

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

**IN THE MATTER OF:**

**DAVID CHOI**

**DOCKET NO. 03.06-113545J**

**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 **October 19, 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

TENNESSEE DEPARTMENT )  
OF FINANCIAL INSTITUTIONS, )  
COMPLIANCE DIVISION, )

Petitioner, )

v. )

DAVID CHOI, )

Respondent. )

APD Docket No.: 03.06-113545J  
TDFI No.: 11-104-C

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**INITIAL ORDER**

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This matter came to be heard on June 29, 2012, at nine o'clock (9:00) A.M., Central Time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219, before Administrative Judge Marion P. Wall, assigned to the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions ("Commissioner"), pursuant to Tennessee Code Annotated Section ("TENN. CODE ANN. §") 4-5-301(d).

The Compliance Division of the Tennessee Department of Financial Institutions ("Compliance Division") was represented by Joseph A. Schmidt, Staff Attorney with the Tennessee Department of Financial Institutions ("Department"). David Choi ("Choi") was not present at the contested case hearing and was not represented by an attorney.

## ORDER OF DEFAULT

1. The record demonstrates that the Compliance Division mailed Choi, via United States Certified Mail, Return Receipt Requested, and via United States First Class Mail, postage prepaid, a "Motion Requesting the Assignment of an Administrative Judge to Conduct Contested Case" on August 23, 2011, to Choi's address of record on file with the Department.
2. The record demonstrates that the Certified Mail Return Receipt associated with the mailing referenced in paragraph one (1) was signed by Choi on August 29, 2011.
3. The record demonstrates that this Honorable Court entered an Order on May 4, 2012, setting this matter for hearing on June 29, 2012, at nine o'clock (9:00) A.M., Central Time. True and correct copies of the aforementioned Order were mailed to the Compliance Division's attorney and to Choi at their addresses of record on file with this Honorable Court.
4. The record demonstrates that Joseph A. Schmidt was present at the hearing on behalf of the Compliance Division.
5. The record demonstrates that Choi did not attend or participate at the hearing of this matter after due notice thereof.
6. The record demonstrates that Joseph A. Schmidt, attorney for the Compliance Division, made an oral motion at the hearing to hold Choi in default due to Choi's failure to attend or participate at the hearing after due notice thereof, to conduct the hearing as uncontested without the participation of Choi, and to proceed with establishing the Compliance Division's allegations by a

preponderance of the evidence pursuant to TENN. CODE ANN. § 4-5-309 and Rule 1360-04-01.15 of the Official Compilation Rules & Regulations of the State of Tennessee ("TENN. COMP. R. & REGS.").

7. The record demonstrates that this Honorable Court granted the Compliance Division's oral motion and held Choi in default for failure to attend or participate at the hearing after due notice thereof pursuant to TENN. CODE ANN. § 4-5-309 and Rule 1360-04-01.15 of the TENN. COMP. R. & REGS.

8. The record demonstrates that this Honorable Court disagreed with the Compliance Division's position that the Compliance Division had the burden of proof as to the ultimate issue at the hearing of this matter. The record demonstrates that it was the opinion of this Honorable Court that Choi had the burden of proof as to the ultimate issue at the hearing of this matter and that, following entry of default, Choi's appeal of the Commissioner's decision to deny his licensure renewal application should be dismissed. Despite the ruling of this Honorable Court on the burden of proof issue, the record demonstrates that this Honorable Court permitted the Compliance Division to proceed with establishing its proof by a preponderance of the evidence for the purposes of creating and preserving the record.

### NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE RESPONDENT THAT THE RESPONDENT HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR OR PARTICIPATE AT A HEARING ON THE MERITS AFTER RECEIVING DUE NOTICE THEREOF. TENN. CODE ANN. § 4-5-309. THE 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 TENN. CODE ANN. § 4-5-317. THE PETITION FOR RECONSIDERATION MUST BE FILED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 8<sup>TH</sup> AVENUE NORTH, 8<sup>TH</sup> FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. IF THE 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.

### INITIAL ORDER

This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, initiated by Choi and seeking an Initial Order requiring the Commissioner to renew Choi's license to lawfully engage in the business of a mortgage loan originator pursuant to TENN. CODE ANN. § 45-13-306 of the Tennessee Residential Lending, Brokerage and Servicing Act ("Tennessee Mortgage Act").

After consideration of the pleadings, argument of counsel, and the record as a whole, it is the determination of this Administrative Judge that an Initial Order should be entered holding Choi in **DEFAULT** for failing to attend or participate at the hearing of this matter after due notice thereof, **DISMISSING** all issues on which Choi had the burden of proof, and **UPHOLDING** the Commissioner's decision to deny Choi's application to renew his license to lawfully engage in the business of a mortgage loan originator under TENN. CODE

ANN. § 45-13-306 of the Tennessee Mortgage Act. This conclusion is based upon the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

9. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Mortgage Act and any rules promulgated pursuant to the Tennessee Mortgage Act.

10. The Compliance Division is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Tennessee Mortgage Act.

11. Choi is a natural person with a last known address of 177 Polk Woods Drive, Collierville, Tennessee 38017.

12. On December 27, 2010, the Compliance Division received a renewal application on behalf of Choi. Choi submitted said renewal application with the Compliance Division in order to renew his license to lawfully engage in the business of a mortgage loan originator pursuant to TENN. CODE ANN. § 45-13-306 of the Tennessee Mortgage Act.

13. As part of the renewal application process, Choi authorized the Commissioner and/or the Nationwide Mortgage Licensing System and Registry ("NMLS") to obtain an independent credit report from a consumer reporting agency as required by TENN. CODE ANN. § 45-13-302(a)(4)(A) of the Tennessee Mortgage Act.

14. In a letter dated May 12, 2011, the Commissioner denied Choi's renewal application because Choi had failed to satisfy the "...financial

responsibility, character, and general fitness....” requirement set forth in TENN. CODE ANN. §§ 45-13-306(a)(1) and 45-13-302(c) of the Tennessee Mortgage Act (as demonstrated by Choi’s credit report), provided written notice of the grounds supporting the denial, and provided written notice of Choi’s right to submit a written demand for a hearing pursuant to TENN. CODE ANN. § 45-13-306(c) of the Tennessee Mortgage Act.

15. In a facsimile dated June 10, 2011, Choi submitted a written demand for a hearing pursuant to TENN. CODE ANN. § 45-13-306(c) of the Tennessee Mortgage Act.

16. The record demonstrates that Choi did not attend or participate at the hearing of this matter on June 29, 2012, after due notice thereof.

17. TENN. CODE ANN. § 45-13-306 of the Tennessee Mortgage Act places the burden of proof on Choi to prove by a preponderance of the evidence that he is entitled to a renewal of his license to lawfully engage in the business of a mortgage loan originator.

#### **CONCLUSIONS OF LAW**

18. TENN. CODE ANN. § 45-13-301(a) of 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....”

19. TENN. CODE ANN. § 45-13-306(b) of the Tennessee Mortgage Act states that “[t]o renew a mortgage loan originator license for the following calendar year, the commissioner must receive on or before December 31 a completed renewal application and fee meeting the requirements of subsection (a). If the renewal requirements are not timely met, the mortgage loan originator license shall expire at the close of business on December 31.”

20. Pursuant to TENN. CODE ANN. § 45-13-306(a) of the Tennessee Mortgage Act, the minimum standards for the renewal of a mortgage loan originator license include the following:

- (1) Continues to meet the minimum standards for licensure under § 45-13-302(c);
- (2) Satisfies the annual continuing education requirements described in § 45-13-307; and
- (3) Pays a nonrefundable renewal fee of one hundred dollars (\$100.00), which may be decreased or increased by rule of the Commissioner.

21. Pursuant to TENN. CODE ANN. § 45-13-302(c) of the Tennessee Mortgage Act, the minimum standards for licensure as a mortgage loan originator include the following:

- (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction...;
- (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. An individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition;

(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.

22. For the purposes of investigating whether renewal applicants have continued to meet the "...financial responsibility, character, and general fitness..." requirement set forth in TENN. CODE ANN. § 45-13-302(c), the Tennessee Mortgage Act requires all renewal applicants to authorize the Commissioner and/or the NMLS to obtain an independent credit report from a consumer reporting agency as defined in § 603(p) of the Fair Credit Reporting Act, codified in 15 U.S.C. § 1681a(p). See TENN. CODE ANN. § 45-13-302(a)(4)(A) of the Tennessee Mortgage Act.

23. TENN. CODE ANN. § 45-13-306(c) of the Tennessee Mortgage Act states "[s]hould the commissioner deny a renewal application, the applicant may make written demand to the commissioner for a hearing on the question of whether the license should be renewed; provided, that the request for hearing be received by the commissioner within thirty (30) days from the date of denial; and provided, further, that the failure to timely request a hearing shall cause the

license to be automatically revoked without further notice or hearing at the end of the thirty-day period. If a hearing is timely requested under this subsection (c), it shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the license shall not expire until resolution of the appeal in accordance with the Uniform Administrative Procedures Act.”

24. TENN. CODE ANN. § 4-5-309(a) states “[i]f a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.”

25. TENN. CODE ANN. § 4-5-309(b) states, in pertinent part, that “[i]f the proceedings are conducted without the participation of the party in default, the administrative judge or hearing officer, hearing the case alone, shall include in the initial order a written notice of default, otherwise, the agency, sitting with the administrative judge or hearing officer, shall include such written notice of default in the final order....”

26. TENN. CODE ANN. § 4-5-309(c) states that “[a] party may petition to have a default set aside by filing a timely petition for reconsideration as provided in § 4-5-317.”

27. TENN. CODE ANN. § 4-5-309(d) states “[i]f a party fails to file a timely petition for reconsideration or the petition is not granted, the administrative judge or hearing officer, sitting alone, or agency, sitting with the administrative judge or hearing officer, shall conduct any further proceedings necessary to complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.”

28. Rule 1360-04-01-.15(1)(a) of the TENN. COMP. R. & REGS. states, in pertinent part, that “[t]he failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309....”

29. Rule 1360-04-01-.15(1)(d) of the TENN. COMP. R. & REGS. states “[i]f the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1360-4-1-.06, subsections (2)(a) through (2)(d), where appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.”

30. Rule 1360-04-01-.15(2)(a) of the TENN. COMP. R. & REGS. states “[u]pon entry into the record of the default of the petitioner at a contested case hearing, the charges shall be dismissed as to all issues on which the petitioner bears the burden of proof, unless the proceedings are adjourned.”

31. TENN. CODE ANN. § 45-13-306 of the Tennessee Mortgage Act places the burden of proof on Choi to prove by a preponderance of the evidence that he is entitled to a renewal of his license to lawfully engage in the business of a mortgage loan originator.

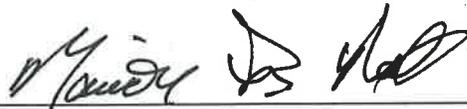
32. The record demonstrates that Choi did not attend or participate at the hearing of this matter after due notice thereof.

33. Choi’s failure to attend or participate at the hearing of this matter after due notice thereof is grounds for holding Choi in default. Upon entry in the record of the default of the party bearing the burden of proof at a hearing, the charges shall be dismissed as to all issues on which the party bears the burden of proof.

34. The findings of fact and conclusions of law as stated in paragraphs one (1) through thirty-three (33), incorporated by reference as though specifically set forth herein, are sufficient to establish that Choi failed to carry the burden of proving by a preponderance of the evidence that he is entitled to a renewal of his license to lawfully engage in the business of a mortgage loan originator under TENN. CODE ANN. § 45-13-306 of the Tennessee Mortgage Act.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Choi is hereby held in **DEFAULT** for failing to attend or participate at the hearing of this matter after due notice thereof, that all issues on which Choi had the burden of proof are hereby **DISMISSED**, and that the Commissioner's decision to deny Choi's application to renew his license to lawfully engage in the business of a mortgage loan originator is hereby **UPHELD** due to Choi's failure to carry the burden of proving by a preponderance of the evidence that Choi is entitled to a renewal of his license to lawfully engage in the business of a mortgage loan originator under TENN. CODE ANN. § 45-13-306 of the Tennessee Mortgage Act.

This Initial Order entered and effective this 4<sup>TH</sup> day of October 2012.



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Marion P. Wall  
Administrative Judge

Filed in the Administrative Procedures Division of the Tennessee Department of State this 4<sup>TH</sup> day of October 2012.



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Thomas G. Stovall, Director  
Administrative Procedures Division

## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.