

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:

SHERMAN BROWN

DOCKET NO. 03.06-107693J

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 27, 2010**.

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**

SHERMAN BROWN,)	
)	
Petitioner,)	
)	
v.)	APD Docket No.: 03.06-107693J
)	TDFI No.: 10-73-C
TENNESSEE DEPARTMENT OF)	
FINANCIAL INSTITUTIONS,)	
COMPLIANCE DIVISION,)	
)	
Respondent.)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on Friday, July 9, 2010, at 9:30 a.m., central standard time, 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. The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Respondent") was represented by Eric E. Rogers, staff attorney with the Department of Financial Institutions. The Petitioner, Sherman Brown, was not present at the hearing.

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, TENN. CODE ANN. §§ 45-13-101 *et seq.* (hereinafter, "Mortgage Act").

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 seeking an

order requiring the Respondent to issue a provisional mortgage loan originator's license to the Petitioner pursuant to TENN. CODE ANN. § 45-13-302.

After consideration of the pleadings, the argument of counsel, and the entire record as a whole, it is **DETERMINED** that the Petitioner's request for licensing by the Respondent as a mortgage loan originator under the Mortgage Act should be **DISMISSED**. Said decision is based on the Preliminary Rulings and Order of Default, Findings of Fact, and Conclusions of Law stated below.

PRELIMINARY FINDINGS AND ORDER OF DEFAULT

1. 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).

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

3. The Respondent is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Mortgage Act.

4. The record indicates that the Petitioner was served with a Motion Requesting the Assignment of an Administrative Judge to Conduct Contested Case on May 28, 2010 (05/28/10), and that the Respondent did not prepare or produce any response.

5. The Administrative Judge prepared an Order that was entered on June 15, 2010 (06/15/10), in this matter, which was mailed both to the Petitioner and to the Respondent on June 15, 2010 (06/15/10).

6. Having received no response, at the hearing of this matter on July 9, 2010 (07/09/10), counsel for the Respondent orally moved to hold the Petitioner in default, and to

continue on an uncontested basis pursuant to TENN. CODE ANN. § 4-5-309(a) and TENN. COMP. R. & REGS. 1360-4-1-.15(1), based upon Petitioner's failure to appear at the hearing or to respond in any way.

7. Respondent's oral motion for default was granted, and it was **ORDERED** that the Petitioner be held in default for failing to appear after due notice.

FINDINGS OF FACT

8. The Petitioner filed a mortgage loan originator's license application with the Respondent on or about February 25, 2010 (02/25/10) to obtain a mortgage loan originator's license from the Respondent.

9. As part of the application process, the Petitioner was required to supply his fingerprints for the performance of a criminal history background check.

10. When the Petitioner's fingerprints had not been received, the Respondent placed an external note on the Petitioner's National Mortgage Licensing System ("NMLS") account on March 1, 2010, requesting that the Petitioner be fingerprinted within thirty (30) days of the date the external note was placed on the Petitioner's NMLS account.

11. The external note also said that if the Petitioner did not submit fingerprints within the time period specified, the Respondent would recommend that the Petitioner's mortgage loan originator's license application be denied as incomplete.

12. When the Petitioner's fingerprints were not submitted on or before April 6, 2010, the Assistant Commissioner of the Respondent sent written correspondence to the Petitioner detailing the Respondent's basis for denying the Petitioner's license application. Specifically, the letter stated, in pertinent part, that "it appears that the application is incomplete because [the Petitioner] [has] not yet furnished fingerprints...for a criminal history background check as

required by Tenn. Code Ann. § 45-13-302(b).”

13. The written notice also provided the Petitioner the opportunity to “make a written demand for a hearing on the question of whether the license should be granted. Any such hearing shall be conducted under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code, and the burden of proving that [the Petitioner] [is] entitled to a mortgage loan originator license shall be on [the Petitioner].”

14. In an electronic mail (e-mail) communication from the Petitioner received by the Respondent on April 26, 2010 (04/26/10), the Petitioner requesting a hearing to appeal the decision of the Department to deny his license application.

15. The Petitioner did not appear nor did he have counsel appear at the hearing on this matter. The Petitioner communicated with counsel for the Respondent by e-mail that he was withdrawing his appeal.

CONCLUSIONS OF LAW

16. TENN. CODE ANN. § 301(a) states that “[a]n individual...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...”

17. TENN. CODE ANN. § 45-13-302(b) states that “[i]n connection with an application for a mortgage loan originator license, the applicant shall furnish fingerprints to the commissioner or the commissioner's duly authorized agent, such as the Nationwide Mortgage Licensing System and Registry, for submission to the federal bureau of investigation or any other governmental agency or entity, or both, authorized to receive the information, such as the Tennessee bureau of investigation, for a state, and/or national and/or international criminal history background check, as well as authorization for a criminal history background check...”

18. TENN. CODE ANN. § 45-13-302(d) states, in pertinent part, that “[i]f the commissioner denies an application..., the applicant may make a written demand of the commissioner for a hearing on the question of whether the license should be granted.... At the hearing, the burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual.”

19. TENN. COMP. R. & REGS. 1360-4-1-.15(2)(a) states that “[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.”

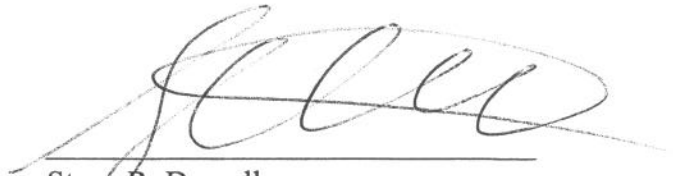
20. TENN. R. CIV. P. 41.02(1) states that “[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.”

21. The Findings of Fact set forth above show by a preponderance of the evidence that the Petitioner failed to appear to prosecute his claims, and that pursuant to TENN. COMP. R. & REGS. 1360-4-1-.15(2)(a) and TENN. R. CIV. P. 41.02(1), his request for a hearing should be dismissed.

ORDER

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Petitioner, Sherman Brown, should have his request to have a mortgage loan originator’s license issued by the Respondent be **DISMISSED** for failure to prosecute, and that the decision of the Respondent to deny a mortgage loan originator’s license to the Petitioner was proper, and is upheld.

This Initial Order entered and effective this 12TH day of AUG, 2010.



Steve R. Darnell
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 12TH day of AUGUST 2010.



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 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.