

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:

MALCOLM BELLAR

DOCKET NO. 03.06-102734J

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 **August 7, 2009**.

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 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

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:

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

DOCKET NO: 03.06-102734J

Vs.

**Malcolm Bellar,
Respondent.**

INITIAL ORDER

This matter came to be heard on June 24, 2009, before Administrative Judge Steve R. Darnell of the Administrative Procedures Division of the Tennessee Department of State, sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Respondent") was represented by Derek Church, a staff attorney with the Department of Financial Institutions. The Petitioner, Malcom Wayne Bellar, appeared and represented himself (hereinafter, "Petitioner").

This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, initiated by the Petitioner. The issue of this case is whether the Petitioner should be denied registration as a mortgage loan originator under the Mortgage Act. Judge Steve R. Darnell is vested with jurisdiction to hear this matter on behalf of the Commissioner pursuant to Tenn. Code Ann. § 45-1-105 and the

Tennessee Residential Lending, Brokerage and Servicing Act of 1988 as amended, at Tenn. Code Ann. §§ 45-13-101 *et seq.* (hereinafter, "Mortgage Act").

After consideration of the record in this matter, it is **DETERMINED** that the Petitioner **SHOULD** be denied registration as a mortgage loan originator under the Mortgage Act. This decision is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Petitioner is a natural person residing in Old Hickory, Tennessee.
2. Prior to January 1, 2009, the Petitioner was registered with the Department of Financial Institutions (hereinafter, "Department") under the Mortgage Act as a mortgage loan originator; however, the Petitioner's most recent registration expired on December 31, 2008 for failure to renew.
3. On April 3, 2009, the Petitioner filed a new application with the Department to be registered as a mortgage loan originator, listing his affiliated mortgage company as "Envision Lending Group."
4. On April 24, 2009, the Respondent sent the Petitioner a letter denying the Petitioner's application to be registered as a mortgage loan originator. The stated reason for denial is that "the Commissioner has determined that you do 'not have the character or general fitness to warrant the belief that [you] will act as a mortgage loan originator lawfully and within the purposes of [the Mortgage Act],' as required by Tenn. Code Ann. § 45-13-126(h)(4)." The letter states that the Commissioner made the determination based on guilty pleas to two (2) felonies on March 20, 2003: "Theft of Property over \$60,000" and "Workers Comp Fraud." The letter is signed by Mike Igney, Assistant Commissioner.

5. The Petitioner submitted a written appeal and request for hearing on April 28, 2009, thus initiating this contested case.

6. The Mortgage Act did not require or allow the Commissioner to evaluate the character of an applicant for mortgage loan originator registration until January 1, 2009.

7. In order to apply for registration as a mortgage loan originator, the Department requires an individual to complete and file an application through the Nationwide Mortgage Licensing System. The application form is a uniform application that is being widely used by other states. The application includes questions pertaining to an individual's criminal history.

8. The Department, as part of its application process for registration as a mortgage loan originator, also requires an individual to complete a fingerprint-based criminal background check.

9. In the Petitioner's April 3, 2009 application for registration as a mortgage loan originator, he answered "Yes" to the question "Have you ever: been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?" Results of the Petitioner's fingerprint background check indicated that he had pled guilty to two (2) felonies.

10. The Petitioner did, in fact, plead guilty on March 20, 2003 to "Theft of Property over \$60,000" and "Workers Comp Fraud," both felonies, and does not dispute such.

11. Section 1505(b)(2) of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Public Law 110-289, Title V (hereinafter, "SAFE Act"), provides that no individual may obtain a mortgage loan originator license if in the last seven (7) years the individual has been convicted of or pled guilty to any felony, or if the individual has ever been convicted of or pled guilty to any felony involving certain criteria, including fraud.

12. The Commissioner has adopted the SAFE Act's standard pertaining to felonies as his standard for evaluating the character of an applicant for registration as a mortgage loan originator, effective January 1, 2009. The Department's witness testified that it will not register any individual as a mortgage loan originator if the applicant in the last seven (7) years has been convicted of or pled guilty to any felony, or if the applicant has ever been convicted of or pled guilty to any felony involving certain criteria, including fraud. The Department does not allow any exceptions to this standard, and has consistently applied the standard since January 1, 2009.

13. The Tennessee General Assembly recently passed amendments to the Mortgage Act that incorporate the SAFE Act's licensing standards (including those pertaining to felonies), which amendments will become effective July 31, 2009.

CONCLUSIONS OF LAW

14. Tenn. Code Ann. § 45-13-126(h)(4) provides that "The commissioner may refuse to register any mortgage loan originator who...Is found by the commissioner to not have the character or general fitness to warrant the belief that the individual will act as a mortgage loan originator lawfully and within the purposes of [the Mortgage Act]." Therefore, pursuant to Tenn. Code Ann. § 45-13-126(h)(4), the Commissioner is vested with the authority and discretion to determine whether an applicant has shown sufficient character to be registered as a mortgage loan originator. Further, this authority allows the Commissioner to create a policy as to how an individual's criminal history will impact on their character, including by adopting federal standards regarding the automatic disqualification for a license based on certain felony convictions or guilty pleas.

15. The above findings of fact show that the Department adopted the SAFE Act's standard pertaining to felonies as its policy for evaluating the character of an applicant for

registration as a mortgage loan originator, effective January 1, 2009. The Department is lawfully authorized to create such a policy pursuant to Tenn. Code Ann. § 45-13-126(h)(4). Not only was it lawful, it was entirely reasonable for the Department to adopt and implement such a policy, as it was based on the federal SAFE Act and would become state law on July 31, 2009 (see SB2279, signed into law by Governor Bredesen on June 24, 2009). Further, the above findings of fact show that the policy has been consistently applied, and that it was accurately applied to the Petitioner in this matter – the Petitioner having pled guilty to two (2) felonies in the last seven (7) years, which automatically disqualified the Petitioner for registration under the Department’s policy.

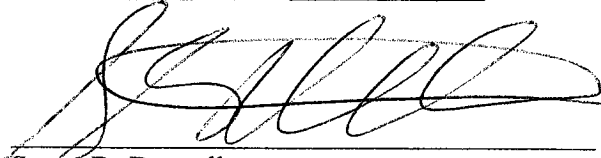
16. Tenn. Code Ann. § 45-13-126(i) provides that, upon any refusal to register a mortgage loan originator and subsequent appeal, “the burden of proving that the mortgage loan originator is entitled to a registration certificate shall be upon the mortgage loan originator.” Pursuant to Tenn. Code Ann. § 45-13-126(i), the Petitioner had the burden at hearing of proving that he was entitled to a mortgage loan originator registration.

17. Based on the record, the Petitioner was not able to show that the Department’s policy was unlawful or unreasonable, that it was inaccurately or improperly applied to the Petitioner in this matter, or that he should otherwise be issued registration as a mortgage loan originator under the Mortgage Act.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petitioner, Malcom Wayne Bellar, **SHOULD** be denied registration as a mortgage loan originator under the Mortgage Act, and that the decision of the Department to deny registration to the Petitioner was proper and is upheld.

This Initial Order entered and effective this 23RD day of JULY, 2009.



Steve R. Darnell
Administrative Judge

Filed in the Administrative Procedures Division this 23RD day of JULY, 2009.



Thomas G. Stovall, Director

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 Eighth Avenue N., 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.