

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

GEORGIA SOUTHERN MORTGAGE \*  
GROUP, INC. and GENE ROMEO, \*

NMLS: 168165 DBF: 20383 \*  
NMLS: 168722 DBF: 27639 \*

Petitioners, \*

v. \*

GEORGIA DEPARTMENT OF \*  
BANKING AND FINANCE, \*

Respondent. \*

Docket No. DBF-MLO-16-0011-302  
Docket No. DBF-MLO-16-0011-303



TO: Georgia Southern Mortgage Group, Inc.  
800 Old Roswell Lakes Pkwy, Ste 160  
Roswell, GA 30076

Gene Romeo  
900 Old Roswell Lakes Pkwy, Ste 340  
Roswell, GA 30076

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**FINAL ORDER**

**A. BACKGROUND**

On November 22, 2016, Gene Romeo (“Mr. Romeo”), individually and on behalf of Georgia Southern Mortgage Group, Inc. (“Georgia Southern”) (Mr. Romeo and Georgia Southern collectively referred to as “Petitioners”), appeared before the undersigned Commissioner of the Georgia Department of Banking and Finance (“Department”) to contest the following administrative actions (“Actions”):

1. Notice of Intent to Revoke Annual License issued against Georgia Southern on November 2, 2011 and amended on August 14, 2012 (Amended Notice of Intent to Revoke Annual License) and March 9, 2015 (Second Amended Notice of Intent to Revoke Annual License) (collectively, “Notice of Intent to Revoke Annual License”);

2. Notice of Intent to Revoke Mortgage Loan Originator's License issued against Mr. Romeo on November 2, 2011 and amended on August 14, 2012 (Amended Notice of Intent to Revoke Mortgage Loan Originator's License) and March 9, 2015 (Second Amended Notice of Intent to Revoke Mortgage Loan Originator's License) (collectively, Notice of Intent to Revoke Mortgage Loan Originator's License); and
3. Order to Cease and Desist issued against Mr. Romeo on November 2, 2011 and amended on August 14, 2012 (Amended Order to Cease and Desist) and March 9, 2015 (Second Amended Order to Cease and Desist) (collectively, "Order to Cease and Desist").

The Actions provided that the Petitioners' licenses are subject to revocation and that Mr. Romeo should be ordered to cease and desist due to the Petitioners' refusal to permit an investigation or examination in violation of O.C.G.A. § 7-1-1009; purposeful withholding of information, including books, accounts, and records, requested by an examiner for the purposes of conducting an examination in violation of O.C.G.A. § 7-1-1013(11); misrepresentation of material facts likely to influence, persuade, or induce an applicant for a mortgage loan in violation of O.C.G.A. § 7-1-1013(1); misrepresentation or concealment of information concerning mortgage transactions in violation of O.C.G.A. § 7-1-1013(2); and engagement in a course of business not in good faith in violation of O.C.G.A. § 7-1-1013(6). *See also* Ga. Comp. R. & Regs. R. 80-11-2-.01(6)(b) and 80-11-3-.01(16). Further, the Department sought to enforce the Actions due to Petitioners' violation of O.C.G.A. § 7-1-1002 because the Petitioners transacted "business with a person who is unlicensed and unregistered, and not exempt from licensing and registration requirements" and "directly or indirectly controlled a person who violated O.C.G.A. § 7-1-1002(a) and (b)."

In response to the Actions, Petitioners requested a hearing pursuant to O.C.G.A. §§ 7-1-1017(b) and 7-1-1018(a). Pursuant to notice and subsequent amended notices due to Petitioners' requests for continuance, a hearing was scheduled for and held on November 22, 2016 at or around 9:30 a.m. at the Department.<sup>1</sup> At the hearing, Petitioners were represented by Louis M. Turchiarelli, Esq. The Department was represented by Elizabeth Harris, Esq.

As a preliminary matter, the Petitioners contended that this matter was required to be heard in front of an administrative law judge at the Office of State Administrative Hearings pursuant to the initial notices issued in 2011 and objected to going forward with the hearing in front of the Commissioner. Transcript of Record (hereinafter, "T.") at 8-11.

The Department presented two witnesses: Fernando Ornelas ("Mr. Ornelas") and Andy Reid ("Mr. Reid"). Mr. Ornelas, Supervisory Examiner, provided testimony at the hearing regarding the attempted examination of the Petitioners' business and records, including reasons for the examination and the Petitioners' refusal to submit to the examination. T. 12-98. Mr. Ornelas further stated that the Department charges a statutory

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<sup>1</sup> A transcript of the hearing was received by this Tribunal on February 7, 2017.

fee for examinations, but the cost of an examination cannot be approximated in advance because the examiners do not know how much time will be spent reviewing the findings. T. 14-15. Mr. Reid corroborated Mr. Ornelas's testimony by describing the examination process, the Department's limited access to documents, and the Department being locked out of the Petitioners' office. T. 99-115.

After the Department rested its case, Mr. Romeo presented testimony on the Petitioners' behalf regarding Georgia Southern's business operations and their concern about the potential cost of an examination. T. 117-165. Specifically, Mr. Romeo stated that the Petitioners were concerned they would be unable to afford to pay the cost of the examination and, therefore, conditioned the examination process upon the Department's ability to provide an estimate for the cost of the examination. T. 142.

## **B. FINDINGS OF FACT**

1.

Mr. Romeo is the principal and sole shareholder of Georgia Southern. T. 28, 102, 118.

2.

Mr. Romeo and Georgia Southern are licensed by the Department as a mortgage loan originator and mortgage broker, respectively.<sup>2</sup> T. 117-118; Resp't Ex. 6.

3.

The Department conducts risk-based examinations of its licensees. T. 13-14. Advance notice of examinations is rarely given as it may provide an opportunity for licensees to conceal evidence indicative of violations of law. T. 14, 97, 100-101.

4.

The cost of an examination includes a charge of \$65 per examiner hour spent on the examination. T. 14-15, 101; Ga. Comp. R. & Regs. R. 80-5-1-.03(1)(c). The Department is unable to provide an estimate of the total examination costs due to its lack of knowledge of the possible nature of the findings and the sheer volume of records. T. 15, 141.

5.

On Wednesday, October 26, 2011, the Department went to Georgia Southern in order to examine Georgia Southern and Mr. Romeo, the principal of Georgia Southern

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<sup>2</sup> The Department issues mortgage loan originator, mortgage broker, and mortgage lender licenses pursuant to O.C.G.A. §§ 7-1-1001.1 and 7-1-1002.

and the sole mortgage loan originator employed by Georgia Southern. T. 26, 28, and 47. Mr. Romeo was not present at the office. T. 27, 103, 139.

6.

In order to examine the Petitioners, the Department requested a number of documents, including the Petitioners' loan files and certain correspondence with the consumers, from Georgia Southern. T. 27-29, 47-48. The Department received access to a limited number of the requested documents and commenced its review. T. 35-36, 104.

7.

Later that morning and prior to the Department's completion of its review of the provided documents, Petitioners' counsel requested that the Department cease its examination. T. 36-37, 104. Because of the limited number of documents provided by Petitioners and the Petitioners' request that the Department cease its examination, the Department agreed to temporarily cease its review until speaking with Mr. Romeo. T. 37, 104.

8.

On the afternoon of October 26, 2011, the Department spoke on the phone with Mr. Romeo. T. 38, 104, 138-140. Mr. Romeo expressed his concerns regarding the cost of the examination and made an appointment with the Department for Friday, October 28, 2011, to bring additional documents that only he had control over, to discuss the examination, and the cost of the examination. T. 38, 105, 140. Notwithstanding the scheduled meeting, the Department and Mr. Romeo agreed that the Department would return to Georgia Southern on Thursday, October 27, 2011, to continue the examination. T. 41, 105-106.

9.

On Thursday, October 27, 2011, the Department returned to Georgia Southern to continue its examination. T. 41, 106.

10.

The Department was unable to continue its examination because the office was closed and a notice was posted on the front door. T. 41-42, 106; Resp't Ex. 4. The notice stated as follows:

Attention DBF:

On the advice of counsel this office is closed today.  
Please contact our attorney Brian Douglas 770-933-9009.

Gene Romeo

Resp't Ex. 4. The office was closed on Thursday, October 27, 2011, due to the Petitioners' concern regarding the amount of the cost of the examination. T. 122-123. As such, the Petitioners refused to permit an examination on October 27, 2011.

11.

On October 27, 2011, pursuant to the posted notice, the Department contacted Petitioners' counsel, Mr. Douglas. T. 44. Mr. Douglas expressed the Petitioners' concerns regarding the cost of the examination; however, the Department stated that the examination would continue. T. 44. Mr. Douglas promised to reach out to Mr. Romeo and follow up, but failed to contact the Department on that day. T. 44.

12.

On Friday, October 28, 2011, the Department contacted Petitioners, through counsel, to confirm the continuation of the examination as well as the previously scheduled meeting with Mr. Romeo for that afternoon. T. 44.

13.

Mr. Romeo did not meet with the Department on October 28, 2011, nor did he provide the requested documents. T. 140. Instead, Mr. Douglas expressed the Petitioners' wishes to not allow the examination until their concerns about the cost of the examination were resolved. T. 45; Resp't Ex. 5. As such, the Petitioners refused to permit the examination on October 28, 2011.

14.

On Friday, October 28, 2011, the Department sent a letter via certified mail, e-mail, and fax to the Petitioners regarding the Petitioners' continued refusal to be examined and informed the Petitioners that the Department would make its final attempt to conduct an examination on Monday, October 31, 2011. Resp't Ex. 5.

15.

On Sunday, October 30, 2011, the Petitioners, through counsel, advised the Department not to go to the office of Georgia Southern to conduct an examination on Monday, October 31, 2011. Resp't Ex. 6 ("I advise you not to go to their location in the morning because [the cost of the examination] issue remains outstanding."). As such, the Petitioners refused the examination scheduled for October 31, 2011.

16.

The Petitioners' failure to provide full access to documents, failure to allow the

Department into the office, and refusal to continue with the examination constitute the Petitioners' refusal to submit to an examination.

17.

In light of the number of refusals, the Department did not make any additional efforts to schedule an examination. T. 50.

18.

The Department repeatedly attempted to conduct an examination of the Petitioners, but the Petitioners refused such examination. T. 41-50, 106-107, 140-143. Mr. Romeo even acknowledged the Petitioners' refusal to submit to an examination. T. 163. As such, the Department was not able to complete the examination of Petitioners. T. 50, 108.

19.

The Actions were properly issued to the Petitioners due to their refusal to submit to an examination. T. 56.

### **C. CONCLUSIONS OF LAW**

1.

The hearing was properly held before the Commissioner notwithstanding the Petitioners' contention that the notice of hearing required the hearing to be held before the Office of State Administrative Hearings ("OSAH"). T. 8-11. Pursuant to O.C.G.A. § 7-1-1017(b), the Petitioners are authorized to request in writing a hearing to contest the Department's Actions. The administrative hearing must be transferred to an administrative law judge at OSAH unless it is presided over by the agency head, which, in this matter, is the Commissioner of the Department. *See* 1995 Op. Att'y Gen. 95-5; *see also* O.C.G.A. § 50-13-41. There is no authority mandating all administrative hearings to be held before OSAH.

2.

O.C.G.A. § 50-13-41(d) provides, in pertinent part, that "every decision of an administrative law judge shall be treated as an initial decision." The Commissioner of the Department has the authority to review initial decisions "even when [the Department] refers administrative proceedings to an administrative law judge with OSAH for an initial decision pursuant to O.C.G.A. § 50-13-41" and is the ultimate decision maker. *Alexander v. Dep't of Revenue*, 316 Ga. App. 543, 544 (2012). On review, the Department has "all the powers it would have in making the initial decision and ... may take additional testimony." O.C.G.A. § 50-13-17(a). That is, even when the Department refers a case to OSAH, the Commissioner of the Department is still able to review OSAH's decision, has

all the powers he would have in making the initial decision, and is the ultimate decision maker. O.C.G.A. §§ 50-13-17, 50-13-41.

3.

Further, even if the initial notice of hearing created a right to have the initial hearing before OSAH, Petitioners waived that right by requesting a hearing pursuant to the Second Amended Notice of Intent to Revoke Annual License, Second Amended Notice of Intent to Revoke Mortgage Loan Originator's License, and Second Amended Order to Cease and Desist, which expressly provided for a hearing in front of the Commissioner. Record; Second Amended Notice of Intent to Revoke Annual License; Second Amended Notice of Intent to Revoke Mortgage Loan Originator's License; Second Amended Order to Cease and Desist; Request for Hearing dated March 23, 2015.

4.

Accordingly, the Petitioners did not have a right to a hearing at OSAH as the Commissioner of the Department, the agency head, presided over the hearing. Therefore, the hearing was rightfully held before this Tribunal.

5.

One of the underlying objectives of the Financial Institutions Code of Georgia, which includes the Georgia Residential Mortgage Act, is to supervise and examine the business affairs of mortgage lenders and brokers "to ensure that they operate in a manner consistent with state law." O.C.G.A. § 7-1-3(a)(10)(A). The objective to supervise and examine shall be a standard observed by the Department when conducting examinations and exercising discretionary powers. O.C.G.A. § 7-1-3(b). This overriding standard applicable to the Department is reinforced by the provisions in the Georgia Residential Mortgage Act. O.C.G.A. § 7-1-1009(b) provides, in pertinent part, that the Department may, as often as it deems necessary, "investigate and examine the affairs, business, premises, and records of any mortgage broker or mortgage lender required to be licensed or registered under this article." Further, pursuant to O.C.G.A. § 7-1-1009(d)(1), the Department may "[m]ake such public or private investigations ... as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article." O.C.G.A. § 7-1-1009(c) provides similar provisions regarding the Department's authority to investigate and examine mortgage loan originators. Accordingly, the Department has the authority to examine the business affairs of the Petitioners to ensure that the licensees are complying with the provisions of the Georgia Residential Mortgage Act. O.C.G.A. § 7-1-1009.

6.

Because the Petitioners failed to submit to the Department's examination by their failure to provide full access to documents, failure to allow the Department into the office, and refusal to continue with the examination, the Petitioners have refused the

examination in violation of O.C.G.A. § 7-1-1009. Further, Mr. Romeo did testify that Petitioners refused the examination. T. 163.

7.

Notwithstanding these facts, the Petitioners contend that they did not refuse the examination, but, instead, were merely seeking limitations on the cost of the examination. T. 141; Resp't Ex. 6. This contention is without merit. The Petitioners received their licenses subject to the laws and rules of the State of Georgia, including O.C.G.A. § 7-1-1009 which confers upon the Department the power to examine its licensees. *Hughes v. State Bd. of Med. Examiners*, 162 Ga. 246, 256 (1926) ("Every citizen has the undoubted right to follow any lawful calling, business, or profession he may select, *subject only to such restrictions as the government may impose* for the welfare and safety of society" (emphasis added)); *see also State Bd. of Educ. v. Drury*, 263 Ga. 429, 431 (1993) (stating that an individual does not have a constitutional right to practice a profession "since such a right is subordinate to the state's right to regulate such a profession."). The conditions imposed by Petitioners prevented the Department from regulating the Petitioners. By seeking to place a condition on the Department's ability to conduct an examination and not permitting the examination to go forward until that condition was satisfied, the Petitioners have refused the examination pursuant to O.C.G.A. § 7-1-1009. Accordingly, the Department has established that the Petitioners refused to submit to an examination in violation of O.C.G.A. § 7-1-1009.

8.

Due to Mr. Romeo's violation of O.C.G.A. § 7-1-1009, the Department's order requiring Mr. Romeo to cease and desist from violating the law is valid. O.C.G.A. § 7-1-1018(a) (the Department can issue an order "requiring such person to cease and desist immediately from such unauthorized practices."). Additionally, the Petitioners' violation of O.C.G.A. § 7-1-1009(b) supports the revocation of the Petitioners' licenses. O.C.G.A. § 7-1-1017(a)(1) ("The department may ... revoke [a license] for a violation of a provision of [the Georgia Residential Mortgage Act]").

9.

The Petitioners' refusal to permit the Department's examination also violates the prohibited acts section of the Georgia Residential Mortgage Act. Pursuant to O.C.G.A. § 7-1-1013(11), it is prohibited to purposely withhold information requested by an examiner of the Department. By failing to produce the requested documents, the Petitioners have withheld information requested by the Department in the course of the examination in violation of O.C.G.A. § 7-1-1013(11). Accordingly, due to the Petitioners' violation of O.C.G.A. § 7-1-1013(11), the Department's Order to Cease and Desist issued to Mr. Romeo is valid and the revocation of the Petitioners' licenses is proper. *See* O.C.G.A. §§ 7-1-1017(a); 7-1-1018(a).

10.

The Petitioners contend that the Actions should not be upheld due to the fact that they are currently willing to submit to an examination. T. 127. “[C]ompliance contemplated by the statute is compliance with lawful requirements at the time of the alleged violations, not subsequent compliance after notice has been given.” *Georgia Dep’t of Agriculture v. Brown*, 270 Ga. App. 646, 648 (2004). See also 1965 Op. Att’y Gen. U65-73, p. 121 (“The real question to be resolved by the agency’s proceeding would be whether the licensee had been in noncompliance with all lawful requirements for the retention of his license *at the time* that the licensee is alleged to have been in noncompliance with such requirements” (emphasis added)). Accordingly, the Petitioners’ were required to comply with the examination requirement at the time of the initial examination attempt. Therefore, the Petitioners’ willingness to submit to an examination today is irrelevant as they failed to comply with the examination requirement at the time of the attempted examination. It is worth noting that the Petitioners’ current willingness to submit to an examination undermines the Petitioners’ stated rationale for refusing to permit the examination in 2011 as the Department has not provided an estimate of the cost of the examination.

11.

The Petitioners’ argument that the Actions are invalid as there has been no attempted examination since 2011 is likewise without merit. T. 126. “Where a statute directs that something be done within a certain time period, without any negative prohibition of later performance of the act, usually the provision as to time is treated as *directory only*.” *Rolleston v. Glynn County Bd. of Tax Assessors*, 240 Ga. App. 405, 406 (1999) (emphasis added). Further, “in the absence of injury to the defendant and in the absence of a penalty for failure to comply with the statute, [the provision as to time] denotes simple futurity rather than a command.” *Thebaut v. Ga. Bd. of Dentistry*, 235 Ga. App. 194, 195 (1998). Here the Petitioners testified that they refused to submit to an examination due to a concern regarding cost of the examination. Because no examination fees have accrued as a result of the delay of subsequent examination, the Petitioners have not been harmed. Accordingly, as no injury resulted from the delay in subsequent examinations and the statute does not include a penalty for failure to comply with the 2-year requirement, the provision as to time is directory and not mandatory. Furthermore, “[f]ailure of the department to act within any of the time limits established by [the Financial Institutions Code of Georgia, which includes the Georgia Residential Mortgage Act,] shall not deprive the department of jurisdiction thereafter to act in regard to the matter involved.” O.C.G.A. § 7-1-76(a). Thus, the Department has the jurisdiction to enforce its Actions based on the Petitioners’ refusal to submit to an examination in violation of O.C.G.A. § 7-1-1009, regardless of whether the Department attempted subsequent examinations.

12.

However, even if the 2-year examination requirement was a mandatory provision,

the Department was not required to attempt another examination because the Petitioners refused to permit an examination. The “law does not require a futile tender or other useless act.” *Nowlin v. Davis*, 245 Ga. App. 821, 822 (2000). Here the Petitioners failed to provide all documents, requested that the Department cease its examination, locked the door of the business to prevent the examination, communicated to the Department their wishes not to allow the examination, and advised the Department not to go to the business. T. 35-36, 41-42, 44-50; Resp’t Ex. 5 and 6. Based on the Petitioners previous actions, the Department’s failure to attempt another examination within the 2-year period would have been futile and is not relevant to the enforcement of the Actions.

13.

Either a refusal of an examination or withholding of information would be adequate to support the revocation of Petitioners’ licenses and to uphold the Order to Cease and Desist. Collectively, these violations more than substantiate the enforcement of the Order to Cease and Desist and revocation of Petitioners’ licenses.

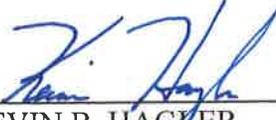
#### **D. DETERMINATION**

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 Department has determined that the Petitioners refused to permit an investigation or examination of books, accounts, and records and purposely withheld documents requested by the Department. Because the Department is entitled to enforce the Actions based on such refusal and withholding, it is unnecessary to decide whether Petitioners: 1) violated O.C.G.A. § 7-1-1002(a) and (b) by transacting business with a person who is unlicensed, unregistered, and not exempted from the licensing or registration requirements pursuant to O.C.G.A. § 7-1-1001 and 2) violated O.C.G.A. § 7-1-1002(c) by directly or indirectly controlling a person who violated O.C.G.A. § 7-1-1002(a) or (b).

#### **ORDER**

**Based on the forgoing Findings of Fact and Conclusions of Law set forth herein, it is the FINAL ORDER of the Department that the Annual License of Georgia Southern Mortgage Group, Inc. and the Mortgage Loan Originator’s License of Gene Romeo are REVOKED and that Mr. Romeo is ORDERED to Cease and Desist.**

SO ORDERED this 9<sup>th</sup> day of March, 2017.

  
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KEVIN B. HAGLER  
Commissioner  
Department of Banking and Finance