

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:

ANTHONY PELLEGRINO

DOCKET NO. 03.06-115322J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN November 15, 2012.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 ROSA PARKS AVENUE, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-5042, FAX 615/741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER**

**IN THE MATTER OF:**

**Department of Financial Institutions,  
Compliance Division,  
Petitioner,**

**DOCKET NO: 03.06-115322J  
TDFI No. 11-094-C**

**Vs.**

**Anthony Pellegrino,  
Respondent.**

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter was heard on October 16, 2012, 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 (Commissioner), pursuant to T.C.A. §4-5-301(d). The Compliance Division of the Department of Financial Institutions (Department) was represented by attorney Joseph Schmidt. No one appeared on Respondent's behalf for the hearing. The Department moved that Respondent be held in default.

**ORDER OF DEFAULT**

1. The Department is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions) pursuant to T.C.A §45-1-104. The Commissioner is responsible for the administration, enforcement, and interpretation of the Mortgage Act, and any rules promulgated

pursuant thereto. The Department is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Mortgage Act.

2. By letter dated May 9, 2011, Respondent was notified that the Department had denied his license renewal application. This letter was mailed to Respondent's at his address of record. This information was also posted electronically on the Nationwide Mortgage Licensing System (NMLS). In response to this information, Respondent requested a hearing by letter dated June 3, 2011.

3. The Department filed a "Motion Requesting the Assignment of an Administrative Judge to Conduct Contested Case" with the Administrative Procedures Division and served a copy on Respondent at his address of record.

4. The Administrative Law Judge entered an Order on August 10, 2012, which advised Respondent of the date, time, and location of the hearing. This order was mailed to Respondent via U.S. mail by the Administrative Procedures Division. This mail was not returned to the Administrative Procedures Division.

5. Respondent has received other mail from the Department at his address of record, but has not made any response nor did he appear for the hearing. None of this mail has been returned to the Department. Respondent received notice of the hearing, but failed to appear.

6. Based upon Respondent's failure to appear at the hearing or to respond in any way to this action, the Department moved that Respondent be held in default pursuant to T.C.A. §4-5-309(a) and Rule 1360-4-1-.15(1).

7. The Department's motion for default was granted, and it was **ORDERED** that Respondent be held in default for failing to appear after due notice. The Department elected to proceed uncontested.

### NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE RESPONDENT THAT RESPONDENT HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR OR PARTICIPATE AT A HEARING ON THE MERITS AFTER RECEIVING DUE NOTICE THEREOF. T.C.A. §4-5-309. RESPONDENT, WITHIN FIFTEEN (15) DAYS AFTER ENTRY OF THIS INITIAL ORDER, MAY FILE A PETITION FOR RECONSIDERATION, STATING THE SPECIFIC GROUNDS FOR SETTING THE DEFAULT ASIDE, PURSUANT TO T.C.A. §4-5-317. THE PETITION FOR RECONSIDERATION MUST BE FILED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 ROSA L. PARKS AVENUE, 8<sup>TH</sup> FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. IF RESPONDENT FAILS TO FILE A PETITION FOR RECONSIDERATION OR OTHERWISE FAILS TO APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW.

### ISSUE FOR CONSIDERATION

Did the Department properly deny Respondent's renewal application for a Mortgage Loan Originator's license because of his poor credit history?

### SUMMARY OF DETERMINATION

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

### FINDINGS OF FACT

1. Respondent has been licensed in Tennessee as a Mortgage Loan Originator in the past years. Respondent made an electronic application to Tennessee using NMLS for renewal of his license on November 24, 2010.
2. In his application, Respondent authorized the Department to secure a copy of his credit report. The Mortgage Act now requires the Department to determine that all applicants demonstrate financial responsibility before it approves a new or renewed license application.

3. Respondent's credit report indicated he had one account charged off by the creditor in March 2010 in the amount of \$199,444. Respondent had an account at least 120 days past due. Respondent had two civil judgments totaling \$179,026 reported between June and September 2010.

4. Due to these items on Respondent's credit report, the Department denied Respondent's renewal application. Respondent appealed this decision by letter dated June 3, 2011.

5. Respondent's credit report would not support a finding by the Department that he "demonstrated the financial ... such as to command the confidence of the community ...." The Department properly denied Respondent's renewal application for failing to satisfy this criterion.

#### 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...**; (emphasis added.)

(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.

**IT IS THEREFORE ORDERED** the Department's decision to deny Respondent's application for renewal of his Mortgage Loan Originator's license is **UPHELD**.

This Order entered and effective this 31<sup>ST</sup> day of OCTOBER, 2012.



Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 31<sup>ST</sup> day of OCTOBER 2012.



Thomas G. Stovall, Director  
Administrative Procedures Division