

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

IN THE MATTER OF:

ROBERT SWIFT

DOCKET NO. 03.06-113543J

ORDER

THIS ORDER 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 **December 7, 2011**.

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.

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

IN THE MATTER OF:

**Robert Swift,
Petitioner,**

Vs.

**Department of Financial Institutions,
Compliance Division,
Respondent.**

**DOCKET NO: 03.06-113543J
TDFI No.: 11-082-C**

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on November 21, 2011, at the offices of the Tennessee Department of Financial Institutions, before Administrative Judge Steve R. Darnell, assigned by the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions pursuant to T.C.A. §4-5-301(d). The Department of Financial Institutions was represented by attorney Joseph Schmidt. The Petitioner, having received proper notice of this hearing, failed to appear or otherwise participate. Upon motion of the Department, the Petitioner was held in **DEFAULT**, and Petitioner's request for a hearing was **DISMISSED**.

FINDINGS OF FACT

1. Petitioner applied to the Department for a license as a mortgage loan originator. The Department denied Petitioner's application, and Petitioner initiated this hearing pursuant to T.C.A. § 45-13-301(a) of the Tennessee Residential Lending, Brokerage and Servicing Act.
2. Petitioner was provided proper notice of the hearing by the Department as well as by pre-hearing order issued by the undersigned Administrative Judge.

3. Petitioner failed to appear at the hearing or otherwise participate in the hearing. No one appeared on Petitioner's behalf.

CONCLUSIONS OF LAW

1. Hearings pursuant T.C.A. § 45-13-301(a) are to be conducted in compliance with T.C.A. § 45-13-301(a) of the Uniform Administrative Procedures Act, provided, that the individual has requested a hearing in writing within 30 days following the date of the Commissioner's denial as required by T.C.A. § 45-13-302(d).

2. At the hearing, the burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual as required by T.C.A. § 45-13-302(d) of the Tennessee Mortgage Act.

3. T.C.A. § 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.”

4. TENNESSEE. COMP. R. & REGS. 1360-04-01-.15(1)(a) 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....”

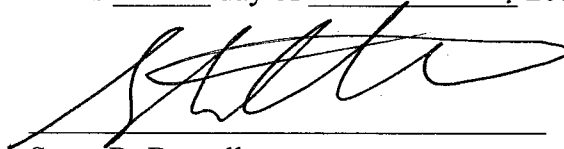
5. TENNESSEE COMP. R. & REGS. 1360-04-01-.15(1)(d) states “[i]f the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1360-4-1-.06, subsections (2)(a)

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.”

6. TENNESSEE COMP. R. & REGS. 1360-04-01-.15(2)(a) 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.”

IT IS THEREFORE ORDERED that the Department’s motion for default is granted and Petitioner’s request for a hearing is **DISMISSED**.

This Initial Order entered and effective this 22ND day of NOV, 2011.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 22ND day of NOVEMBER 2011.



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.