

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

FIRST CHOICE FUNDING, INC.

DOCKET NO. 03.06-111069J

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 22, 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 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**

TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS, COMPLIANCE DIVISION,)	
)	
 Petitioner,)	
)	
v.)	APD Docket No.: 03.06-111069J
)	TDFI No.: 10-203-C
FIRST CHOICE FUNDING, INC.,)	
)	
 Respondent.)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on June 15, 2011, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219, before Administrative Law 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 (“Commissioner”) pursuant to Tennessee Code Annotated Section (“TENN. CODE ANN. §”) 4-5-301(d). The Tennessee Department of Financial Institutions (“Department”) was represented by attorney Joseph A. Schmidt.¹ First Choice Funding, Inc. (“First Choice”), having received due notice of this hearing, failed to appear or to otherwise participate and was not represented by legal counsel.

This matter is a “contested case” governed by the “Uniform Administrative Procedures Act,” TENN. CODE ANN. §§ 4-5-101, *et seq.*, and Chapter 1360-04-01 of the “Uniform Rules of Procedure for Hearing Contested Cases before Administrative State Agencies.” This matter was initiated by the Department for the purposes of seeking an Initial Order: 1) requiring First Choice to pay the Commissioner civil monetary penalties in the amount of one million five

¹ The Department filed a “Notice of Substitution of Counsel” on April 20, 2011. Prior to the filing of said Notice, the Department was represented by attorney Trey Talley.

hundred ten thousand dollars (\$1,510,000.00) based upon one hundred fifty-one (151) alleged violations (one hundred fifty-one (151) alleged violations multiplied by the statutory maximum of ten thousand dollars (\$10,000.00) per alleged violation) pursuant to TENN. CODE ANN. § 45-13-116(3) of the “Tennessee Residential Lending, Brokerage and Servicing Act of 1988”² (“Tennessee Mortgage Act of 1988”); 2) requiring First Choice to cease and desist violating the “Tennessee Residential Lending, Brokerage and Servicing Act”³ (“Tennessee Mortgage Act”) by not paying a past due examination fee in the amount of eleven thousand six hundred dollars (\$11,600.00) pursuant to TENN. CODE ANN. §§ 45-13-405(a)(1) of the Tennessee Mortgage Act; 3) Suspending or revoking First Choice’s license to lawfully engage in the business of mortgage loan brokering in the state of Tennessee (license number 1476) pursuant to TENN. CODE ANN. § 45-13-405(a)(4) of the Tennessee Mortgage Act; 4) taxing the costs of this matter, if contested, to First Choice pursuant to Rule 54 of the Tennessee Rules of Civil Procedure; and 5) granting such other, further, general or different relief to which the Department may be entitled.

NOTICE OF DEFAULT

1. The record demonstrates that First Choice is an active, for-profit foreign corporation incorporated under the laws of the state of Delaware on January 12, 1998.
2. The record demonstrates that the principal office address for First Choice is, and was at all times relevant herein, 2100 Riverchase Center, Suite 100, Birmingham, Alabama 35244.
3. The record demonstrates that the Tennessee Department of State issued First Choice a Certificate of Authority on January 13, 2000 (Control Number 382904).

² The Tennessee Mortgage Act of 1988 was amended effective July 31, 2009. In this Initial Order, violations that occurred prior to the effective date of the amendments (prior to July 31, 2009) are cited to the Tennessee Mortgage Act of 1988. Violations that occurred on or after the effective date of the amendments (occurred on or after July 31, 2009) are cited to the Tennessee Mortgage Act.

³ See footnote two (2).

4. The record demonstrates that Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203, is, and was at all times relevant herein, the Registered Agent for Service of Process for First Choice.

5. The record demonstrates that counsel for the Department mailed First Choice, in care of Corporation Service Company, a true and correct copy of a “Notice of Charges and Opportunity for Hearing,” via United States Certified Mail Return Receipt Requested, on December 20, 2010. The United States Mail Return Receipt indicates that Corporation Service Company received said mailing on December 22, 2010. First Choice failed to respond to said mailing.

6. The record demonstrates that counsel for the Department mailed First Choice, in care of Corporation Service Company, a true and correct copy of a “Notice of Filing of Notice of Charges,” via United States Certified Mail Return Receipt Requested, on February 2, 2011. The United States Certified Mail Return Receipt indicates that Corporation Service Company received said mailing on February 3, 2011.

7. The record demonstrates that counsel for the Department received a letter, dated February 10, 2011, from Zack Rogers, III, Former President of First Choice, acknowledging First Choice’s receipt of the “Notice of Filing of Notice of Charges.”

8. The record demonstrates that an order was entered on May 17, 2011, setting this matter for hearing on June 15, 2011. Said Order was mailed via United States First Class Mail to the principal office address for First Choice and to First Choice in care of Corporation Service Company.

9. The record demonstrates that, after due notice thereof, First Choice failed to appear and failed to otherwise participate at the hearing. The record demonstrates that First

Choice was not represented by legal counsel.

10. The record demonstrates that counsel for the Department made an oral motion at the hearing to hold First Choice in default for failing to appear or to participate at the hearing after due notice thereof and to conduct the hearing without the participation of First Choice.

11. The record demonstrates that the Department's motion to hold First Choice in default for failing to appear or to participate at the hearing after due notice was granted, and the hearing conducted without the participation of First Choice 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.").

12. The record demonstrates that this matter was tried as uncontested as to First Choice pursuant to Rule 1360-04-01-.15(2)(b) of the TENN. COMP. R. & REGS.

NOTICE IS HEREBY GIVEN TO THE RESPONDENT THAT THE RESPONDENT HAS BEEN HELD IN DEFAULT FOR FAILING TO APPEAR OR TO PARTICIPATE AT THE HEARING AFTER RECEIVING DUE NOTICE THEREOF. T.C.A. § 4-5-309. THE RESPONDENT HAS FIFTEEN (15) DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 302 8TH AVENUE NORTH, 8TH FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE RESPONDENT'S FAILURE TO APPEAR OR TO PARTICIPATE AT THE HEARING. IF THE RESPONDENT DOES NOT REQUEST THE DEFAULT TO BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER SHALL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW.

INITIAL ORDER

Findings of Fact

13. TENN. CODE ANN. § 45-1-104 provides that 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).

14. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Mortgage Act of 1988, the Tennessee Mortgage Act, and any regulations promulgated pursuant to said Acts.

15. The Compliance Division of the Department is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Tennessee Mortgage Act of 1988 and the Tennessee Mortgage Act.

16. First Choice was at all relevant times herein a for-profit Alabama corporation with a principal office located at 2100 Riverchase Center, Suite 100, Birmingham, Alabama, 35244.

17. First Choice, at all times relevant hereto, had designated as their Registered Agent for Service of Process as filed with the Tennessee Department of State the Corporation Service Company, located at 2908 Poston Ave, Nashville, Tennessee 37203.

18. First Choice, at all times relevant hereto, was authorized by the Department to lawfully engage in the business of mortgage lending or mortgage loan brokering in the state of Tennessee, having been issued license or certificate of registration number 1476.

19. First Choice was served with a "Notice of Charges and Opportunity for Hearing" in the above-captioned matter on December 22, 2010.

20. First Choice was examined by the Department between March 29, 2010 and May 10, 2010.

21. On or about May 10, 2010, the Department completed a "Report of Examination," which was offered on multiple occasions to Zach Rogers, a representative of First Choice, for his review and signature.

22. First Choice had Mary Endres, who was registered as a Mortgage Loan Originator ("MLO") with First Choice as of November 7th, 2008, perform mortgage loan origination activities on loan number 186411354 on October 15, 2008.

23. First Choice had William Fullum, who was registered as a MLO with First Choice as of July 13th, 2009, perform mortgage loan origination activities on loan number 80000091753 on December 8, 2008, and on loan number 8519040136 on January 10, 2009.

24. First Choice had Rebekah Epperson, whose registration as a MLO with First Choice expired on February 1st, 2008, perform mortgage loan origination activities on loan number 2911950 on September 6th, 2008, and on loan number 2856287 on August 12, 2008.

25. First Choice had Brigette McDonald, who was registered as a MLO with First Choice from May 18th, 2006 until December 31, 2007, and re-registered again with First Choice on June 11, 2008, perform mortgage loan origination activities on loan number 2000560302 on May 14, 2008.

26. First Choice had Martha Saulsberry, who was registered as a MLO with First Choice as of June 11th, 2008, perform mortgage loan origination activities on loan number 567955 on February 11, 2008.

27. First Choice had Steve Terry, who was never registered as a MLO with First Choice, perform mortgage loan origination activities on loan number 30923454 on April 1, 2009.

28. First Choice had Ed Irelan, who was registered as a MLO with First Choice from January 22, 2008 until December 31, 2008, and re-registered again on March 25, 2009, perform

mortgage loan origination activities on loan number 30923100 on February 20, 2009, and loan number 901278 on January 6, 2009.

29. First Choice was cited in their 2010 examination for violating TENN. CODE ANN. § 45-13-127(b) by failing to include the required identification numbers on one-hundred forty-one (141) mortgage loans.

30. First Choice was cited in their prior examination on August 13, 2008, for violating TENN. CODE ANN. § 45-13-127(b) by failing to include the required identification numbers on a portion of their mortgage loans.

31. First Choice violated TENN. CODE ANN. § 45-13-127(b) of the Tennessee Mortgage Act of 1988 one-hundred forty-one (141) times by failing to include the required identification numbers on one-hundred forty-one (141) mortgage loans.

32. First Choice received a letter from the Department, providing it with an opportunity to show compliance with the lawful requirements for maintaining its license, at its principal address on October 7, 2010.

33. First Choice received a letter from the Department, providing it with an opportunity to show compliance with the lawful requirements for maintaining its license, at the address of its Registered Agent for Service of Process, the Corporation Service Company, on October 6, 2010.

34. First Choice received a true and correct copy of a "Notice of Charges and Opportunity for Hearing" at the address of its Registered Agent for Service of Process, the Corporation Service Company, which it signed for on December 22, 2010.

35. First Choice received a true and correct copy of a "Notice of Filing of Notice of Charges" at the address of its registered agent for service of process, the Corporation Service

Company, which it signed for on February 3, 2011.

36. First Choice was invoiced for a 2010 examination fee of eleven thousand six hundred dollars (\$11,600.00).

37. First Choice has not paid the eleven thousand six hundred dollar (\$11,600.00) examination fee for the 2010 examination.

Conclusions of Law

38. TENN. CODE ANN. § 45-13-126(a) of the Tennessee Mortgage Act of 1988 (repealed effective July 31, 2009 and replaced by TENN. CODE ANN. § 45-13-301(a) of the Tennessee Mortgage Act) states that “[b]efore an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with that licensee or registrant. A mortgage loan originator shall not be registered in affiliation with more than one (1) licensee or registrant at the same time.”

39. TENN. CODE ANN. § 45-13-127(a) of the Tennessee Mortgage Act of 1988 (repealed effective July 31, 2009 and replaced by TENN. CODE ANN. § 45-13-303(e) of the Tennessee Mortgage Act) states that “[a] licensee or registrant for whom a mortgage loan originator provides services is responsible for, and shall supervise the acts of, the mortgage loan originator.”

40. The factual allegations as stated in paragraphs twenty-two (22) through twenty-eight (28) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that First Choice committed ten (10) violations of TENN. CODE ANN. § 45-13-126(a) of the Tennessee Mortgage Act of 1988 by permitting individuals to provide services as mortgage loan originators for First Choice concerning ten (10) mortgage loans without said individuals having first obtained registrations

from the Commissioner.

41. TENN. CODE ANN. § 45-13-127(b) of the Tennessee Mortgage Act of 1988 (repealed effective July 31, 2009 and replaced by TENN. CODE ANN. § 45-13-303(d) of the Tennessee Mortgage Act) states that “[a] licensee or registrant shall ensure that each application for a mortgage loan contain the name and license number or registration of the licensee or registrant as well as the name, signature, and registration number of the mortgage loan originator who provided services with respect to the mortgage loan.”

42. The factual allegations as stated in paragraphs twenty-nine (29) through thirty-one (31) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that First Choice committed one hundred forty-one (141) violations of TENN. CODE ANN. § 45-13-127(b) of the Tennessee Mortgage Act of 1988 by failing to ensure that one hundred forty-one (141) applications for mortgage loans contained the required identification numbers.

43. TENN. CODE ANN. § 45-13-404(f) of the Tennessee Mortgage Act (formerly TENN. CODE ANN. § 45-13-112(b) of the Tennessee Mortgage Act of 1988) states that “[a]ny mortgage lender, mortgage loan broker, mortgage loan servicer or registrant that is investigated or examined under this section shall pay to the commissioner the reasonable and actual expenses of the investigation or examination. The fees shall be payable in addition to all other fees, taxes and costs now required by law.”

44. The factual allegations as stated in paragraphs thirty-six (36) and thirty-seven (37) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that First Choice committed one (1) violation of TENN. CODE ANN. § 45-13-404(f) of the Tennessee Mortgage Act by failing to pay

an eleven thousand six hundred dollar (\$11,600.00) past due examination fee to the Department.

45. TENN. CODE ANN. § 45-13-405(a)(1) of the Tennessee Mortgage Act (formerly TENN. CODE ANN. § 45-13-116(1) of the Tennessee Mortgage Act of 1988) states, in pertinent part, that “[i]f after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter or any administrative rule issued pursuant to this chapter, the commissioner may...[o]rder the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter.”

46. TENN. CODE ANN. § 45-13-116(3) of the Tennessee Mortgage Act of 1988 (repealed effective July 31, 2009 and replaced by TENN. CODE ANN. § 45-13-405(a)(3) of the Tennessee Mortgage Act) states, in pertinent part, that “[i]f after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or administrative rule issued pursuant to this chapter, the commissioner may...[o]rder the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter.”

Relief

47. After consideration of the pleadings, argument of counsel, and the record as a whole, it is determined by a preponderance of the evidence that First Choice committed ten (10) violations of TENN. CODE ANN. § 45-13-126(a) of the Tennessee Mortgage Act of 1988, one hundred forty-one (141) violations of TENN. CODE ANN. § 45-13-127(b) of the Tennessee Mortgage Act of 1988, and one (1) violation of TENN. CODE ANN. § 45-13-404(f) of the Tennessee Mortgage Act.

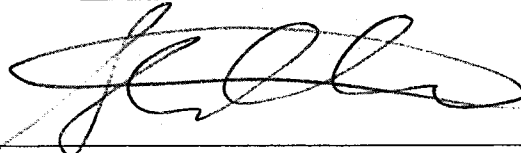
IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

a. That First Choice shall pay civil monetary penalties in the amount of one hundred thousand dollars (\$100,000.00) based upon ten (10) violations of TENN. CODE ANN. § 45-13-126(a) of the Tennessee Mortgage Act of 1988 (ten (10) violations multiplied by the statutory maximum of ten thousand dollars (\$10,000.00) per violation) pursuant to TENN. CODE ANN. § 45-13-116(3) of the Tennessee Mortgage Act of 1988;

b. That First Choice shall pay civil monetary penalties in the amount of one million four hundred ten thousand dollars (\$1,410,000.00) based upon one hundred forty-one (141) violations of TENN. CODE ANN. § 45-13-127(b) of the Tennessee Mortgage Act of 1988 (one hundred forty-one (141) violations multiplied by the statutory maximum of ten thousand dollars (\$10,000.00) per violation) pursuant to TENN. CODE ANN. § 45-13-116(3) of the Tennessee Mortgage Act of 1988; and

c. That First Choice shall cease and desist violating TENN. CODE ANN. § 45-13-404(f) of the Tennessee Mortgage Act by failing to pay a past due examination fee to the Department of eleven thousand six hundred dollars (\$11,600.00) pursuant to TENN. CODE ANN. § 45-13-405(a)(1) of the Tennessee Mortgage Act.

This Initial Order entered and effective this 5TH day of Aug, 2011.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
5th day of AUGUST 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.