

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

IN THE MATTER OF:)
) **FINAL ORDER**
JEFF ROY TAYLOR)
) OAH Case No.: 1002081
Respondent) Agency Case No.: M-10-0039

HISTORY OF THE CASE

In August 2010, the Department of Consumer and Business Services, Division of Finance and Corporate Securities (Division) issued an Order Denying Mortgage Loan Originator License and Notice of Right to a Hearing to Jeff Roy Taylor (Respondent). Respondent filed a timely request for hearing on or about August 16, 2010.

On or about September 1, 2010, the Division issued an Amended Order Denying Mortgage Loan Originator License and Notice of Right to a Hearing to Respondent.

The Division referred the matter to the Office of Administrative Hearings on December 2, 2010. The case was assigned to Senior Administrative Law Judge (ALJ) Ken L. Betterton.

A telephone pre-hearing conference was held on February 25, 2011. Assistant Attorney General Joanna L. Tucker Davis represented the Division. Respondent appeared *pro se*. A hearing was scheduled for July 1, 2011.

On March 16, 2011, the Division filed a Motion for Summary Determination. On April 13, Respondent filed a Response Motion for Summary Determination. On April 22, 2011, the Division filed a Reply to Respondent's Response.

On June 1, 2011, ALJ Betterton issued his Rulings on Motion for Summary Determination and Proposed Order (Proposed Order). Respondent made a timely filing of six written exceptions to the Proposed Order to the Division on July 6, 2011.

After review of the Proposed Order and the records herein, the Division adopts the ALJ's Proposed Order as the Final Order and denies the exemptions requested by Respondent.

DOCUMENTS CONSIDERED FOR THE RULINGS

The Division's Exhibits A1 through A5 were made a part of the record. Respondent's exhibits were also made a part of the record.

ISSUES

(1) Whether Respondent's conviction for attempt to evade or defeat tax disqualifies him under ORS 86A.212(1)(c)(B) from obtaining a mortgage loan originator's license.

(2) Whether Respondent should be disqualified under ORS 86A.224(1)(c) from obtaining a mortgage loan originator's license because he made a false statement or made a material misstatement of fact on his application for a license.

BASES FOR THE MOTION

The Division seeks a ruling that as a matter of law Respondent's application for a mortgage loan originator's license should be denied under ORS 86A.212(1)(c)(B) because he has a felony conviction and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument.

The Division also seeks a ruling that as a matter of law Respondent's application for a mortgage loan originator's license should be denied under ORS 86A.224(1)(c) because Respondent made a false statement or made a material misstatement of fact on his application for a license.

FACTS RELEVANT TO MOTION

(1) On April 8, 2010, Respondent filed an Application for a Mortgage Loan Originator's License with the Division. (Ex. A2.) The application included a question, "Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?" (*Id.* at 1.) Respondent answered "no." (*Id.*)

(2) On September 28, 1993, Respondent pled guilty to attempt to evade or defeat tax, a felony under 26 USCA § 7201. (Ex. A1 at 3.) On November 12, 1993, Respondent filed a motion to withdraw his guilty plea. (*Id.* at 19-20.) The court denied Respondent's motion. (*Id.* at 9.) The court on December 6, 1993 sentenced Respondent to three years' probation. (*Id.* at 6.) Respondent then undertook a lengthy effort to appeal his conviction and to set aside his guilty plea. His effort was ultimately unsuccessful and his conviction became final in November 2009. (*Id.* at 7-12.)

(3) On the application for a mortgage loan originator's license, Respondent took the following oath:

I, Jeff Taylor, (Applicant) on this date Thursday, April 8, 2010 make oath and say that I executed this application on my own behalf, and agree to and represent the following:

(1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law; * * *

If an Applicant has made a false statement of material fact in this application or any documentation provided to support the foregoing application, then the foregoing application may be denied. I verify that I am the named person above and agree to the language as stated.

(Ex. A2 at 2-3.)

(4) The Division conducted a criminal background check of Respondent after he submitted his application and discovered his felony conviction. The Division then requested that Respondent explain his “no” answer to the question on the application about his criminal record. (Ex. A3 at 1.)

(5) Respondent responded to the Division’s request in a letter dated June 11, 2010. (Ex. A3 at 3-5.) He explained that he assumed his application had not been “submitted” when he completed it online and checked the box “no” to the question regarding his criminal background. (*Id.* at 3.) He also stated that he did not “feel in his heart” that he was guilty, and that he felt “coerced” into pleading guilty to attempt to evade or defeat tax. (*Id.* at 3-4.) Respondent asserted that his crime was due to his ex-wife’s bookkeeping errors. (*Id.* at 3.) Respondent challenged whether § 7201 meets the definition of a disqualifying crime because the text of the law does not contain the words “fraud,” “dishonesty,” “breach of trust,” or “money laundering.” (*Id.* at 4.) Respondent also asserted that he has been a mortgage broker since 1991, has been very successful at his trade, and has had no complaints filed against him with the Division by his clients. (*Id.*)

(6) The Division denied Respondent’s application on two grounds. First, the Division concluded that Respondent’s conviction for attempt to evade or defeat tax was a felony with an element of fraud or dishonesty and constituted grounds to deny his application under ORS 86A.212(1)(c). Second, the Division concluded that Respondent’s application should be denied under ORS 86A.224(1)(c) because he made a false statement or material misstatement of fact on his application. (Amended Order, September 1, 2010.)

SUMMARY DETERMINATION

OAR 137-003-0580 governs motions for ruling on legal issues or summary determination. That administrative rule provides, in relevant parts:

(6) The administrative law judge shall grant the motion for a summary determination if:

- (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
- (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order * * * incorporating that ruling * * *.

CONCLUSIONS OF LAW

(1) Respondent's conviction for attempt to evade or defeat tax disqualifies him under ORS 86A.212(1)(c)(B) from obtaining a mortgage loan originator's license.

(2) Respondent's false statement or material misstatement of fact also disqualifies him under ORS 86A.224(1)(c) from obtaining a mortgage loan originator's license.

OPINION

The Division contends that it is entitled as a matter of law to prevail on each issue raised in its motion for summary determination. On each ground I must consider the evidence in a manner most favorable to the non-moving party (*i.e.*, Respondent). OAR 137-003-0580(7).

(1) Respondent's conviction for attempt to evade or defeat tax.

The United States Congress enacted the "Secure and Fair Enforcement for Mortgage Licensing of 2008" (SAFE Act), 12 USCA §§ 5101 through 5116. The purpose of the SAFE Act is to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud in the mortgage lending industry. 12 USCA § 5101. The SAFE Act requires that states put in place a SAFE Act compliant system. 12 USCA § 5107. Section 5107 of the SAFE Act provides that if a state does not create a licensing system that complies with the SAFE Act's requirements, the Secretary of Housing and Urban Development (HUD) is authorized to make that determination and set up a separate, federal licensing system for loan originators in that state.

Section 5104 of the SAFE Act provides, in relevant part, that an applicant may qualify for a mortgage loan originator's license if:

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

(A) During the 7-year period preceding the date of the application for licensing and registration; or (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

The Oregon legislature passed House Bill (HB) 2189 in 2009 in response to the SAFE Act. ORS 86A.212(1) was enacted as part of HB 2189. ORS 86A.212(1) provides, in relevant part:

The Director of the Department of Consumer and Business Services may not issue a mortgage loan originator's license to an applicant unless the director finds, at a minimum, that the applicant:

* * * * *

(c) Has not been convicted of or pleaded guilty or no contest in a state, federal, foreign or military court to a felony or to a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(A) During a period of seven years before the date the applicant submits an application * * *; or

(B) At any time before the date the applicant submits an application under ORS 86A.206, if the conviction or plea

involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument. * * *.

The question is whether Respondent's conviction for attempt to evade or defeat tax is a disqualifying conviction under ORS 86A.212(1)(c)(B).

Attempt to evade or defeat tax was and is a felony under federal law.¹ The elements of the crime were discussed in *Sansone v. United States*, 380 US 343 (1965) as follows:

As has been held by this Court, the elements of § 7201 are will-fulness; the existence of a tax deficiency, *Lawn v. United States*, 355 U.S. 339, 361, 78 S.Ct. 311, 323, 2 L.Ed.2d 321; *Spies v. United States*, *supra*, 317 U.S. at 496, 63 S.Ct. at 366; and an affirmative act constituting an evasion or attempted evasion of the tax, *Spies, v. United States*, *supra*. In comparison, § 7203 makes it a misdemeanor willfully to fail to perform a number of specified acts at the time required by law—the one here relevant being the failure to pay tax when due. This misdemeanor requires only willfulness and the omission of the required act—here the payment of the tax when due. As recognized by this Court in *Spies v. United States*, *supra*, 317 U.S. at 499, 63 S.Ct. at 368, the difference between a mere willful failure to pay a tax (or perform other enumerated actions) when due under § 7203, and a willful attempt to evade or defeat tax under § 7201 is that the latter felony involves ‘some willful commission in addition to the willful omissions that make up the list of misdemeanors.’ * * *.

Id. at 351.

Respondent's conviction was for a crime of willful commission to attempt to evade or defeat taxes. His conviction was for a crime of fraud or dishonesty. “Dishonesty” means “lack of honesty, probity, or integrity in principle: lack of fairness and straightforwardness: disposition to defraud, deceive or betray.” *Webster's Third Int'l Dictionary* at 650 (unabridged ed 2002). “Fraud” means “an instance or an act of trickery or deceit esp. when involving a misrepresentation: an act of deluding.” *Id.* at 904.

It is not necessary that the words “fraud” or “dishonesty” appear in the text of the statute. Respondent's conviction disqualifies him from a mortgage loan originator's license under ORS 86A.212(1)(c)(B).

¹ 26 USCA § 7201 states:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with costs of prosecution.

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Respondent argues that circumstances of the crime and intervening events since his conviction should be considered. Nothing in the SAFE Act or in ORS 86A.212 *et seq* provide that circumstances surrounding the crime or subsequent events can be considered to not disqualify an individual with such a conviction.

(2) False statement or material misstatement of fact.

The Division may also deny an application for a mortgage loan originator's license if:

An applicant makes a false statement or a material misstatement of fact on an application for a mortgage loan originator's license or a licensed mortgage loan originator makes a false statement or a material misstatement of fact on an application to renew a mortgage loan originator's license[.]

ORS 86A.224(1)(c).

When Respondent completed his application, he answered "no" to the question asking whether he had ever been convicted of any felony. His answer was false. He knew he had been convicted. His lengthy effort to try to set aside or reverse his conviction demonstrates that he knew he had been convicted. The application form contained a warning about the consequences of providing false information. If Respondent believed his conviction was unjust, he could have simply answered "yes" to the question and given an explanation.

To the extent Respondent argues that he was not sure he had "filed" or "submitted" his application because he completed it online, the fact remains that he answered the pertinent question, completed the application, and his application was filed with the Division. Respondent is bound by his answer and the consequences of his actions.

Respondent's false statement or material misstatement of fact is an independent basis on which his application for a mortgage loan originator's license should be denied.

EXCEPTIONS

The Proposed Order provides that exceptions must be limited to issues related to a necessary finding of fact or necessary legal conclusion, either of which was omitted or wrong, essential to the ultimate just determination of the proceeding, or a prejudicial procedural error. Oral argument is not allowed, and Respondent can not introduce any new or additional evidence in the exceptions.

The Proposed Order instructed that if Respondent wished to file exceptions, he must cite to the page and paragraph number of the Proposed Order to specify the disputed

language and provide corrective language. Respondent did not comply with either instruction, and, consequently, all of the exceptions are denied.

Taylor's exceptions and discussion appear below.

1. "The Administrative Law Judge erred by his statement that Respondent then undertook a lengthy effort to appeal his conviction and to set aside his guilty plea. His effort was ultimately unsuccessful and his conviction became final in November 2009."

Respondent's only argument is that "he has a case with the Ninth Circuit Court of Appeals Case No. 11-35227 which notes that it is impossible to have income tax evasion and innocent spouse relief for the same year by the Internal Revenue Service."

There is no evidence in the record that Respondent has a case with the Ninth Circuit Court of Appeals case No. 11-35227. Respondent is not allowed to introduce new evidence into the record, and to the extent he is doing so, it will not be considered by the Director in his decision making. Therefore, this argument will not be considered, and this exception should be denied.

2. "The Administrative Law Judge erred by concluding that Respondent has been convicted by a court of his peers, or plead guilty freely or no contendere to a felony."

Respondent argues that he "was coerced to plead guilty to something he did not do, and he withdrew his plea before sentencing." As result, he does not believe that he is barred by Section 5104 of the SAFE Act. While Section 5104 of the SAFE Act was cited in the Proposed Order on page five paragraph one, that was only to preface the history of what lead to the language in ORS 86A.212(1), which is the statute at issue in the case.

Respondent previously made this argument regarding the validity of his guilty plea in his "Objection to Summary Determination" that is a part of the record. This argument was considered by the ALJ, and the ALJ made the finding that Respondent pled guilty and was convicted of attempt to evade or defeat tax under 26 USCA 7201. This finding is supported by substantial evidence in the record.

Exhibit A-1, that was made a part of the record, is a printout of the docket report and other filings from *USA v. Taylor*, the 1993 criminal prosecution brought against Taylor in the U.S. District Court for Oregon, case number 93-cr-00118-RE-1. The docket report shows that on September 28, 1993, Respondent pled guilty to count two (attempt to evade or defeat tax, 12 USC § 7201), and on November 12, 1993, he filed a motion to withdraw his guilty plea. His motion was denied, and then Respondent began a series of appeals of the decision which, at the time the docket report was pulled, have all been denied.

In addition, Exhibit A-4, also made a part of the record, contains Kirsten Anderson's affidavit in which she noted that she reviewed both the criminal records

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check completed by the FBI for Taylor and the court records. She found that both records show that Respondent pled guilty to a felony count of attempt to evade or defeat tax, 12 USC §7201, and was sentenced in December 1993. The court records reflect that Respondent filed a motion to withdraw his guilty plea, and the court denied his motion.

None of the relevant statutes or rules include the word “freely” qualifying the guilty plea. The question in the Nationwide Mortgage Licensing System (NMLS) disclosure question section does not include it, and neither does the statute or the Proposed Order. Respondent improperly added the word “freely”, and it should not be considered. Since Respondent’s original guilty plea and conviction stand, this exception is denied.

3. The Administrative Law Judge erred in using the case law *Sansone v United States*, 380 US 343 (1965) to apply to Respondent’s case.”

Respondent argues that *Sansone* is not relevant to this case, apparently because *Sansone* provides a contrast between the elements of 26 USCA § 7201, the crime that Respondent was convicted of, and 26 USCA §7203, which may be considered as a lesser included offense of §7201.

The main issue is whether Respondent’s conviction under § 7201 disqualifies him from mortgage loan originator licensure under ORS 86A.212(1)(c)(B). This required the ALJ to determine if the crime Respondent was convicted of contains an element of fraud, dishonesty, breach of trust, or money laundering. In *Sansone*, the Court explains the elements of § 7201 making it highly relevant to this case. The ALJ must understand the elements of the crime of which the applicant was convicted before applying ORS 86A.212(1)(c)(B). Since the explanation of this crime’s elements was provided in *Sansone*, this exception is denied.

4. “The Administrative Law Judge erred by determining that the words “fraud” or “dishonesty” do not have to appear in the text of the offense.”

Respondent argues that without those specific words appearing in the text “every offense could be decided by personal interpretation which is not what Congress would have wanted.”

Denial of Respondent’s license application was not made under the SAFE Act, but under Oregon’s own provision in ORS 86A.212(1)(c)(B). Legislative history for that provision was included in Exhibit A-5 which was made a part of the record. None of that history indicates that there was any intention that the word “fraud” or “dishonesty” must appear in the text of the crime to be disqualifying.

In addition, there are a litany of federal and Oregon cases addressing what constitutes a crime of dishonesty. Whereas these cases relate to the impeachment of a witness and not ORS 86A.212(1)(c)(B) directly, they still offer numerous examples of courts’ interpretations of crimes involving dishonesty, and none of them required that the word “dishonesty”, or any variation, appear in the text of the crime used for

impeachment. See generally, *U.S. v. Brackeen*, 969 F.2d 827 (C.A.9 (Cal.), 1992), *USA v. Foster*, 227 F.3d 1096 (9th Cir., 2000). Accordingly, Respondent's interpretation is unsupported and more restrictive than applications of similar language by courts, and this exception is denied.

5. "The Administrative Law Judge erred regarding Respondent's supposed 'false statement' on his license application."

Respondent argues that the ALJ erred because he had a conversation with Kirsten Anderson about his charges before filing the application, and he did not realize his application was submitted. There is no evidence in the record that Kirsten Anderson had a conversation with Respondent. Respondent is not allowed to introduce new evidence in the record, and to the extent he is doing so, it will not be considered by the Director in his decision making. In addition, Respondent previously made this argument regarding the submission of his application in his Objection to Summary Determination. This was considered by the ALJ, and the ALJ found that Respondent made a false statement on the application that he submitted. This determination is supported by substantial evidence in the record.

The NMLS application requires that the applicant answer each question truthfully. Specifically, Exhibit A-2 page two of three, made a part of the record, shows that Respondent electronically signed an oath that the answers were "current, true, accurate and complete and [were] made under the penalty of perjury...". His answer to the question asking whether he had been convicted of a felony in a domestic court was answered "no" when, as already discussed, he had in fact been convicted of a felony in the US District Court.

Respondent then argues that he did not believe his application had been submitted because the NMLS system showed it as "unsubmitted." As the notice order states, Respondent submitted his application for an Oregon mortgage loan originator license through NMLS on or about April 8, 2010. He filed the application under oath that the information he was providing was incorrect. There are several steps required to file an application with NMLS making it unlikely that an applicant could file something without realizing it had been filed. Since a truthful answer would have been "yes", and Taylor answered "no" on his application submitted to NMLS, this exception is denied.

6. "The Administrative Law Judge erred by not determining that the SAFE Act, and ORS 86A.212(1)(c)(B), are unconstitutional by not allowing Respondent to continue to earn a living in the field has been approved to do for the past 19 years."

Respondent does not clarify which provisions of the United States or Oregon Constitution the specified statutes purportedly violate.

Respondent did not make an objection to the constitutionality of these statutes in a motion for summary determination or in his Objection to Summary Determination which

would have been the proper time to make this objection. He makes reference generally to the “Equal Employment Opportunity Act.” He may be referring to the Equal Employment Opportunity Act of 1972 (EEOA), but again he does not provide a specific provision that either statute purportedly violates. That said, the issue at hand is whether or not Respondent should be issued a license, not whether or not he should be employed. As such, the EEOA, which places prohibitions on what employers may do, does not apply here, and this exception is denied.

RULINGS

(1) The Division’s Motion for Summary Determination that as a matter of law Respondent’s application should be denied under ORS 86A.212(1)(c)(B) because he has a conviction for attempt to evade or defeat tax is granted.

(2) The Division’s Motion for Summary Determination that as a matter of law Respondent’s application should be denied under ORS 86A.224(1)(c) because he made a false statement or a material misstatement of fact on an application is also granted.

(3) Respondent’s written exceptions are all denied.

ORDER

Respondent Jeff Roy Taylor’s application for a mortgage loan originator’s license is denied.

DATED AND MAILED this 12 day of September, 2011.

/s/ Scott L. Harra
Scott L. Harra, Acting Director
Department of Consumer and Business Services

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order. Judicial review is to the Oregon Court of Appeals pursuant to the provisions of ORS 183.482.