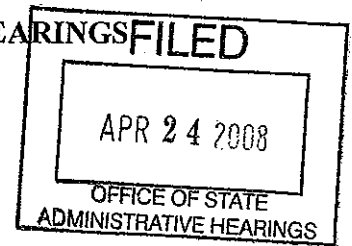


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**



CHRIS BROWN,

Petitioner,

v.

GEORGIA DEPARTMENT OF  
BANKING AND FINANCE,

Respondent.

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Docket Number:

OSAH-DBF-MBL-0824205-44-Malihi

**ORDER ON MOTION FOR SUMMARY DETERMINATION**

Respondent, the Georgia Department of Banking and Finance, pursuant to OSAH Rule 616-1-2-.15, moved for summary determination in the above-styled case alleging that there exists no genuine issue of material fact and that Respondent is entitled to judgment as a matter of law. In support of its Motion for Summary Determination, Respondent relies on all pleadings on file in this case, Statement of Material Facts as to Which There Exists No Issue, Affidavit of Betty Thomas, Affidavit of Sandra Sheley, Affidavit of Angela Mozo and Affidavit of Jacqueline Melone-Smith. Petitioner, Chris Brown, failed to respond to the Motion for Summary Determination.<sup>1</sup> For the reasons indicated below, Respondent's Motion is **GRANTED**.

**I. UNDISPUTED MATERIAL FACTS**

Respondent issued an Order to Cease and Desist to Petitioner on November 21, 2006.

Respondent's Exhibit A. Petitioner timely requested a hearing before this Tribunal pursuant to O.C.G.A. § 7-1-1018.

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<sup>1</sup> OSAH Rule 616-1-2-.15(3) provides, "When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion...must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing."

Starting on July 6, 2006, Respondent initiated an examination of Commons People Mortgage, Inc. ("Commons People"), a licensed mortgage broker.<sup>2</sup> (Affidavit of Thomas, ¶ 4). As part of the examination, Respondent's examiner requested that Teresa Whitehead, the president of Commons People, complete the Officer's Questionnaire. (Affidavit of Thomas, ¶ 5). Ms. Whitehead provided Respondent's examiner with a completed Officer's Questionnaire. (Affidavit of Thomas, ¶ 5). Respondent's Exhibit C. The Officer's Questionnaire indicates that Petitioner had been employed as a loan officer for Commons People from December 12, 2005, until March of 2006. Respondent's Exhibit C, p. 4-14.

During the examination, Respondent's examiner reviewed the loan file of Erik Sullivan for the property located at 1559 Westwood Avenue, Atlanta, Georgia 30310 that was provided by Commons People. (Affidavit of Thomas, ¶ 6). The loan application indicates that the application was taken by Petitioner as an employee of Commons People on December 19, 2005. Respondent's Exhibit D, a copy of Mr. Sullivan's loan application for the property located at 1559 Westwood Avenue, Atlanta, Georgia 30310, was discovered in his loan file. (Affidavit of Thomas, ¶ 6). The loan application discovered by Respondent indicates that the purpose of the loan is for Mr. Sullivan's primary residence. Respondent's Exhibit D. The loan was closed on January 20, 2006, with Lime Financial Services, LTD. ("Lime Financial"). (Affidavit of Mozo, ¶ 4, Exhibit 2).

Respondent's examiner also reviewed the loan files of Mr. Sullivan for the property located at 504 Hopkins Street, Atlanta, Georgia 30310 that were produced by Commons People as part of the examination. (Affidavit of Thomas, ¶ 7). The loan applications indicate that the

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<sup>2</sup> As a result of the findings made during the examination, Respondent issued a Notice of Intent to Revoke Annual License to Commons People on November 21, 2006. (Affidavit of Sheley, ¶ 4). The mortgage broker's license of Commons People was revoked effective April 2, 2007. (Affidavit of Sheley, ¶ 4).

applications were taken by Petitioner as an employee of Commons People on January 30, 2006.

Respondent's Exhibit E, Mr. Sullivan's loan applications for the property located at 504 Hopkins Street, Atlanta, Georgia 30310, were discovered in his loan files.<sup>3</sup> (Affidavit of Thomas, ¶ 7). The applications indicate that the purpose of the loans is for Mr. Sullivan's primary residence. Respondent's Exhibit E. The loans were closed by Fieldstone Mortgage Company ("Fieldstone") on February 15, 2006. (Affidavit of Melone-Smith, ¶ 4, Exhibit 2).

Lime Financial funded Mr. Sullivan's loan for the property located at 1559 Westwood Avenue SW, Atlanta, Georgia 30310 on January 20, 2006. (Affidavit of Mozo, ¶ 4). Lime Financial relied on the information in the loan application to decide to fund Mr. Sullivan's loan. (Affidavit of Mozo, ¶ 4). Whether a borrower intends on using the property in question as a primary residence, secondary residence, or as an investment is a material factor to Lime Financial in deciding to fund a loan as it affects the interest rate Lime Financial will charge on a loan. (Affidavit of Mozo, ¶ 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 Mozo, ¶ 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 Mozo, ¶ 4). If Mr. Sullivan did not intend on using the property as his primary residence, then Lime Financial would have charged a higher interest rate on the loan. (Affidavit of Mozo, ¶ 4).

Fieldstone funded Mr. Sullivan's loans for the property located at 504 Hopkins Street SW, Atlanta, Georgia 30310 on February 15, 2006. (Affidavit of Melone-Smith, ¶ 4).

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<sup>3</sup> Given the fact that one loan application seeks a loan of \$238,000.00 for the property at 504 Hopkins Street and the other loan application seeks a loan of \$42,000.00 for the same property, Mr. Sullivan was seeking to obtain, and did ultimately obtain, a first and second loan on the property.

Fieldstone relied on the information in the loan applications in deciding to fund Mr. Sullivan's loans. (Affidavit of Melone-Smith, ¶ 4). Whether a borrower intends on using the property in question as a primary residence, secondary residence, or as an investment is a material factor to Fieldstone in deciding to fund a loan as it affects the interest rate or points Fieldstone will charge on a loan. (Affidavit of Melone-Smith, ¶ 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 Melone-Smith, ¶ 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 Melone-Smith, ¶ 4). If Mr. Sullivan did not intend on using the property as his primary residence, then Fieldstone would have applied its pricing and underwriting guidelines for a secondary residence or investment property in funding the loans. (Affidavit of Melone-Smith, ¶ 4). The application of the pricing and underwriting guidelines would have resulted, in all likelihood, in the charging of a higher interest rate on the loans. (Affidavit of Melone-Smith, ¶ 4).

Petitioner took Mr. Sullivan's loan application for the property located at 1559 Westwood Avenue SW, Atlanta, Georgia 30310 and Mr. Sullivan's loan applications for the property located at 504 Hopkins Street SW, Atlanta, Georgia 30310. Respondent's Exhibits D and E. These loans closed twenty-six days apart. (Affidavit of Mozo, ¶ 4; Affidavit of Melone-Smith, ¶ 4). The loan application for the property located at 1559 Westwood Avenue SW, Atlanta, Georgia 30310 indicated that it was for Mr. Sullivan's primary residence. Respondent's Exhibit D. The loan applications for the property located at 504 Hopkins Street SW, Atlanta, Georgia 30310 also indicated that they were for Mr. Sullivan's primary residence. Respondent's Exhibit E. Further, Petitioner took Mr. Sullivan's loan applications for the property at 504

Hopkins Street SW, Atlanta, Georgia 30310 on January 30, 2006, a mere ten days after Lime Financial funded Mr. Sullivan's loan for the property at 1559 Westwood Avenue SW, Atlanta, Georgia 30310. (Affidavit of Mozo, ¶ 4, Exhibit 2; Respondent's Exhibit E). It is impossible that all of the loans were for Mr. Sullivan's primary residence as an individual cannot have two primary residences. Based on the conflicting information in the applications for the two properties, Petitioner knew that both sets of loans were not for Mr. Sullivan's primary residence, yet both sets of loan applications were submitted to lenders to be funded anyway.

## **II. LEGAL AUTHORITY**

Petitioner violated the prohibitions found in O.C.G.A. §§ 7-1-1013 (1), (2) and (6) by taking loan applications that concealed the true use of the property.

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

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, 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;

Pursuant to O.C.G.A. § 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.”

By taking loan applications for Mr. Sullivan that misrepresented the use of the property, Petitioner misrepresented material facts to the mortgage lenders in question. 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. A misrepresentation that causes a mortgagor to take a loan on terms that the mortgagor would otherwise not have taken violates O.C.G.A. § 7-1-1013(1). In addition, Petitioner violated O.C.G.A. § 7-1-1013(2) by misrepresenting the intended use of the property. Further, by submitting the loan packages for both sets of Mr. Sullivan’s loans, even though the applications clearly contained conflicting information, Petitioner engaged in a practice which was not in good faith or fair dealing with the lenders in violation of O.C.G.A. § 7-1-1013(6).

O.C.G.A. § 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.

For the purposes of O.C.G.A. § 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

requirements<sup>4</sup> 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 Petitioner violated O.C.G.A. §§ 7-1-1013 (1), (2) and (6), Respondent's order requiring Petitioner to cease and desist from violating the law is valid.

### III. CONCLUSIONS OF LAW

Petitioner committed prohibited acts in violation of O.C.G.A. §§ 7-1-1013(1), (2) and (6). Respondent's Order to Cease and Desist issued by the Georgia Department of Banking and Finance pursuant to O.C.G.A. § 7-1-1018 was proper. Respondent's Motion for Summary Determination is **GRANTED**. All issues are resolved in favor of the Respondent in this case and the hearing set for May 7, 2008 at 8:30 a.m. is **DISMISSED**.

**SO ORDERED** this 24<sup>th</sup> day of April 2008.

*Michael M. Malihi*

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Michael M. Malihi, Judge

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<sup>4</sup> Petitioner was exempt from the licensing requirements of the Georgia Residential Mortgage Act during the applicable timeframe as she was an employee of Commons People, a licensed mortgage broker. O.C.G.A. § 7-1-1001(11).

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

CHRIS BROWN,

Petitioner,

v.

DEPARTMENT OF BANKING AND FINANCE,  
Respondent.

Docket No.: OSAH-DBF-MBL-0824205-44-Malihi

Agency Reference No.: 0824205

**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 Martin, jmartin@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).



**CERTIFIED MAIL**

RE: CHRIS BROWN, Petitioner

DOCKET NO.: OSAH-DBF-MBL-0824205-44-Malihi

MAIL TO:

☒ CHRIS BROWN  
1017 PALMER ROAD  
LITHONIA, GA 30058

(NOTICE AND DECISION CERTIFIED MAIL)  
(ALSO NOTICE ROUTINE MAIL)

☒ GEORGIA DEPARTMENT OF BANKING AND FINANCE  
2990 BRANDYWINE ROAD SUITE 200  
ATLANTA GA 30341

(DECISION)

☒ OSCAR FEARS  
ASSISTANT ATTORNEY GENERAL  
40 CAPITOL SQ, SW  
ATLANTA, GA 30334-1300