

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

IN THE MATTER OF:) **FINAL ORDER**
)
BRETT LAWRENCE,) OAH Case No.: 1202720
Respondent) Agency Case No.: M-12-0004

HISTORY OF THE CASE

On January 11, 2012, the Division of Finance and Corporate Securities Mortgage Lending Section of the Department of Consumer and Business Services (Division) issued a Proposed Order Revoking Mortgage Loan Originator License and Notice of Right to a Hearing to Brett Thomas Lawrence (Respondent), NMLS ID No. 118214. In the Notice, the Division alleged that Respondent: (1) made a false statement on an application for a mortgage loan originator's license, constituting grounds to revoke the license under ORS 86A.224(1)(c); and (2) has had his mortgage loan originator's license revoked in another jurisdiction, providing grounds to revoke his Oregon license under ORS 86A.224(1)(b). Respondent timely filed a request for an administrative hearing.

On March 8, 2012, the Division referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned the case to Senior Administrative Law Judge (ALJ) Jennifer Rackstraw.

On April 27, 2012, ALJ Rackstraw presided over a telephone prehearing conference. Respondent participated without counsel. Senior Assistant Attorney General (AAG) Joanna Tucker-Davis represented the Division. During the conference, AAG Tucker-Davis advised that the Division anticipated filing a Motion for Summary Determination. A deadline of July 2, 2012 for filing the motion was established. In addition, a hearing was scheduled for September 7, 2012, in the event the Division's motion was denied or not determinative of all issues.

On May 23, 2012, the Division filed a Motion for Summary Determination. Respondent did not submit a response to the motion.

On July 19, 2012, the case was reassigned to Senior ALJ Alison Greene Webster to rule on the Division's motion. On July 24, 2012, Senior ALJ Webster issued her Ruling on Summary Determination and Proposed Order (Proposed Order). On August 27, 2012, Attorney for Respondent, Troy Sexton of Motschenbacher and Blattner, LLP, requested thirty days to review the Proposed Order. After discussion between Kirsten Anderson of the Division and Respondent's attorney, the Division agreed to extend the time to file any exceptions to the order to September 4, 2012 at 5 p.m. When no exceptions were received by 5 p.m. on September 4, 2012, Kirsten Anderson of the Division confirmed with Respondent's attorney that Respondent had decided not to pursue any exceptions to the Proposed Order.

After review of the Proposed Order and the records herein, the Division adopts the ALJ's Proposed Order as the Final Order.

ISSUES

(1) Whether Respondent made a false statement or a material misstatement of fact on an application for a mortgage loan originator's license.

(2) Whether Respondent has had a mortgage loan originator license revoked in another jurisdiction, rendering him ineligible for an Oregon mortgage loan originator license under ORS 86A.212(1)(b).

(3) Whether Respondent's Oregon mortgage loan originator license should be revoked pursuant to ORS 86A.224(1)(b) and/or (c).

DOCUMENTS REVIEWED

In support of its Motion, the Division submitted Exhibits A1 through A7. The exhibits were made part of the record.

FINDINGS OF FACT

(1) On November 15, 2006, the Department of Financial Institutions for the State of Washington (WDFI) issued Respondent Brett Thomas Lawrence a loan originator license. (Exs. A1 and A2.)

(2) On March 18, 2010, WDFI issued Respondent notice of its intent to revoke or suspend his loan originator's license. WDFI also proposed to revoke or suspend the license of Excel Funding Inc., a company owned by Respondent and for which Respondent was the designated broker. WDFI's notice alleged, among other things, that Respondent and Excel Funding Inc. violated Washington law by "directly or indirectly employing a scheme, device or artifice to defraud and mislead borrowers, or lenders or any person, engaging in an unfair or deceptive practice toward any person, obtaining property by fraud or misrepresentation, failing to make disclosures to loan applicants and non-institutional investors" as required by law, and charging prohibited fees. (Exs. A1 and A2.)

(3) On April 5, 2010, Respondent submitted a request for hearing on WDFI's notice. (Exs. A1 and A3.)

(4) On May 12, 2010, while the Washington State administrative action was pending, Respondent filed with the Division an application for a mortgage loan originator license in Oregon through the Nationwide Mortgage Licensing System (NMLS). The mortgage loan originator license application contains a series of disclosure questions for the applicant to answer. The application advised the applicant that if the answer to any of the disclosure questions is yes, then the applicant must provide complete details of all events or proceedings. (Exs. A4 and A5.) The application also contains an oath, in which the applicant represents and

verifies that “the information and statements contained therein * * * 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.” (Ex. A4.) The application further warns the applicant that “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.” (*Id.*)

(5) Question (K) on the NMLS mortgage loan originator license application asked the applicant: “*Are you now the subject of any regulatory action proceeding that could result in a ‘yes’ answer to any part of I or J.*” (Emphasis added.) Respondent answered “No” to this question on the application he submitted to the Division on May 12, 2010. Part (I) on the application contained the following questions:

Regulatory Action

(I) Has any State or federal regulator agency or foreign financial regulatory authority ever:

(1) found you to have made a false statement or omission or been dishonest, unfair or unethical?

(2) found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?

(3) found you to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted?

(4) entered an order against you in connection with a financial services-related activity?

(5) revoked your registration or license?

(6) denied or suspended your registration or license, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

(7) barred you from association with an entity regulated by such commissions, authority, agency or officer, or from engaging in a financial services-related business?

(8) issued a final order against you based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

(Ex. A4.)

(6) On July 31, 2010, the Division issued Respondent a loan originator license based upon his May 12, 2010 application. Respondent’s license is set to expire on December 31, 2012. (Ex. A5.)

(7) On July 8, August 26 and November 10, 2010, Respondent filed amendments to his mortgage loan originator license application through NMLS. On each amended application, Respondent again answered “No” to question (K) as well as subsections (1) through (8) of question (I). (Exs. A1 and A6.)

(8) On July 7 and 8, 2011, an administrative hearing was held in Washington State on WDFI's notice of action against Respondent and Excel Funding, Inc. On September 2, 2011, an ALJ issued an Initial Order finding, among other things, that Respondent's loan originator license should be revoked. Respondent did not appeal the ALJ's Initial Order. On December 21, 2011, WDFI issued a Final Order revoking Respondent's license to conduct the business of loan originator in Washington. The Final Order also revoked Excel Funding Inc.'s license, prohibited Respondent and Excel Funding Inc. from participating in the mortgage broker business for five years, and imposed civil penalties, fines and costs. (Ex. A7.) WDFI served Respondent with the Final Order on January 6, 2012. Respondent did not petition for reconsideration of the Final Order and did not timely file an appeal with the Superior Court for judicial review of the Final Order. (Exs. A1 and A7.)

CONCLUSIONS OF LAW

(1) Respondent made a false statement or a material misstatement of fact on an application for a mortgage loan originator's license.

(2) Respondent has had a mortgage loan originator license revoked in another jurisdiction, rendering him ineligible for an Oregon mortgage loan originator license under ORS 86A.212(1)(b).

(3) Respondent's Oregon mortgage loan originator license should be revoked pursuant to ORS 86A224(1)(b) and (c).

OPINION

A. Summary Determination

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(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[.]

* * * * *

(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 in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

The evidence in the record consists of Exhibits A1 through A7 submitted by the Division in connection with its Motion for Summary Determination. Summary determination in the Division's favor is appropriate if the record, viewed in a light most favorable to Respondent, shows there is no genuine issue of material fact relevant to the resolution of this case and that the Division is entitled to a favorable ruling as a matter of law. For the reasons discussed below, the Division is entitled to summary determination in its favor.

B. Oregon Mortgage Loan Originator License Revocation.

As set out above, the Division seeks to revoke Respondent's Oregon mortgage loan originator license, alleging that Respondent (1) made a false statement or material misstatement on an application for a mortgage loan originator's license; and (2) has had a mortgage loan originator's license revoked in another jurisdiction, which renders him ineligible for an Oregon license under ORS 86A.212(1)(b). The Division has the burden to establish these allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

ORS 86A.224 sets out the Division's authority to deny, suspend, condition, revoke or refuse to renew a person's mortgage loan originator license in Oregon. It provides, in pertinent part:

(1) In addition to authority the Director of the Department of Consumer and Business Services has under ORS 86A.095 to 86A.198, the director under this section has the authority, subject to ORS chapter 183, to deny, suspend, place conditions upon, revoke or decline to renew a mortgage loan originator's license or permanently prohibit a person from conducting business as a mortgage loan originator if:

* * *

(b) The director makes a finding under ORS 86A.212 or 86A.218 that the director

believes justifies a decision to deny or decline to renew a mortgage loan originator's license;

(c) 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; or * * *.

ORS 86A.212 sets out the minimum qualifications for issuance of a mortgage loan originator's license in Oregon. As relevant to this matter, the statute provides as follows:

(1) 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:

* * *

(b) Has not had a mortgage loan originator's license revoked in another jurisdiction. For purposes of this paragraph, an applicant's mortgage loan originator's license was not revoked if an order or decision to revoke the license was later rescinded or vacated.

1. *False Statement.* In this case, the evidence establishes that in his May 2010 mortgage loan originator license application and in subsequent amendments to the application, Respondent answered "No" to question (K), "Are you now the subject of any regulatory action proceeding that could result in a yes answer to any part of I or J." As set out in the findings above, the specific questions under part I address regulatory action and the applicant's involvement in violations of financial services-related statutes and rules. Respondent's "No" answer to question (K) was false¹ because, in March 2010, he had received notice that he was the subject of a regulatory action proceeding in the State of Washington. Respondent was facing revocation of his Washington mortgage loan originator's license for defrauding and misleading borrowers, lenders or others, for engaging in an unfair or deceptive practice toward others, for failing to make disclosures required by law and for charging prohibited fees. A month prior to submitting his license application to the Division, Respondent had requested a hearing in Washington challenging the charges in WDFI's notice.

Because Respondent's statement was false, his denial that he was the subject of a regulatory action proceeding was also a material misstatement of fact.² The purpose of the disclosure questions on the license application is to provide the Division with information necessary to assess the applicant's fitness to conduct business as a licensed mortgage loan originator. By answering "No," and failing to disclose the existence of regulatory charges pending against him in Washington, Respondent deprived the Division of relevant and important information necessary to that determination.

¹ The plain and ordinary meaning of "false" includes "not corresponding to truth or reality: not true" and "erroneous, incorrect." *Webster's Third New International Dictionary* (unabridged 2002 ed.) at 819.

² A "misstatement" is a "false or incorrect statement." *Webster's* at 1446.

In short, Respondent made a false statement and a material misstatement of fact in his application for an Oregon mortgage loan originator's license. The Division is therefore authorized to revoke Respondent's Oregon license pursuant to ORS 86A.224(1)(c).

2. *Revocation in Another Jurisdiction.* The evidence also establishes that Respondent has had a mortgage loan originator's license revoked in another jurisdiction, the State of Washington. As set forth above, pursuant to ORS 86A.212(b), the Division may not issue a mortgage loan originator's license to an applicant who has had his or her mortgage loan originator's license revoked in another jurisdiction. And, under ORS 86A.224(1)(b), the Division may revoke an already existing license upon a finding under ORS 86A.212 that justifies a decision to deny or decline to renew a mortgage loan originator's license. Consequently, because Respondent's Washington mortgage loan originator's license has been revoked, the Division is authorized to revoke his Oregon license pursuant to ORS 86A.224(1)(b).

ORDER

The Division of Finance and Corporate Securities issued the following order: The Proposed Order Revoking Mortgage Loan Originator License and Notice of Right to a Public Hearing issued on January 11, 2012 is **AFFIRMED** and the mortgage loan originator license held by Brett Lawrence, NMLS #118214, is **REVOKED**.

DATED AND MAILED this ___5th___ day of ___September_____, 2012.

_____/S/ David Tatman _____
Patrick M. Allen, 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.