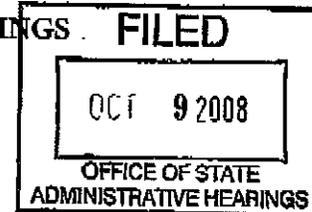


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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



HORTENSE THOMPSON,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

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Docket Number:
OSAH-DBF-MBL-0906676-67-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, Affidavit of Bob Bauguss, Affidavit of Sandra Sheley, Affidavit of Edward Hyne, and Affidavit of Dorinda C. Smith. Petitioner, Hortense Thompson, failed to respond to the Motion for Summary Determination.¹ 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 August 17, 2007. Respondent's Exhibit A. Petitioner timely requested a hearing before this Tribunal pursuant to O.C.G.A. § 7-1-1018. Respondent's Exhibit B.

¹ 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 January 9, 2007, Respondent initiated an examination of Home Loans USA, Inc. ("Home Loans USA"), a licensed mortgage lender.² (Affidavit of Bauguss, ¶ 4). As part of the examination, Respondent's examiner requested that Stephen J. Kori, the President of Home Loans USA, complete the Officer's Questionnaire. (Affidavit of Bauguss, ¶ 5). Mr. Kori provided Respondent's examiner with a completed Officer's Questionnaire. (Affidavit of Bauguss, ¶ 5). Respondent's Exhibit C. The Officer's Questionnaire indicates that Petitioner was an employee of Home Loans USA and was hired on July 24, 2004. Respondent's Exhibit C, p. 4-21.

During the examination, Respondent's examiner reviewed the loan file of Jerome Harris, Jr. for the property located at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317 at Home Loans USA's place of business. (Affidavit of Bauguss, ¶ 6). The loan application indicates that the application was taken by Petitioner as an employee of Home Loans USA on February 5, 2005. Respondent's Exhibit D, a copy of Mr. Harris' loan application for the property located at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317, was discovered in his loan file. (Affidavit of Bauguss, ¶ 6). The loan application discovered by Respondent indicates that the purpose of the loan is for Mr. Harris' primary residence. Respondent's Exhibit D. The loan was closed on March 9, 2005, with First Horizon Home Loan Corporation. ("First Horizon"). (Affidavit of Hyne, ¶ 4).

Respondent's examiner also reviewed the loan files of Mr. Harris for the property located at 4952 Galleon Crossing, Decatur, Georgia 30035 that were produced at Home Loans USA's place of business. (Affidavit of Bauguss, ¶ 7). The loan applications indicate that the

² As a result of the findings made during the examination, Respondent issued a Notice of Intent to Revoke Annual License to Home Loans USA on July 20, 2007. (Affidavit of Sheley, ¶ 4). The mortgage broker's license of Home Loans USA was revoked effective November 5, 2007. (Affidavit of Sheley, ¶ 4).

applications were taken by Petitioner as an employee of Home Loans USA on March 21, 2005. Respondent's Exhibit E, Mr. Harris' loan applications for the property located at 4952 Galleon Crossing, Decatur, Georgia 30035, were discovered in his loan files. (Affidavit of Bauguss, ¶ 7). The applications indicate that the purpose of the loans is for Mr. Harris' primary residence. Respondent's Exhibit E. The loans were closed by SunTrust Mortgage ("SunTrust") on May 11, 2005. (Affidavit of Smith, ¶ 4).

First Horizon funded Mr. Harris' loan for the property located at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317 on March 9, 2005. (Affidavit of Hyne, ¶ 4). First Horizon relied on the information in the loan application to decide to fund Mr. Harris' loan. (Affidavit of Hyne, ¶ 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 First Horizon in deciding to fund a loan as it affects the interest rate First Horizon will charge on a loan. (Affidavit of Hyne, ¶ 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 Hyne, ¶ 4). The interest rate is lower because, all things being equal, the credit risk on a secondary residence of investment property is higher than on a primary residence. (Affidavit of Hyne, ¶ 4). If Mr. Harris did not intend on using the property as his primary residence, then First Horizon would have charged a higher interest rate on the loan. (Affidavit of Hyne, ¶ 4).

SunTrust funded Mr. Harris' loan for the property located at 4952 Galleon Crossing, Decatur, Georgia, 30035 on May 11, 2005. (Affidavit of Smith, ¶ 4). SunTrust relied on the information in the loan applications in deciding to fund Mr. Harris' loan. (Affidavit of Smith, ¶ 5). 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 SunTrust in deciding to fund a loan as it affects the interest rate or points SunTrust will charge on a loan.³ (Affidavit of Smith, ¶ 5). 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 Smith, ¶ 5). The interest rate is lower because, all things being equal, the credit risk on a secondary residence of investment property is higher than on a primary residence. (Affidavit of Smith, ¶ 5). If Mr. Harris did not intend on using the property as his primary residence, then SunTrust would have charged a higher interest rate on the loan. (Affidavit of Smith, ¶ 5).

Petitioner took Mr. Harris' loan application for the property located at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317 and Mr. Harris' loan applications for the property located at 4952 Galleon Crossing, Decatur, Georgia 30035. Respondent's Exhibits D and E. The loan application for the property located at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317 indicated that it was for Mr. Harris' primary residence. Respondent's Exhibit D. The loan applications for the property located at 4952 Galleon Crossing, Decatur, Georgia 30035 also indicated that they were for Mr. Harris' primary residence. Respondent's Exhibit E. Further, Petitioner took Mr. Harris' loan applications for the property at 4952 Galleon Crossing, Decatur, Georgia 30035 on March 21, 2005, just 12 days after First Horizon funded Mr. Harris' loan for the property at 1602 Memorial Drive, Atlanta, Georgia 30317. (Affidavit of Hync, ¶ 4; Respondent's Exhibits D and E). It is impossible that both of the loans were for Mr. Harris' 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

³ Mr. Harris' property at 4952 Galleon Crossing, Decatur, Georgia 30035 would not qualify for a loan as a second home under SunTrust's lending guidelines due to its proximity to his property at 1602 Memorial Drive, Unit 30, Atlanta, Georgia 30317. (Affidavit of Smith, ¶ 6.)

were not for Mr. Harris' 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.

Prior to May 5, 2005, O.C.G.A. § 7-1-1013⁴ 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)⁵, 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."

⁴ The current law is substantially similar to the law in effect prior to May 5, 2005. O.C.G.A. § 7-1-1013; Ga. L. 2005, p. 826, § 35.

By taking loan applications for Mr. Harris 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. Harris' 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 requirements⁶ to make false statements to a lender in order to close a loan. O.C.G.A. §§ 7-1-

⁵ The current law is substantially similar to the law in effect prior to May 5, 2005. O.C.G.A. § 7-1-1000(10); Ga. L. 2005, p. 826, § 29.

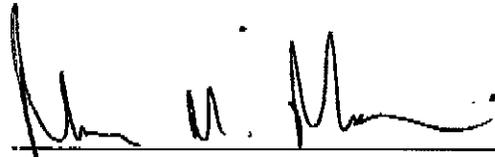
⁶ Petitioner was exempt from the licensing requirements of the Georgia Residential Mortgage Act during the applicable timeframe as she was an employee of Home Loans USA, a licensed mortgage lender. O.C.G.A. § 7-1-1001(11).

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**.

SO ORDERED this 10th day of October, 2008.



Michael M. Malihi, Judge

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

HORTENSE THOMPSON,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-DBF-MBL-0906676-67-Malini
	:	
DEPARTMENT OF BANKING AND FINANCE,	:	Agency Reference No.: 0906676
Respondent.	:	

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).

RE: HORTENSE THOMPSON, Petitioner

DOCKET NO.: OSAH-DBF-MBL-0906676-67-Malihi

MAIL TO:

HORTENSE THOMPSON (NOTICE AND DECISION CERTIFIED MAIL)
505 LENDLLANE (ALSO NOTICE ROUTINE MAIL)
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