

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:

SHARON McKINNEY

DOCKET NO. 03.06-107292J

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, 8<sup>th</sup> 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**

<b>SHARON MCKINNEY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>APD Docket No.: 03.06-107292J</b>
	)	<b>TDFI No.: 09-195-C</b>
<b>TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS, COMPLIANCE DIVISION,</b>	)	
	)	
<b>Respondent.</b>	)	

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**INITIAL ORDER**

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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 Petitioner, Sharon McKinney, (hereinafter "Petitioner"), appeared by telephone and participated in the hearing by telephone. 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.

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, witness testimony and the entire record as a whole, it is **DETERMINED** that the Petitioner's request should be **DENIED** for licensing by the Respondent as a mortgage loan originator under the Mortgage Act. Said decision is based on the Preliminary Findings, the Admissions and Stipulated Facts, the Findings of Fact, and the Conclusions of Law stated below.

### **PRELIMINARY FINDINGS**

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 Petitioner is a natural person.

5. Both parties were mailed an "Order" entered May 25, 2010 by the Administrative Judge regarding a hearing on this matter to their respective addresses.

### **ADMISSIONS AND STIPULATED FACTS**

6. The Petitioner admitted she lives at 3804 Brandywine Cove, Memphis, Tennessee 38115.

7. The Petitioner admitted she pled guilty to at least one count of felony theft in Shelby County, Tennessee.

8. The Petitioner admitted that theft over \$500.00 is a Class E felony in Tennessee.
9. The Petitioner admitted that judgment was entered against her on August 3, 1993.
10. The Petitioner admitted that at the time she pled guilty to felony theft, she was known as Sharon Blevins.
11. The Respondent stipulated that the Petitioner has previously been licensed by the Respondent.

### **FINDINGS OF FACT**

12. The Petitioner filed an application with the Respondent to obtain a mortgage loan originator's license from the Respondent.
13. As part of the application process, the Petitioner supplied her fingerprints for the performance of a criminal history background check.
14. A criminal history background check was performed on the Petitioner, and there were findings reported that, based on statutes, would result in the denial of the Petitioner's application for licensing as a mortgage loan originator under the Mortgage Act.
15. As a result of the criminal history background check findings on the Petitioner, as admitted above, the Respondent denied the license application of the Petitioner by written notice dated December 21, 2009.
16. The written notice detailed that the Respondent had denied the Petitioner's license application "[b]ecause on August 3, 1993, [she] pled guilty to 'Theft over \$500' a Class E Felony..." a fact which was admitted by the Petitioner.
17. The written notice also provided the Petitioner the opportunity to "appeal this decision to deny [her] application by submitting a written demand for a hearing on the question of whether a license should be granted [to the Petitioner]."

18. On or about December 29, 2009, the Department received a facsimile transmission from the Petitioner requesting a hearing to appeal the decision of the Department to deny her license application.

**CONCLUSIONS OF LAW**

19. 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...”

20. TENN CODE ANN. § 45-13-302(c)(2)(A) requires that no mortgage loan originator’s license shall be issued unless “[t]he applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign or military court: (i) [d]uring the seven year period preceding the date of application for a mortgage loan originator license; or (ii) [a]t any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust or money laundering...”

21. TENN CODE ANN. § 45-13-302(d) states, in part, that “[i]f the commissioner finds the applicant so qualified, the commissioner shall issue the applicant a mortgage loan originator license... If the commissioner does not find the applicant so qualified, the commissioner shall notify the applicant in writing, stating the basis for denial.”

22. TENN CODE ANN. § 45-13-302(d) further 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.”

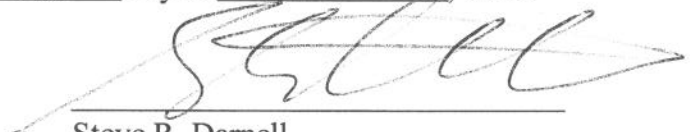
23. In *State v. Pittman*, 2001 WL 589162 (May 31, 2001), the Court determined “that...theft is...a dishonest crime.” *Id.* at 5. See also: *State v. Kirkup*, 2008 WL 2755294 at 6 (July 16, 2008), (“[t]he courts of this state have repeatedly held that robbery and theft are crimes of dishonesty...”).

24. The Admissions and Stipulated Facts and the Findings of Fact set forth above show by a preponderance of the evidence that the Petitioner was convicted of felony theft, a crime of dishonesty, and that pursuant to TENN CODE ANN. § 45-13-302(c), she does not meet the statutory requirements for the issuance of a mortgage loan originator’s license by the Respondent because of her prior conviction, and that it was proper for the Respondent to deny the Petitioner’s mortgage loan originator’s license application.

**ORDER**

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Petitioner, Sharon McKinney, should be **DENIED** licensing as a mortgage loan originator under the Mortgage Act, and that the decision of the Respondent to deny a mortgage loan originator’s license to the Petitioner was proper, and is upheld.

This Order entered and effective this 12<sup>TH</sup> day of AUG., 2010.



Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 12<sup>TH</sup> 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, 8<sup>th</sup> 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.