



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

March 7, 2012

Commissioner Greg Gonzales
Tennessee Department of Financial Institutions
Suite #1000, Nashville City Center
414 Union Street
Nashville, Tennessee 37219

Whitney M. Stone, Esq.
Staff Attorney
Tennessee Department of Financial Institutions
Suite #1000, Nashville City Center
414 Union Street
Nashville, TN 37219

Rex M. Palmer
25 #5 Highland Meadows Boulevard
Highland Heights, KY 41076

RE: In the Matter of: Rex Palmer

Docket No. 03.06-115146J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF:

REX PALMER

DOCKET NO. 03.06-115146J

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 **March 22, 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, 8th 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,**

Vs.

**Rex Palmer,
Respondent.**

**DOCKET NO: 03.06-115146J
TDFI No. 11-141-C**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard on February 28, 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 Whitney M. Stone. 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 June 13, 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 July 12, 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 February 1, 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, 8TH 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 and/or failure to provide the Department additional information?

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 December 27, 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. The Department has developed a very specific policy concerning how it will view credit report information. This entire policy is found at exhibit 4 of the record. In summary, if the applicant's TransUnion Credit Report reflects a Vantage Score of 600 or greater the applicant is presumed to be financially responsible. If the applicant's Vantage Score is below 600, then the "flagged" items on the applicant's credit report are considered using criteria found in the Department's policy. An applicant with a Vantage Score below 600 can still be deemed financially responsible if certain information conceding flagged items is made available to the Department.

4. Respondent's Vantage Score was below 600 and he also had numerous flagged items on his credit report. The Department sent Respondent a letter dated March 21, 2011 listing these flagged items and requesting additional information from Respondent. This letter notified Respondent his application would be denied if he did not respond within 30 days. Respondent was also notified of this letter by an external note posted to his NMLS account. This caused an e-mail message to Respondent notifying him of forthcoming letter.

5. Respondent did not respond to the Department's letter noted above, and on June 13, 2011, the Department issued another letter notifying Respondent his application was denied. This information was also posted on Respondent's NMLS account. Respondent appealed this decision by letter dated July 12, 2012.

6. Respondent's credit history does not indicate that he is financially responsible. Respondent failed to provide additional information requested by the Department. 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....”

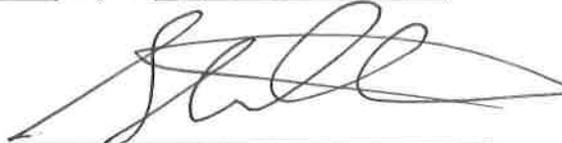
5. T.C.A. §45-13-302(d) states, in pertinent part, **that if the Commissioner does not find the applicant so qualified, the Commissioner shall notify the applicant in writing stating the basis for denial.** If the Commissioner denies an application or fails to act on a complete application within ninety (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.

ANALYSIS

The Department has adopted thorough and objective policies for analyzing an applicant's financial responsibility. Applying this policy, the Department requested additional information from Respondent. When Respondent failed to respond to the Department's request, the Department had no other alternative than to deny his application. The Department's denial must be upheld.

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 7TH day of MARCH, 2012.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 7TH day of MARCH 2012.



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, 8th 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.