

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

IN THE MATTER OF:

KENNETH DERRYBERRY

DOCKET NO. 03.06-106603J

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 **November 5, 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.

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

IN THE MATTER OF:

**Kenneth Edwin Derryberry,
Petitioner,**

Vs.

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

**DOCKET NO: 03.06-106603J
TDFI No.: 10-17-C**

INITIAL ORDER

This matter came to be heard on June 8, 2010, 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 (hereinafter "Commissioner"), pursuant to T.C.A. §4-5-301(d). Kenneth Edwin Derryberry (hereinafter "Petitioner") was represented by attorney K. David Waddell. The Compliance Division of the Department of Financial Institutions (hereinafter "Respondent") was represented by attorneys Joseph A. Schmidt and Jera Bradshaw. The record was closed on October 14, 2010, when all post-hearing materials were submitted by the parties.

ISSUE FOR CONSIDERATION

Did Respondent properly deny Petitioner's application for a Mortgage Loan Originator's license because of his felony convictions on November 29, 1990?

SUMMARY OF DETERMINATION

After consideration of the pleadings, argument of counsel, and the record as a whole, it is determined that Respondent's decision denying Petitioner's Mortgage Loan Originator's license

application should be upheld. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner was issued a Registration Certificate (Number 8611) to engage in the business of a mortgage loan originator on March 23, 2005. Petitioner's Registration Certificate expired by operation of law on January 15, 2010¹. Previously, the Tennessee Mortgage Act did not require applicants to furnish fingerprints and authorize a criminal history background check as prerequisites for registration as a mortgage loan originator. The Tennessee Mortgage Act now has this requirement.
2. On December 1, 2009, Petitioner filed an application for a Mortgage Loan Originator's license with Respondent pursuant to T.C.A. § 45-13-302(b). In accordance with new requirements, Petitioner authorized a criminal history background check and supplied his fingerprints.
3. Petitioner's criminal history background check revealed Petitioner pled guilty to, and was convicted of four felony counts of violating 18 U.S.C. § 1344 and 18 U.S.C. § 657 (bank fraud and embezzlement) on November 29, 1990 in the criminal matter of the *United States of America v. Kenneth Edwin Derryberry*, in the federal district court for the Western District of Tennessee, Case Number 90-20183-01-TU. Petitioner was sentenced to eighteen (18) months of imprisonment, ordered to serve two years of supervised release, and ordered to pay one hundred fifty-five thousand twenty-six dollars and twenty-seven cents (\$155,026.27) in restitution.
4. Petitioner's convictions on November 29, 1990, are all felonies and all involve dishonesty.

¹ The Tennessee Mortgage Act has been amended and certificate of registration are no longer issued. Now mortgage loan originators must secure a license under the act.

5. By letter dated January 15, 2010, Respondent denied Petitioner's licensure application due to these felony convictions. Petitioner requested a hearing on the denial of his application pursuant to T.C.A. §45-13-302(d).

6. The sole basis for the denial of Petitioner's application for a Mortgage Loan Originator's license was the felony convictions noted above. It is not disputed that Petitioner is otherwise qualified and has had an exemplary career since these convictions.

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...;

(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. Emphasis added.

4. 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....”

5. 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.

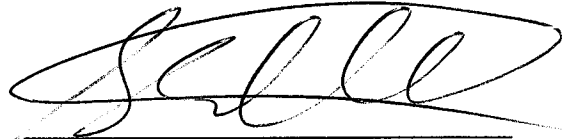
ANALYSIS

The statutory requirements found in the Tennessee Mortgage Act are absolute. If an

applicant has been convicted of or pled guilty or *nolo contendere* to **any** felony within seven years prior to application, the Commissioner **must** deny the application. If an applicant **has ever** been convicted of or pled guilty or *nolo contendere* to a felony that involved an act of fraud, dishonesty or a breach of trust or money laundering the Commissioner **must** deny the application. The legislature made these requirements absolute, and the Commissioner has no discretion to circumvent them.

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

This Order entered and effective this 21ST day of OCTOBER, 2010.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 21ST day of OCTOBER 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 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.