative Hearings
Attn.: Jennifer Risko, jrisko@osah.ga.gov
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Banking and Finance
Attn: Commissioner
2990 Brandywine Road, Suite 200
Atlanta, Georgia 30341.

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).

RE: RICHARD STEELE, Petitioner

DOCKET NO.: OSAH-DBF-MBL-0731114-147-Howells

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