

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

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SECRETARY OF STATE

IN THE MATTER OF:

GILLEY, COLLEEN

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DOCKET NO. 03.06-131644J

FINAL ORDER

On October 22, 2015, Petitioner, Tennessee Department of Financial Institutions, Compliance Division, initiated this appeal of the September 2, 2015 Initial Order and the October 8, 2015 Order Granting in Part and Denying in Part the Petition for Reconsideration entered by Administrative Law Judge Kim Summers. The ALJ vacated the Emergency Cease and Desist Order entered by the Commissioner of Financial Institutions on April 24, 2015, and reinstated Respondent's mortgage loan originator license. The Notice of Hearing and Charges filed on June 12, 2015 and June 23, 2015 alleged that Respondent, Colleen Gilley, had violated provisions of the Tennessee Residential Lending, Brokerage and Servicing Act, TENN. CODE ANN. §§ 45-13-101, *et seq.* (hereinafter, "Mortgage Act").

Petitioner filed a Petition for Reconsideration of the Initial Order on September 17, 2015. The ALJ issued an Order Granting in Part and Denying in Part the Petition for Reconsideration on October 8, 2015. Petitioner appealed the Initial Order and the Order Granting in Part and Denying in Part the Petition for Reconsideration on the ground that conclusions in the two orders are inconsistent with Georgia's First Offender Statute, GA. CODE ANN. § 42-8-60 and 42-8-62 (2010), Tennessee's Mortgage Act and the federal Secure and Fair Enforcement for Mortgage

Licensing Act of 2008, 12 U.S.C. § 5104, 24 C.F.R. 3400.105 (2012) (“SAFE Act”), and prevents Petitioner from fulfilling its obligations under the SAFE Act (24 C.F.R. 3400.115 (2012)). Petitioner further alleged that conclusions in the two orders do not meet the burden of proof and the Order Granting in Part and Denying in Part the Petition for Reconsideration was untimely according to TENN. CODE ANN. § 4-5-317(c).

On February 2, 2016, the Commissioner of Financial Institutions entered a Scheduling Order providing the parties the opportunity to submit briefs in support of their positions. Petitioner’s brief was timely filed on March 8, 2016. On May 18, 2016, Petitioner filed a Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment. With the Motion, counsel for petitioner filed an Affidavit attesting that the copy of Petitioner’s brief mailed to Respondent at her address of record was returned “unclaimed.” Respondent was served a copy of the Scheduling Order by certified mail, return receipt requested using her address of record. The return receipt was signed by “Ricky Gilley” and received back on February 9, 2016. To date, Respondent has filed neither a brief nor a response to Petitioner’s Motion.

Upon careful review of the record and the Petitioner’s brief and Motion, the following findings are made:

FINDINGS OF FACT

1. Findings of Fact 1-10 of the Initial Order are adopted.

CONCLUSIONS OF LAW

1. The Applicable Laws 1-3 of the Initial Order are adopted and additional Conclusions of Law are made:

2. Tenn. Code Ann. § 45-13-102 provides:

The origination or offering of financing for residential real property has a direct, valuable and immediate impact upon Tennessee's consumers, Tennessee's economy, the neighborhoods and communities of this state and the housing and real estate industry. The general assembly finds that accessibility to mortgage credit is vital to the state's citizens. It is the purpose of this chapter to ensure a sound system of making residential mortgage loans through the licensing, examination and regulation of mortgage lenders, mortgage loan brokers, mortgage loan servicers and mortgage loan originators. It is also the purpose of this chapter to carry out the purposes and to be compliant with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101 et seq.

3. Tenn. Code Ann. § 45-13-103 provides:

The commissioner is granted broad administrative authority to administer, interpret and enforce this chapter and to promulgate reasonable substantive and procedural rules and regulations to carry out the purposes of this chapter.

4. 12 C.F.R. § 1008.1 provides:

Purpose. The purpose of this part is to enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the S.A.F.E. Act, if the Bureau determines that a state's loan origination licensing system does not meet the minimum requirements of the S.A.F.E. Act, the Bureau is charged with establishing and implementing a system for all loan originators in that state. Additionally, if at any time the Bureau determines that the nationwide mortgage licensing system and registry is failing to meet the S.A.F.E. Act's requirements, the Bureau is charged with establishing and maintaining a licensing and registry database for loan originators.

5. 12 C.F.R. § 1008.105 provides:

For an individual to be eligible for a loan originator license required under § 1008.103(a) and (d), a state must require and find, at a minimum, that an individual:

- (a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;
- (b)(1) Has never been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
 - (i) During the 7-year period preceding the date of the application for licensing; or
 - (ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.
- (2) For purposes of this paragraph (b):
 - (i) Expunged convictions and pardoned convictions do not, in themselves, affect the eligibility of the individual; and
 - (ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.
- (c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual state.

6. Words should be read in the context of the entire statute and in light of the statute's general purpose. *State v. Fleming*, 19 S.W.3d 195, 197 (Tenn. 2000). One must then look to the entire statute, the entire statutory scheme in which the statute appears, and elsewhere to ascertain the General Assembly's intent and purpose. *State v. Walls*, 62 S.W.3d 199, 121 (Tenn. 2001).

7. A particular interpretation should not be applied to a statute if that interpretation would yield an absurd result. *State v. Fleming*, 19 S.W.3d 195, 197 (Tenn. 2000).

8. Where possible, we construe language used by the General Assembly in a manner that will not render it meaningless or mere surplusage. *Georgia v. C.S.B.*, 297 S.E.2d 260, 262 (1982)

9. Expungement of the records of first offender treatment of criminal defendants runs contrary to the intent and the practical operation of the First Offender Act. *US v. Knight*, 154 Fed.Appx. 798, 800, 2005 WL 3048774 (11th Cir. Nov, 2005); *Georgia v. C.S.B.*, 297 S.E.2d 260, 262 (1982)

10. Reading the statutes harmoniously and plainly, it is concluded that the ALJ erred in holding that all remnants of the three felony counts of theft to which Respondent pled guilty, and the guilty plea, have been erased from Respondent's record, as though these events never occurred.

11. Reading the statutes harmoniously and plainly, it is concluded that the ALJ erred in holding that Respondent's guilty plea to the three felony counts of theft is not a basis for revocation of Respondent's license.

12. Reading the statutes harmoniously and plainly, it is concluded that the ALJ erred in holding that Respondent's first offender treatment cannot be used to determine eligibility for a license that is required for employment.

13. Reading the statutes harmoniously and plainly, the intent of the mortgage loan originator licensing program is to establish and protect the soundness of the nationwide residential mortgage loan system.

14. Petitioner is required by state and federal law to ask and consider whether an applicant for a mortgage loan originator license has pled guilty to a felony offense.

15. Respondent is required by state and federal law to disclose a felony guilty plea on a mortgage loan originator license application.

16. Contrary to the conclusion of the ALJ, Petitioner did prove by a preponderance of the evidence that Respondent pled guilty to three felony counts of theft and did not disclose this

fact on her mortgage loan originator license application. Consequently, Petitioner did prove by a preponderance of the evidence that Respondent's mortgage loan originator license must be revoked.

17. Respondent pled guilty to three felony counts of theft that occurred within the context of her employment at a financial institution. This has direct bearing on whether she can be trusted to continue to work in the financial services sector as a mortgage loan originator.

18. The entry of the ALJ's Order Granting in Part and Denying in Part the Petition for Reconsideration on October 8, 2015, created no disadvantage or prejudice to the parties.

ORDER

The citizens of Tennessee are entitled to expect and trust in the honesty and law abiding conduct of the individuals authorized to engage in the business of mortgage loan origination in this state. The acts of Respondent as set forth above require action on the part of the Department of Financial Institutions in order to protect the public interest.

Upon careful review of the record in this matter, and due consideration of the brief and Motion filed by Petitioner, the Commissioner hereby reverses all portions of the Initial Order and the Order Granting in Part and Denying in Part the Petition for Reconsideration not expressly adopted by this Final Order.

THEREFORE, on the above findings of fact, conclusions of law, and the entire record in this matter, it is hereby **ORDERED AND ADJUDGED** the Petitioner's Motion is **GRANTED**. All portions of the Initial Order entered on September 2, 2016 and the Order Granting in Part and Denying in Part the Petition for Reconsideration on October 8, 2015, by Administrative Law Judge Kim Summers that are not expressly adopted by this Final Order are **REVERSED**. It is further **ORDERED** the Respondent's mortgage loan originator license, is

hereby **REVOKED**. This Final Order is made pursuant to TENN. CODE ANN. § 4-5-313 and marks the disposition of this matter.

NOTICE OF RECONSIDERATION AND APPEAL PROCEDURES

Within fifteen (15) days after the Order of Remand is entered, a party may file a Petition for Reconsideration of the Final Order with the Commissioner of Financial Institutions, in which the Petition shall state the specific reasons why the Order of Remand was in error. If no action is taken by the Commissioner of Financial Institutions within twenty (20) days of filing of the Petition for Reconsideration, the Petition is deemed denied. TENN. CODE ANN. § 4-5-317.

A party who is aggrieved by a decision in a contested case may seek judicial review of the Order of Remand by filing a petition for review in Davidson County Chancery Court within sixty (60) days after the entry of the Order of Remand, or if a Petition for Reconsideration is granted, within sixty (60) days of the entry date of the Order of Remand disposing of the Petition for Reconsideration. The filing of a Petition for Reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted. A reviewing court also may order a stay of the Order of Remand upon appropriate terms. TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IT IS SO ORDERED.

This 19th day of July, 2016.



Greg Gonzales, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via State messenger mail to Mark W. Kilpatrick, counsel for the Petitioner, Tennessee Department of Financial Institutions, Citizens Plaza, 400 Deaderick Street, 6th Floor, Nashville, Tennessee 37243, and via Certified Mail, Return Receipt Requested to the Respondent, Colleen M. Gilley, 68 Jays Way, Ringgold, Georgia 30736 this 20th day of July, 2016.

