

**BEFORE THE GEORGIA DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

LUCINDA CLEMENTS,

NMLS: 882549 DBF: 38911

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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Docket No. DBF-MLO-19-009-340

TO: LUCINDA CLEMENTS
CONTOUR MORTGAGE CORPORATION
990 STEWART AVENUE, SUITE 660
GARDEN CITY, NEW YORK 11530

LUCINDA CLEMENTS
4521 BANSHIRE CIRCLE
GAINESVILLE, GA 30504



FINAL ORDER

A. BACKGROUND

On October 25, 2019, Lucinda Clements (“Petitioner”) appeared before the undersigned Commissioner of the Georgia Department of Banking and Finance (“Department”) to contest the Notice of Intent to Deny Application for Renewal of Mortgage Loan Originator’s License (“Notice”) and the Order to Cease and Desist that were issued by the Department on May 6, 2019.

The Notice provided that, after conducting an investigation of the Petitioner’s 2019 renewal application for a mortgage loan originator’s license, the Department determined that the Petitioner had not met the minimum standards for licensure as required by O.C.G.A. § 7-1-1004(d). The basis for the Department’s determination was its conclusion that the Petitioner, in violation of O.C.G.A. § 7-1-1004(d)(3), had not demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination by the Department that the Petitioner would operate honestly, fairly and efficiently within the dictates of the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 *et seq.* The Department additionally determined that the Petitioner had violated O.C.G.A. § 7-1-1013(11) by

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providing false information to the Department on the Petitioner's individual MU-4 form submitted in connection with Petitioner's application for a renewal of her mortgage loan originator's license. Finally, the Department determined that the Petitioner violated O.C.G.A. § 7-1-1013(1) by submitting false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan; violated O.C.G.A. § 7-1-1013(2) by misrepresenting or concealing information concerning a mortgage transaction; and violated O.C.G.A. § 7-1-1013(6) by engaging in a course of business not in good faith or operating a fraud upon any person, in connection with the attempted or actual making of any mortgage loan. The Order to Cease and Desist was issued on substantively the same grounds.¹

In response to the Notice and the Order to Cease and Desist, Petitioner requested a hearing pursuant to O.C.G.A. §§ 7-1-1017(b) and 7-1-1018(a) to contest the proposed administrative actions. Pursuant to notice, a hearing was scheduled for August 20, 2019 at 9:30 a.m. The Petitioner requested a continuance on August 15, 2019, and the hearing was rescheduled pursuant to notice for September 20, 2019, at 1:00 p.m. The Petitioner requested a second continuance on September 13, 2019, and the hearing was rescheduled pursuant to notice for October 25, 2019, at 9:30 a.m. The Petitioner requested a continuance on October 18, 2019. The request was denied on October 21, 2019. The hearing went forward on October 25, 2019, at 9:30 a.m. at the Department. At the hearing, the Petitioner represented herself. The Department was represented by Elizabeth Harris, Attorney.

Andy Reid, Supervisory Examiner for the Department, provided testimony on behalf of the Department regarding the investigation of the Petitioner's mortgage loan originator renewal application. Mr. Reid testified as to his responsibilities in his role in the Department's Non-Depository Financial Institutions section, which include, but are not limited to, supervising examinations of mortgage loan originators. Mr. Reid testified that in order to renew a currently existing Georgia mortgage loan originator license, the Department: (a) confirms that a renewal has been submitted through the Nationwide Multistate Licensing System and Registry ("NMLSR")²; (b) confirms that the renewal fee has been paid; and (c) reviews the sponsorship, criminal history, credit report, and disclosures submitted by the mortgage loan originator to

¹ Specifically, the Order to Cease and Desist stated the Petitioner violated O.C.G.A. 7-1-1013(11) by providing false information to the Department on Petitioner's individual MU4 form submitted in connection with her application for renewal of her mortgage loan originator's license. Further, Petitioner submitted false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan in violation of O.C.G.A. § 7-1-1013(1); misrepresented or concealed information concerning a mortgage transactions in violation of O.C.G.A. § 7-1-1013(2); and, engaged in a course of business not in good faith or which operated a fraud upon any person, in connection with the attempted or actual making of any mortgage loan in violation of O.C.G.A. § 7-1-1013(6). Finally, the Petitioner violated O.C.G.A. § 7-1-1004(d)(3) by failing to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that she will operate honestly, fairly, and efficiently with the purposes of the GRMA.

² NMLSR is the system utilized by the Department to license all mortgage loan originators in Georgia.

confirm that he or she still meets the minimum requirements for licensure. Mr. Reid testified that, in conducting an investigation, the Department relies on information supplied by the Petitioner, including the Individual MU-4 form (“MU-4”)³ and supporting documentation, as well as information obtained from reports by consumers or the industry. Mr. Reid testified that in order to approve a renewal application for a mortgage loan originator, the Department must find that the Petitioner meets the minimum standards required for licensure. The Department must also determine that the Petitioner demonstrates the financial responsibility, character, and general fitness such as to command the confidence of the community and that the Petitioner will operate honestly, fairly, and efficiently within the purposes of the Georgia Residential Mortgage Act.

Mr. Reid testified that a renewal application was submitted on behalf of Petitioner on December 21, 2018 through NMLSR.⁴ Respondent’s Exhibit 1 (“R1”). Mr. Reid further testified that Petitioner uploaded an MU-4 to NMLSR on October 24, 2018. Respondent’s Exhibit 2 (“R2”). In order to submit the MU-4, Petitioner was required to attest that she executed the MU-4 on her own behalf and that all the information contained on the MU-4 was current, true, accurate and complete. R2, p. 14. Mr. Reid testified that Petitioner had provided answers to all the Financial Disclosures as required. Specifically, Mr. Reid testified that Petitioner responded “No” to Financial Disclosure “D”, which asked “Do you have any unsatisfied judgments or liens against you?” R2, p. 11. Mr. Reid also testified that Petitioner responded “No” to Financial Disclosure “Q”, which asked “Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of: (1) violating statute(s), regulations(s), rule(s), or industry standards of conduct? (2) fraud, dishonesty, theft, or the wrongful taking of property?”

After Petitioner submitted her renewal application and uploaded her MU-4, these forms were forwarded to the Department for review. Mr. Reid testified that the Department initiated an investigation into Petitioner after receiving information from the industry regarding Petitioner’s conduct. Specifically, Mr. Reid testified that MiLend Inc. (“MiLend”), Petitioner’s former employer, notified the Department that Petitioner was discharged from MiLend for allegedly engaging in fraudulent conduct. Mr. Reid testified that after learning of Petitioner’s discharge, the Department obtained further information and supporting documentation from MiLend related to Petitioner’s discharge. Mr. Reid testified that, pursuant to Rule 80-11-5-.07(2), a mortgage loan originator is obligated to disclose any instance of termination for allegations of fraud within

³ The Individual MU-4 form is available on NMLSR. The form contains personal information about the mortgage loan originator, including, but not limited to, identifying information, residential history, and employment history. The form also contains a series of disclosure questions and it is attested to by the applicant or licensee.

⁴ During questioning of Mr. Reid, Petitioner stated on numerous occasions that she did not submit the application and that others had access to her information on NMLSR. Petitioner was not under oath at the time of these statements, so the statements are not evidence. Petitioner did not raise this issue in her own testimony when she was under oath. Also, even if Petitioner did testify to these statements, they are inconsistent with other testimony. If Petitioner did not submit the MU-4 or request the renewal, she could have withdrawn the renewal or updated and amended the MU-4 at any time. Although Petitioner has access to her profile in NMLSR, she had not withdrawn the renewal request or amended her MU-4 at the time of the hearing.

10 days of knowledge of the event by updating or amending his or her MU-4. According to Mr. Reid's review of the Department's records, Petitioner did not update or amend her MU-4 to reflect her discharge for allegedly engaging in fraudulent conduct.

Mr. Reid further testified that MiLend also notified the Department that Petitioner had an unsatisfied judgment against her. In the course of the Department's investigation into Petitioner, the Department obtained certified copies of an Order and a Judgment entered by the Gwinnett County Superior Court in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4. Respondent's Exhibit 3 ("R3"). Mr. Reid further testified that, in accordance with the Department's rules and regulations, a mortgage loan originator is required to update the disclosures contained on the individual's MU-4 within 10 business days of the judgment. Rule 80-11-5-.07(2). According to Mr. Reid's review of the Department's records, Petitioner did not update or amend her MU-4 to reflect the judgment entered against her.

David Worley provided testimony on behalf of the Department. Mr. Worley testified that he is the Compliance Manager at MiLend and that his duties include, but are not limited to, developing policies and procedures, conducting audits of mortgage loan files, training employees, and monitoring open mortgage loan files. Mr. Worley also testified that, in the case of an allegation of fraud, he reviews the file, determines whether he agrees with the allegations, and may be involved with any subsequent disciplinary actions. Mr. Worley testified that the Petitioner was employed by MiLend from approximately January 7, 2016 until approximately March 31, 2016. On or about March 31, 2016, the Petitioner was discharged from MiLend for a violation of rules and policies. Respondent's Exhibit 4, p. 2 ("R4"). Mr. Worley testified that Petitioner signed a "Zero Tolerance Loan Fraud Policy" on or about January 7, 2016, when her employment at MiLend commenced. R4, p. 1. The policy expressly provides that "the alteration or forgery of information" is fraud. R4, p. 1. Mr. Worley testified that on or about March 31, 2016, MiLend discovered evidence that suggested that Petitioner was engaging in mortgage loan fraud in violation of the Zero Tolerance Loan Fraud Policy. Specifically, Mr. Worley testified MiLend discovered a Closing Disclosure for Howard Herschenfeld, a mortgage loan applicant, in a shredder bin close to Petitioner's desk that had the date of receipt whited out and replaced with an earlier date. Respondent's Exhibit 8 ("R8"). Mr. Worley also testified that Petitioner emailed a copy of the Closing Disclosure with the altered date to other employees at MiLend in order to allow the loan to close on the requested date.⁵ Respondent's Exhibit 7, p. 1. ("R7"). Mr. Worley testified that he conducted an investigation into Petitioner's conduct after discovering this evidence. Mr. Worley testified that, subsequent to his investigation, Petitioner was discharged from MiLend for violation of its Zero Tolerance Loan Fraud Policy. R4, p. 2. Mr. Worley further testified that MiLend participated in a telephonic hearing with Petitioner in front of the Georgia Department of Labor on May 24, 2016. Respondent's Exhibit 5 ("R5"). Of note, the Administrative Hearing Officer found the Petitioner was discharged from MiLend for mortgage loan fraud. R5, p. 2.

⁵ Federal law requires that the Closing Disclosure be provided to the applicant three business days before closing. 12 C.F.R. § 1026(f)(1)(iv). The original Closing Disclosure signed by Mr. Herschenfeld was dated March 29, 2016. R7, p. 6. Mr. Herschenfeld was scheduled to close on the loan on March 31, 2016. R7, p.2. Thus, in order to proceed with the scheduled closing date, the Closing Disclosure would have to have indicated that it was provided to Mr. Herschenfeld on March 28, 2016.

Sean Rabideaux provided testimony on behalf of the Department. Mr. Rabideaux testified that he is a Senior Vice President at MiLend and oversaw Petitioner's work during her employment with MiLend.⁶ Mr. Rabideaux testified that he was made aware of an altered date on a Closing Disclosure sent by Petitioner to other MiLend employees on or about March 31, 2016. Specifically, Mr. Rabideaux testified that Christie Drake, Operations Manager at MiLend, notified him that Petitioner appeared to have altered a date on a document after Ms. Drake received an email from Petitioner with the Closing Disclosure attached. R7, p.1. Relevantly, the date on the Closing Disclosure had been changed from March 29, 2016, to March 28, 2016, which, if accepted, would have permitted the closing to take place on March 31, 2016, as scheduled. Mr. Rabideaux testified that, upon being informed of a possible alteration, he spoke to the applicant, Mr. Herschenfeld, who stated that he would not be able to provide MiLend with a correctly dated copy of the Closing Disclosure for a few hours. Mr. Rabideaux further testified that when he confronted Petitioner about the altered date, she initially denied making the alteration, but eventually admitted to Mr. Rabideaux that she had altered the date. Mr. Rabideaux testified that Petitioner did not rebut the allegations against her in her discharge meeting with MiLend. Additionally, Mr. Rabideaux testified that changing the date on the Closing Disclosure would be a violation of MiLend's Zero Tolerance Loan Fraud Policy even if Petitioner had gotten the borrower's permission. Mr. Rabideaux testified that neither he nor any other MiLend employee instructed Petitioner to alter the date on the Closing Disclosure. Mr. Rabideaux testified that Petitioner was discharged for violation of MiLend's Zero Tolerance Mortgage Loan Fraud Policy. Mr. Rabideaux testified that he participated in the telephonic hearing in front of the Georgia Department of Labor on May 24, 2016.

During questioning of Mr. Worley and Mr. Rabideaux, Petitioner stated on numerous occasions that she did not alter the document and suggested that: (1) the altered document was "planted" in the shredder; (2) she was told to alter the document by Mr. Rabideaux or another MiLend employee; and (3) she did not care whether the loan closed on March 31, 2016 as it did not impact her financially. Petitioner was not under oath at the time these statements were made. Petitioner did not raise these issues in testimony other than to state that Mr. Rabideaux altered the document so that the loan would close on the scheduled date. Thus, these statements are not in evidence. Even if properly introduced through testimony, this story is incredible. The gist of Petitioner's position is that she was told to alter the Closing Disclosure so that the loan could close as scheduled. When she refused to do so, a representative of MiLend altered the Closing Disclosure and "planted" it in the shredder bin to make her look guilty. Then, MiLend terminated Petitioner and invited regulatory scrutiny of its alleged alterations by informing the Department of the transaction and subsequent termination of Petitioner. If Petitioner had in fact provided this testimony, the Tribunal would not have found it credible.

⁶ Mr. Rabideaux testified that Petitioner's direct supervisor was Randy Harrison. Mr. Rabideaux was Mr. Harrison's boss and oversaw the work done by Mr. Harrison and all the mortgage loan originators he supervised.

To support the Department's decision to deny Petitioner's 2019 renewal application and issue the Cease and Desist Order, the Department tendered into evidence the following exhibits⁷ during the October 25, 2019 hearing:

- R1** – State Renewals History for Lucinda Clements (from NMLSR);
- R2** – Lucinda Clements MU-4, attested to on October 24, 2018;
- R3** – Certified Copy of Gwinnett County Superior Court Judgment in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4, entered July 20, 2018 (p. 1) and Gwinnett County Superior Court Order in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4, entered August 22, 2017 (p. 2);
- R4** – MiLend Zero Tolerance Loan Fraud Policy (p. 1) and Separation Notice issued to Lucinda Clements by MiLend (p. 2);
- R5** – Certified Copy of Georgia Department of Labor Decision of Administrative Hearing Officer for Claimant Lucinda Clements, dated May 25, 2016;
- R6** – Uniform Residential Loan Application for Howard Herschenfeld;
- R7** – Emails and Attachments between Lucinda Clements and other MiLend Employees, dated from March 29, 2016 to March 31, 2016;
- R8** – Torn Fragments of Closing Disclosure with copied signature, white out, and date in wet ink;
- R9** – Completed Closing Disclosure from Howard Herschenfeld;
- R10** – Email from David Worley to Betty Thomas at the Department with letter attachments regarding Lucinda Clements; and
- R11** – MiLend Training Document: TILA-RESPA Integrated Disclosure (TRID) Rule.

After the Department rested its case, the Petitioner presented testimony on her own behalf and offered the following additional documentation:

- P1** – Credit Plus RiskView Liens and Judgments Report dated 1/17/2019;
- P2** – Reference Letter from James Laymac dated 10/24/2019; and
- P3** – Credit Plus Merged Infile Credit Report dated 10/24/2019.

Petitioner testified that she did not alter the date on the Closing Disclosure. Petitioner testified that she believed Mr. Rabideaux altered the date because he wanted the loan to close as scheduled, but she did not tell MiLend at the time of her termination because she did not want to throw him under the bus. Petitioner testified that there was a culture of altering documents at MiLend. Petitioner additionally testified that the Judgment in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4 was currently under appeal. Petitioner further testified that she gave the Department notice of the Judgment and appeal by emailing it to employees of the Department. Petitioner testified that she had additional documentation regarding the appeal and her communications with the Department that she would like to submit

⁷ Petitioner objected to many of the Department's exhibits. Petitioner's objections to the exhibits went to the weight of the evidence, not the admissibility. As such, Petitioner's objections were overruled, and all documents were admitted into evidence.

into evidence. However, at the time of the hearing, Petitioner did not have any of the documents in her possession in order to submit them into evidence. Petitioner additionally testified to her good reputation and success in the mortgage industry. Petitioner did not have any additional witnesses for her case.

At the close of the Petitioner's testimony, the Commissioner left the record open, per Petitioner's request, until November 1, 2019, for the limited purpose of the submission of evidence regarding the following: (1) the status of Petitioner's appeal from the judgment entered in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4, in the Superior Court of Gwinnett County; and, (2) whether Petitioner disclosed the judgment to the Department. On November 1, 2019, the Department submitted a certified copy of the Order Dismissing Appeal entered on November 29, 2018, and a certified copy of the Order Denying Defendant's Motion for Reconsideration for Order Dismissing Appeal entered on December 19, 2018. Despite testifying that she had additional documentation and requesting permission to submit the documentation to the Tribunal after the hearing, Petitioner failed to provide any documents. On November 1, 2019, Petitioner informed the Tribunal that she would be unable to submit the documents that day but would submit them on November 5, 2019. As of the date of this Order, Petitioner has failed to submit any evidence to the Tribunal after October 25, 2019, including, but not limited to, documents establishing a pending appeal of the Superior Court judgment or that the Department had been notified of the judgment.

B. FINDINGS OF FACT

1.

On or about October 24, 2018, Petitioner attested and submitted a MU-4 through NMLSR. R2. On or about December 21, 2018, a renewal of Petitioner's mortgage loan originator license was requested on NMLSR. R1. Petitioner's MU-4 and renewal application were reviewed by the Department to determine her eligibility for licensure.

2.

As part of the renewal application process, the Department is required to make a determination whether the Petitioner has met the minimum standards required for licensure and whether the Petitioner has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination by the Department that Petitioner will operate honestly, fairly and efficiently within the dictates of the Georgia Residential Mortgage Act.

3.

Each MU-4 makes the following straight forward inquiry of a mortgage loan originator:

(D) Do you have any unsatisfied liens or judgments against you?

R2, p. 11. Petitioner responded "no" to this question.

4.

On July 20, 2018, the Gwinnett County Superior Court entered a Judgment in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4. R3. The Judgment was against the Petitioner in the amount of \$31,826.00 for breach of contract and \$16,000.00 for attorney's fees. R3. The Judgment included additional attorney's fees in the amount of \$4,650.00 related to a Motion to Compel and Motion for Contempt filed by MiLend. R3.

5.

Petitioner did not deny that the Judgment had been entered by the Gwinnett County Superior Court or that she had received a copy of the Judgment. Instead, Petitioner testified that the Judgment was currently being appealed. Petitioner did not provide any documentation or evidence regarding the alleged appeal. However, no appeal was pending. On November 29, 2018, the Gwinnett County Superior Court entered an Order Dismissing Appeal in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4. On December 17, 2018, the Gwinnett County Superior Court entered an Order denying Defendant's Motion for Reconsideration of Order Dismissing Appeal in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4.

6.

Notwithstanding the lack of a pending appeal in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4, it is undisputed that the Gwinnett County Superior Court entered the Judgment against Petitioner on July 20, 2018. Petitioner did not deny that she received and was aware of the Judgment. Petitioner failed to disclose the Judgment on her MU-4 dated October 24, 2018. Further, Petitioner failed to disclose on her MU-4 that the appeal was dismissed on November 29, 2018, or that her subsequent Motion for Reconsideration was denied on December 17, 2018. In fact, as of the date of the hearing, Petitioner had still not updated her MU-4 to reflect the judgment.

7.

Each MU-4 makes the following straight forward inquiry of a mortgage loan originator:

Termination Disclosure

(Q) Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of:

(1) violating statute(s), regulation(s), rule(s), or industry standards of conduct?

(2) fraud, dishonesty, theft, or the wrongful taking of property?

(R2, p. 12). Petitioner responded "no" to each of these questions.

8.

On or before March 31, 2016, Petitioner was discharged from her employment with MiLend. R4. Pursuant to the Separation Notice signed by Janet Lane, HR for MiLend, Petitioner's discharge was due to a "violation of rules and policies." R4. Mr. Worley and Mr. Rabideaux testified that Petitioner was discharged for a violation of MiLend's Zero Tolerance Loan Fraud Policy. Specifically, Mr. Worley and Mr. Rabideaux testified that Petitioner was

discharged because she impermissibly altered a Closing Disclosure in violation of the Zero Tolerance Loan Fraud Policy. R4. Petitioner denied altering the document but did not deny that she was discharged for an alleged violation of MiLend's Zero Tolerance Loan Fraud Policy. On May 24, 2016, Petitioner and MiLend participated in a hearing in front of the Department of Labor related to Petitioner's eligibility for unemployment benefits. R5. The Administrative Hearing Officer concluded that Petitioner "was discharged due to the mortgage loan fraud." R5, p.2. The Administrative Hearing Officer also found that MiLend had provided timely, written notice of the separation to Petitioner. R5, p.3. Despite Petitioner's awareness that her discharge from MiLend was for allegations of fraud, Petitioner failed to disclose the discharge on her MU-4.

9.

On or about March 28, 2016, Petitioner provided a Closing Disclosure to Mr. Herschenfeld. R7, p. 5. Mr. Herschenfeld's loan was scheduled to close on March 31, 2016. R7, p. 3. On March 29, 2016, Ms. Drake, MiLend's Operations Manager, informed Petitioner that she had not received the signed Closing Disclosure from Mr. Herschenfeld. R7, p. 5. Mr. Herschenfeld provided the Closing Disclosure to MiLend on March 29, 2016, which he had dated March 29, 2016. R7, p. 6. On March 31, 2016, Ms. Drake informed Petitioner that MiLend had not received the Closing Disclosure dated March 28, 2016. R. 7, p.1. Less than fifteen minutes later, Petitioner sent Ms. Drake a Closing Disclosure that appeared to be dated March 28, 2016. R. 7, p.1. Ms. Drake informed Mr. Rabideaux that she believed Petitioner had altered the date on the Closing Disclosure to March 28, 2016. Representatives from MiLend looked in a shredder bin near Petitioner's desk and discovered a torn Closing Disclosure with the original date whited out and March 28, 2016 written on it. When compared to the Closing Disclosure emailed by Petitioner to Ms. Drake on March 31, 2016, the emailed copy matches the torn copy. R7, p. 10; R8. Petitioner admitted to Mr. Rabideaux that she had altered the date on the Closing Disclosure. Petitioner did not rebut the allegations that she had altered the date on the Closing Disclosure when she was discharged from MiLend. The Tribunal also notes that the Georgia Department of Labor determined that the Petitioner had committed mortgage loan fraud by altering the Closing Disclosure. R5, p.2. During the hearing before the Tribunal, Petitioner denied that she changed the date on the Closing Disclosure. Having weighed the evidence and testimony, the Tribunal finds that Petitioner altered the Closing Disclosure that was previously signed by Mr. Herschenfeld.

C. CONCLUSIONS OF LAW

1.

In order to comply with the federal requirements contained in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act of 2008, it shall be prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license. O.C.G.A. § 7-1-1001.1(a).

2.

The Department shall have the broad administrative authority to administer, interpret, and enforce the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. O.C.G.A. § 7-1-1001.1(b).

3.

O.C.G.A. § 7-1-1005 provides that a mortgage loan originator license expires on December 31 of each year, and that mortgage loan originators must submit a proper renewal application. Further, O.C.G.A. § 7-1-1005(e) provides in pertinent part that “[t]he minimum standards for license renewal for mortgage loan originators shall include: (1) The mortgage loan originator continues to meet the minimum standards for license issuance...”

4.

O.C.G.A. § 7-1-1004(d) provides the minimum standards for the issuance of a mortgage loan originator license. O.C.G.A. § 7-1-1004(d) provides in pertinent part that:

Upon receipt of an application for a mortgage loan originator license, the department shall conduct such investigation as it deems necessary to determine that the mortgage loan originator Petitioner:

...

(3) Has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate, honestly, fairly, and efficiently within the purposes of this article.

5.

O.C.G.A. § 7-1-1013 provides in pertinent part that:

It shall be prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts, make false statements or promises, or submit false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

...

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

...

(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 or the Nationwide Multistate Licensing System and Registry or in connection with any investigation conducted by the department or another governmental agency.

6.

A judgment was entered against Petitioner in MiLend, Inc. v. Lucinda Clements, Civil Action No. 16-A-05013-4, in the Superior Court of Gwinnett County, on July 20, 2018. The Department has established that Petitioner was aware of this judgment on or before October 24, 2018, when the Petitioner submitted the MU-4 on NMLS. Question D on the MU-4 specifically asks whether there are any unsatisfied judgments against the mortgage loan originator. A judgment is final once it is entered by a Superior Court, regardless of whether the judgment is appealed. Thus, Petitioner made a “false statement[] or material misrepresentation[] to the Department or [NMLSR]” in responding to this question. The Petitioner’s failure to disclose a final judgment entered against her is a violation of O.C.G.A. § 7-1-1013(11).

7.

Petitioner appeared to argue at the hearing that the judgment was still under appeal when she submitted her MU-4 on October 24, 2018. The Tribunal does not find this persuasive for several reasons. As discussed above, Question D on the MU-4 asks specifically about judgments entered against the mortgage loan originator and does not excuse disclosure if there is a pending appeal. Further, even if Petitioner reasonably believed the question did not pertain to judgments under appeal, Petitioner has still failed to disclose the dismissed appeal. Rule 80-11-5-.07(2) provides in relevant part that “[a]mendments to any responses to disclosure questions or a mortgage loan originator applicant or licensee’s NMLSR MU-4 must be made within ten (10) business days following the date of the event necessitating the change.” Petitioner failed to update her MU-4 to reflect the judgment entered against her within ten business days of the judgment or within ten business days of the order denying her Motion for Reconsideration for Order Dismissing Appeal, and, as of the date of the hearing, had still not updated her MU-4. Rule 80-11-5-.07(2) provides that failure to update any of the disclosure information on the MU-4 may result in revocation of a mortgage loan originator’s license.

8.

Petitioner was discharged from employment with MiLend on or about March 31, 2016. Petitioner was advised by MiLend that she was being discharged for an alleged violation of its fraud policies. R4, p. 2; R5. Further, Petitioner was aware of her discharge for an alleged violation of MiLend’s fraud policies on or before October 24, 2018, when Petitioner submitted the MU-4 on NMLSR. R4; R5. Question Q on the MU-4 form asks specifically whether Petitioner was discharged “after *allegations* were made that accused you of ... fraud.” R2, p. 12 (emphasis added). Thus, Petitioner made a “false statement[] or material misrepresentation[] to

the Department or NMLSR” in responding to this question. Petitioner’s failure to disclose her discharge for allegations of fraud against her is a violation of O.C.G.A. § 7-1-1013(11), regardless of the veracity of the allegations.

9.

Petitioner altered the date on a Closing Disclosure and attempted to use the altered document to allow a loan to close. O.C.G.A. § 7-1-1013(1) provides that a mortgage loan originator is prohibited from “submit[ing] false statements or documents likely to influence, persuade, or induce...” a party to the mortgage loan transaction. A mortgage loan originator is further prohibited from “conceal[ing] ... 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...” O.C.G.A. § 7-1-1013(2). Finally, a mortgage loan originator is prohibited from engaging in a “course of business not in good faith ... or which operates a fraud upon any person, in connection with the attempted or actual making of ... any mortgage loan.” O.C.G.A. § 7-1-1013(6). MiLend’s understanding of federal law was that it was precluded from closing on March 31, 2016, unless the Closing Disclosure was dated March 28, 2016. Without a Closing Disclosure dated March 28, 2016, MiLend would not have closed on March 31, 2016, as scheduled. Petitioner altered the document to attempt to induce or persuade MiLend to go forward with the closing as scheduled, in violation of MiLend’s policy and in apparent contravention of federal law. Petitioner’s alteration of the Closing Disclosure and subsequent attempt to use the altered Closing Disclosure to allow the loan to close as scheduled is: (1) a submission of a false document likely to influence the lender to close the loan, in violation of O.C.G.A. § 7-1-1013(1); (2) concealment of the date the applicant signed the Closing Disclosure, a material factor pertinent to the application, in violation of O.C.G.A. § 7-1-1013(2); and (3) a course of business not in good faith and which operates a fraud on a person, in violation of O.C.G.A. § 7-1-1013(6).

10.

Petitioner’s failure to disclose the discharge and judgment, as well as the fraudulent alterations of a Closing Disclosure, are relevant considerations to the Department’s determination of whether Petitioner demonstrated the financial responsibility, character, and general fitness required of a mortgage loan originator under O.C.G.A. § 7-1-1004(d)(3). Based on the evidence and credible testimony regarding Petitioner’s violations of the Georgia Residential Mortgage Act, Petitioner has not demonstrated the financial responsibility, character or general fitness required under O.C.G.A. § 7-1-1004(d)(3).

11.

Pursuant to O.C.G.A. § 7-1-1018(a), the Department is authorized to issue and order to cease and desist “whenever it shall appear ... that any person required to be licensed ... has violated any law of this state or any ... regulation of the department.” Further, in order to renew the license of a mortgage loan originator, the applicant must “continue to meet the minimum standards for license issuance.” O.C.G.A. § 7-1-1005(e)(1). A mortgage loan originator license can only be renewed if the licensee has demonstrated financial responsibility, character, and general fitness. O.C.G.A. § 7-1-1003(d)(3).

12.

Petitioner's failure to disclose the March 31, 2016 discharge and failure to disclose the July 20, 2018 judgment are both violations of O.C.G.A. § 7-1-1013(11). Further, Petitioner violated O.C.G.A. §§ 7-1-1013(1), (2), and (6) by altering the Closing Disclosure and attempting to use the altered document to close the loan. Petitioner's continuous failure to disclose the discharge and judgment, combined with her alteration of the Closing Disclosure, establish that Petitioner has not demonstrated the requisite character and fitness required by O.C.G.A. § 7-1-1004(d)(3). Each of these violations, if taken individually, would be sufficient to warrant denial of Petitioner's renewal application for a mortgage loan originator's license and the issuance of an Order to Cease and Desist. Collectively, Petitioner's numerous violations of the Georgia Residential Mortgage Act mandate denial of Petitioner's renewal application for a mortgage loan originator license and the issuance of the Order to Cease and Desist.

D. DETERMINATION

After thoughtful consideration and taking into account the foregoing Findings of Fact and Conclusions of Law, documents entered into evidence, and the testimony and credibility of the witnesses, the Tribunal has determined that the Petitioner made false statements and material misrepresentations to the Tribunal and the NMLSR in her renewal application in violation of O.C.G.A. § 7-1-1013(11). In addition, although not necessary to this Order, the Tribunal has determined that Petitioner violated O.C.G.A. §§ 7-1-1013(1), (2), and (6) by altering a Closing Disclosure to close the loan on the scheduled date. Finally, the Tribunal has also determined that the Petitioner has not demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the Petitioner will operate honestly, fairly and efficiently within the dictates of the Georgia Residential Mortgage Act.

ORDER

Based on the forgoing Findings of Fact and Conclusions of Law set forth herein, the Petitioner violated O.C.G.A. § 7-1-1013(11) by providing false information to the Department and NMLSR in connection with her 2019 mortgage loan originator license renewal application. Further, Petitioner altered a Closing Disclosure in order to allow a loan to close on the scheduled date, in violation of O.C.G.A. § 7-1-1013(1), (2), and (6). Finally, Petitioner did not produce or provide sufficient evidence to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination by the Department that she will operate honestly, fairly and efficiently within the dictates of the Georgia Residential Mortgage Act as required by O.C.G.A. § 7-1-1004(d)(3). Therefore, it is the FINAL ORDER of the Department that the issuance of the Notice of Intent to Deny Renewal Application for Loan Originator's License is UPHELD, which results in the DENIAL of Petitioner's mortgage loan originator renewal application, and the issuance of the Order to Cease and Desist is UPHELD.

SO ORDERED this 26 day of November, 2019.

A handwritten signature in blue ink, appearing to read "Kevin Hagler", written over a horizontal line.

KEVIN B. HAGLER
Commissioner
Department of Banking and Finance