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6-15-2011

Angela Marie Martin, Petitioner, vs. Department of
Financial Institutions, Compliance Division,
Respondent

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF:

**Angela Marie Martin,
Petitioner,**

Vs.

**Department of Financial Institutions,
Compliance Division,
Respondent.**

**DOCKET NO: 03.06-112294J
TDFI No.: 11-042-C**

INITIAL ORDER

This matter came to be heard on June 15, 2011, in Nashville, Tennessee before Steve R. Darnell, Administrative Law Judge assigned by the Department of State, Administrative Procedures Division, and sitting for the Commissioner of the Department of Financial Institutions (hereinafter "Commissioner"), pursuant to T.C.A. §4-5-301(d). The Compliance Division of the Department of Financial Institutions (hereinafter "Respondent") was represented by attorney Joseph A. Schmidt. Petitioner was present for the hearing and not represented by counsel.

ISSUE FOR CONSIDERATION

Did the Department properly deny Petitioner's application for a Mortgage Loan Originator's license upon a finding her license had been revoked by the State of Georgia, and/or because she failed to update her application and provided inaccurate information reflecting the Georgia revocation when she applied in Tennessee?

SUMMARY OF DETERMINATION

After consideration of the pleadings, argument of counsel, and the record as a whole, it is determined that Respondent's decision denying Petitioner's Mortgage Loan Originator's license application should be upheld. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner has been licensed in Tennessee as a Mortgage Loan Originator for the past several years. Petitioner made an electronic application to Tennessee for renewal of her license on November 17, 2010; however, this application was deemed incomplete by the Department. A completed application was submitted to the Department on December 27, 2010. In this application, Petitioner agreed to "keep the information contained in this form [application] current and to file accurate supplementary information on a timely basis...."
2. By letter dated March 11, 2011, Petitioner's Mortgage Loan Originator's license for the State of Georgia was revoked. Petitioner does not dispute the revocation of her Georgia license. Petitioner did not notify the Department in Tennessee of the Georgia revocation.
3. By letter dated April 7, 2011, the Department notified Petitioner it was denying her application for a Mortgage Loan Originator's license due to the Georgia revocation.
4. Petitioner submitted a new application in Tennessee on June 8, 2011. In this application, as in her December 27, 2011, application, Petitioner was asked, "[h]as any State or federal regulatory agency or foreign financial regulatory authority ever: (5) revoked your registration or license?" Petitioner inaccurately answered "no" to this question.

5. Petitioner's testimony was credible. Petitioner allowed her employer's "back office" staff to complete and submit her electronic applications. Petitioner was unaware the June 8, 2011, application was submitted with incorrect information concerning her Georgia revocation.

6. The Department properly denied Petitioner's request for a Mortgage Loan Originator's license due to the revocation of her license by the State of Georgia.

7. Petitioner failed to timely supplement her December 27, 2010, application as necessitated by the application agreement. However, Petitioner did not intentionally submit false information on her June 8, 2011, application. Denial of Petitioner's Tennessee Mortgage Loan Originator's license on these grounds alone would not be proper by the Department.

CONCLUSIONS OF LAW

1. The Tennessee Mortgage Act states, in pertinent part, that "[a]n individual, unless specifically exempted under subsection (b), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license issued by the commissioner and without first being sponsored in accordance with § 45-13-303...." T.C.A. § 45-13-301(a).

2. The Tennessee Mortgage Act provides that "[u]pon submission of a properly completed application form, including submission of fingerprints and payment of all applicable fees, the commissioner shall investigate the application to determine whether the applicant qualifies for a license...." T.C.A. § 45-13-302(d).

3. Pursuant to T.C.A. § 45-13-302(c) of the Tennessee Mortgage Act, no mortgage loan originator license shall be issued unless the Commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction; provided, that a subsequent formal vacation of the revocation shall not be deemed a revocation;

(2)(A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign or military court:

(i) During the seven-year period preceding the date of application for a mortgage loan originator license; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering;

(B) Provided, that any pardon of a conviction shall not be a conviction for purposes of subdivisions (c)(2)(A)(i) and (ii);

(3) The applicant has demonstrated the financial responsibility, character and general fitness to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly and efficiently within the purposes of this chapter...;

(4) The applicant has completed the pre-licensing education requirements set forth in § 45-13-304; and

(5) The applicant has passed a written test that meets the test requirement described in § 45-13-305.

4. T.C.A. §45-13-302(d) of the Tennessee Mortgage Act states, in pertinent part, that “[i]f the Commissioner finds the applicant so qualified, the Commissioner shall issue the applicant a mortgage loan originator license that shall expire on December 31 in the year it was issued....”

5. T.C.A. §45-13-302(d) states, in pertinent part, **that if the Commissioner does not find the applicant so qualified, the Commissioner shall notify the applicant in writing stating the basis for denial.** If the Commissioner denies an application or fails to act on a complete application within ninety (90) days, the applicant may make a written demand to the Commissioner for a hearing on the question of whether the license should be granted. Any hearing requested shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the individual has requested the hearing in writing within thirty (30) days following the date of the Commissioner's denial. At the hearing, the

burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual.

ANALYSIS

Once Petitioner's Mortgage Loan Originator's license was revoked by the State of Georgia, the Tennessee Department of Financial Institutions has no authority to grant Petitioner a license in Tennessee. The Department has no discretion under these circumstances. This alone is sufficient to uphold the Department's decision denying Petitioner's application.

It is equally clear that Petitioner failed to timely update her application and notify the Department her Georgia license had been revoked. Petitioner's June 8, 2011, application was submitted by her employer's staff. Petitioner's testimony was credible. She did not intend to deceive the Department concerning the Georgia revocation. Clearly, Petitioner should not allow others to complete and submit her electronic applications. However, denial of Petitioner's application due to her failure to timely update the Department and/or for providing inaccurate information would not alone be grounds to deny Petitioner's application in Tennessee. But, as noted above, this is a moot issue since the Department had suitable grounds to deny her Tennessee application.

IT IS THEREFORE ORDERED that Respondent's decision to deny Petitioner's application for a Mortgage Loan Originator's license due to the revocation of her license by the State of Georgia is **UPHELD**.

This Order entered and effective this 13 day of September, 2011

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 13
day of September, 2011

A handwritten signature in cursive script that reads "Thomas G. Stovall". The signature is written in black ink and is positioned above a horizontal line.

Thomas G. Stovall, Director
Administrative Procedures Division