

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

PATRICK BAYLEY

DOCKET NO. 03.06-115144J

NOTICE

ATTACHED 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 March 22, 2012.

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.

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF THE COMMISSIONER**

IN THE MATTER OF:

**Patrick Bayley,
Petitioner,**

Vs.

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

**DOCKET NO: 03.06-115144J
TDFI No. 11-221-C**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard on February 28, 2012 in Nashville, Tennessee before Steve R. Darnell, Administrative Law Judge assigned by the Department of State, Administrative Procedures Division, and sitting for the Commissioner of the Department of Financial Institutions (Commissioner) pursuant to T.C.A. §4-5-301(d). The Compliance Division of the Department of Financial Institutions (Department) was represented by attorney Whitney M. Stone. Petitioner participated by telephone and was not represented by counsel.

ISSUE FOR CONSIDERATION

Did the Department properly deny Petitioner's Mortgage Loan Originator's license application because he had not passed the Tennessee component of the licensing examination?

SUMMARY OF DETERMINATION

After consideration of the pleadings, argument of counsel, and the record as a whole, it is determined the Department's decision denying Respondent's license application should be upheld. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 11, 2011, Petitioner made application to Tennessee for a Mortgage Loan Originator's License through the Nationwide Mortgage Licensing System (NMLS).
2. Petitioner's NMLS account revealed Petitioner had passed the national component of the licensing exam on June 22, 2010. His account also indicated he took the Tennessee component of the exam on August 1, 2011 and received a score of 72% which is a failing score.
3. On July 12, 2011, an external note was posted on Petitioner's NMLS account advising him that his application was incomplete because he had not shown that he had passed the Tennessee component of the exam. This note advised Petitioner that he must correct this deficiency within 30 days.
4. The Department will hold an application in abeyance if the applicant's NMLS account shows the applicant is registered to take a portion of the exam. Petitioner did not register to re-take the Tennessee portion of the exam until several months after his application was denied.
5. When Petitioner did not enroll to take the Tennessee portion of the exam, the Department issued a letter dated September 7, 2011 denying his application.
6. Petitioner appealed this decision by letter dated October 3, 2011.
7. Petitioner enrolled to re-take the Tennessee component of the exam during March 2012.
8. The Department has shown, by a preponderance of the evidence, that Petitioner had not passed the Tennessee component of the licensing exam at the time of his application. When Petitioner failed to enroll to re-take the test, the Department properly denied his application.

CONCLUSIONS OF LAW

1. The Tennessee Mortgage Act states, in pertinent part, that “[a]n individual, unless specifically exempted under subsection (b), 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 and without first being sponsored in accordance with § 45-13-303....” T.C.A. §45-13-301(a).

2. The Tennessee Mortgage Act provides that “[u]pon submission of a properly completed application form, including submission of fingerprints and payment of all applicable fees, the commissioner shall investigate the application to determine whether the applicant qualifies for a license....” T.C.A. §45-13-302(d).

3. Pursuant to T.C.A. §45-13-302(c) of the Tennessee Mortgage Act, no mortgage loan originator license shall be issued unless the Commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction; provided, that a subsequent formal vacation of the revocation shall not be deemed a revocation;

(2)(A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign or military court:

(i) During the seven-year period preceding the date of application for a mortgage loan originator license; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering;

(B) Provided, that any pardon of a conviction shall not be a conviction for purposes of subdivisions (c)(2)(A)(i) and (ii);

(3) The applicant has demonstrated the financial responsibility, character and general fitness to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly and efficiently within the purposes of this chapter....;

(4) The applicant has completed the pre-licensing education requirements set forth in §45-13-304; and

(5) The applicant has passed a written test that meets the test requirement described in §45-13-305.

4. T.C.A. §45-13-305 provides as follows:

(a) In order to meet the written test requirement referred to in §45-13-302(c)(5), an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination; and

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) Minimum Competence:

(1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions;

(2) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test;

(3) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again; and

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

5. T.C.A. §45-13-302(d) of the Tennessee Mortgage Act states, in pertinent part, that “[i]f the Commissioner finds the applicant so qualified, the Commissioner shall issue the applicant a mortgage loan originator license that shall expire on December 31 in the year it was issued....”

6. T.C.A. §45-13-302(d) states, in pertinent part, **that if the Commissioner does not find the applicant so qualified, the Commissioner shall notify the applicant in writing stating the basis for denial.** If the Commissioner denies an application or fails to act on a complete application within ninety (90) days, the applicant may make a written demand to the Commissioner for a hearing on the question of whether the license should be granted. Any hearing requested shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the individual has requested the hearing in writing within thirty (30) days following the date of the Commissioner's denial. At the hearing, the burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual.

ANALYSIS

The Department cannot license an applicant unless the applicant shows he meets the minimum competencies to hold a Mortgage Loan Originator's License. The applicant can only make this showing by scoring 75% or greater on the licensing exam. The exam consists of a national and Tennessee component. While Petitioner passed the national component, he failed the Tennessee component. The Department could have immediately denied his application. However, the Department allowed his application to remain active so Petitioner could re-take the Tennessee component of the exam. When he had failed to enroll to re-take this component of the

exam by early September, the Department properly denied his application and closed its file.
Petitioner can reapply when he has passed the Tennessee component of the exam.


IT IS THEREFORE ORDERED the Department's decision to deny Petitioner's application for a Mortgage Loan Originator's license is **UPHELD**.

This Order entered and effective this 17th day of MARCH, 2012.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 17th day of MARCH 2012.



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.