

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER

IN THE MATTER OF:

EARNEST E. WELLS, SR.

DOCKET NO. 03.06-106393J

**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 **October 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, 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>EARNEST EUGENE WELLS, SR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>APD Docket No.: 03.06-106393J</b>
	)	<b>TDFI No.: 09-193-C</b>
<b>TENNESSEE DEPARTMENT OF</b>	)	
<b>FINANCIAL INSTITUTIONS,</b>	)	
<b>COMPLIANCE DIVISION,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER OF DEFAULT AND INITIAL ORDER**

This matter came to be heard on July 9, 2010 (07/09/10), at nine o'clock (9:00) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219, before Administrative Judge Steve R. Darnell, assigned to the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), pursuant to Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 4-5-301(d).

The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter "Respondent") was represented by Joseph A. Schmidt and Eric E. Rogers, Staff Attorneys with the Tennessee Department of Financial Institutions (hereinafter "Department"). Earnest Eugene Wells, Sr. (hereinafter "Petitioner") was represented by attorney Curtis D. Johnson, Jr.

## **ORDER OF DEFAULT**

1. The record demonstrates that the Respondent mailed the Petitioner, via United States Certified Mail, Return Receipt Requested, and via United States First Class Mail, postage prepaid, a "Motion Requesting the Assignment of an Administrative Judge to Conduct Contested Case" on February 9, 2010 (02/09/10).

2. The record demonstrates that an order was entered on February 24, 2010 (02/24/10), setting this matter for hearing on April 1, 2010 (04/01/10), at nine thirty (9:30) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219. True and correct copies of the aforementioned Order were mailed to the Petitioner and to the Respondent's attorney at their addresses of record on file in this proceeding.

3. The record demonstrates that Curtis D. Johnson, Jr., attorney for the Petitioner, made an appearance by letter dated March 24, 2010 (03/24/10), and submitted a copy to the Commissioner, and the Respondent's attorney, and requested a continuance of the previous hearing date.

4. The record demonstrates an order was entered on March 30, 2010 (03/30/10), granting the Petitioner's request for a continuance of the hearing date for good cause shown (over the Respondent's objections) and setting this matter for hearing on June 8, 2010 (06/08/10), at nine thirty (9:30) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219. True and correct copies of the aforementioned Order were mailed to the Petitioner's attorney and to the Respondent's attorney at their addresses of record on file in this proceeding.

5. The record demonstrates that an order was entered on June 8, 2010 (06/08/10), granting the Petitioner's second request for a continuance of the hearing date for good cause shown (over the Respondent's objections) and setting this matter for hearing on July 9, 2010 (07/09/10), at nine thirty (9:30) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219. True and correct copies of the aforementioned Order were mailed to the Petitioner's attorney and to the Respondent's attorney at their addresses of record on file in this proceeding.

6. The record demonstrates that Curtis D. Johnson, Jr., attorney for the Petitioner, sent Joseph A. Schmidt, attorney for the Respondent, an email on July 8, 2010 (07/08/10), providing written notice that the Petitioner would not appear at the hearing to oppose the Commissioner's denial of the Petitioner's application for a license to lawfully engage in the business of a mortgage loan originator and authorizing the Respondent's attorneys to make the aforementioned representation to the Administrative Judge hearing this case.

7. The record demonstrates that Eric E. Rogers was present at the hearing on behalf of the Respondent.

8. The record demonstrates that the Petitioner and his attorney did not attend or participate at the hearing of this matter after due notice thereof.

9. The record demonstrates that Eric E. Rogers, attorney for the Respondent, made an oral motion at the hearing to hold the Petitioner in default due to the Petitioner's failure to attend or participate at the hearing after due notice thereof, to conduct the hearing without the participation of the Petitioner, and to dismiss all issues on which the Petitioner bears the burden of proof pursuant to TENN. CODE ANN. § 4-5-309 and the Official Compilation Rules &

Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.") 1360-04-01.15 (2004).

10. The record demonstrates that Respondent's oral motion was granted and Petitioner was held in default for failure to attend or participate at the hearing after due notice thereof. This contested case proceeded without the participation of the Petitioner, and the Administrative Judge dismissed all issues to which the Petitioner bears the burden of proof pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. 1360-04-01.15 (2004).

#### **NOTICE OF DEFAULT**

**NOTICE IS HEREBY GIVEN THE PETITIONER THAT THE PETITIONER HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR OR PARTICIPATE AT A HEARING ON THE MERITS AFTER RECEIVING DUE NOTICE THEREOF. TENN. CODE ANN. § 4-5-309. THE PETITIONER, WITHIN FIFTEEN (15) DAYS AFTER ENTRY OF THIS INITIAL ORDER, MAY FILE A PETITION FOR RECONSIDERATION, STATING THE SPECIFIC GROUNDS FOR SETTING THE DEFAULT ASIDE, PURSUANT TENN. CODE ANN. § 4-5-317. THE PETITION FOR RECONSIDERATION MUST BE FILED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 8<sup>TH</sup> AVENUE NORTH, 8<sup>TH</sup> FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. IF THE PETITIONER FAILS TO FILE A PETITION FOR RECONSIDERATION OR OTHERWISE FAILS TO APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW.**

#### **INITIAL ORDER**

This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, initiated by the Petitioner and seeking an Initial Order requiring the Commissioner to issue the Petitioner a license to lawfully engage in the business of a mortgage loan origination pursuant to TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of the "Tennessee Residential Lending, Brokerage and Servicing Act" (hereinafter "Tennessee Mortgage Act").

After consideration of the pleadings, argument of counsel, and the record as a whole, it is

the determination of this Administrative Judge that an Initial Order should be entered holding the Petitioner in **DEFAULT** for failing to attend or participate at the hearing of this matter after due notice thereof, **DISMISSING** all issues on which the Petitioner had the burden of proof, and **UPHOLDING** the Commissioner's decision to deny the Petitioner's application for a license to lawfully engage in the business of a mortgage loan originator under TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of the Tennessee Mortgage Act. This conclusion is based upon the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

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

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

13. The Petitioner is a natural person with a last known personal address of 189 Rogers Wood Cove, Collierville, Tennessee 38017-2383.

14. On or about November 10, 2009 (11/10/09), the Respondent received a properly completed licensure application on behalf of the Petitioner. The Petitioner submitted said licensure application with the Respondent in order to obtain a license to lawfully engage in the business of a mortgage loan originator pursuant to TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of the Tennessee Mortgage Act.

15. In a letter dated December 21, 2009 (12/21/09), the Commissioner denied the Petitioner's licensure application, provided written notice of the grounds supporting the denial,

and provided written notice of the Petitioner's right to request a hearing pursuant to TENN. CODE ANN. § 45-13-302(d) of the Tennessee Mortgage Act.

16. According to the aforementioned letter referenced in paragraph fifteen (15), the Commissioner denied the Petitioner's licensure application because a criminal history background investigation revealed that the Petitioner had pled guilty to bank fraud.

17. In a letter dated December 28, 2009 (12/28/09), from the Petitioner, and addressed to the Commissioner, the Petitioner stated "I am in receipt of the State's denial of my 2010 Mortgage Loan Originator's License. Pursuant to TN Code Ann. 45-13-302(d), I am requesting a hearing to appeal this denial."

18. The record demonstrates that the Petitioner and his attorney did not attend or participate at the hearing of this matter on July 9, 2010 (07/09/10) after due notice thereof.

19. The record demonstrates that Curtis D. Johnson, Jr., attorney for the Petitioner, sent Joseph A. Schmidt, attorney for the Respondent, an email on July 8, 2010 (07/08/10), providing written notice that the Petitioner would not appear at the hearing to oppose the Commissioner's denial of the Petitioner's application for a license to lawfully engage in the business of a mortgage loan originator and authorizing the Respondent's attorneys to make the aforementioned representation to the Administrative Judge at the hearing.

#### **CONCLUSIONS OF LAW**

20. TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of 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..."

21. TENN. CODE ANN. § 45-13-302(c)(2)(A) (Supp. 2009) of the Tennessee Mortgage Act states that no mortgage loan originator license shall be issued unless the Commissioner makes a finding that the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign, or military court: A) during the seven (7) year period preceding the date of application for a mortgage loan originator license; or B) at any time preceding such date of application if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

22. TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act states, in pertinent part, 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....”

23. TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) 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....”

24. However, if the Commissioner does not find the applicant so qualified, the Commissioner shall notify the applicant in writing stating the basis for denial pursuant to TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act.

25. 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 pursuant to TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act.



26. 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 as required by TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act.

27. At the hearing, the burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual as required by TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act.

28. TENN. CODE ANN. § 4-5-309(a) states “[i]f a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.”

29. TENN. CODE ANN. § 4-5-309(b) states, in pertinent part, that “[I]f the proceedings are conducted without the participation of the party in default, the administrative judge or hearing officer, hearing the case alone, shall include in the initial order a written notice of default, otherwise, the agency, sitting with the administrative judge or hearing officer, shall include such written notice of default in the final order....”

30. TENN. CODE ANN. § 4-5-309(c) states that “[a] party may petition to have a default set aside by filing a timely petition for reconsideration as provided in § 4-5-317.”

31. TENN. CODE ANN. § 4-5-309(d) states “[i]f a party fails to file a timely petition for reconsideration or the petition is not granted, the administrative judge or hearing officer, sitting alone, or agency, sitting with the administrative judge or hearing officer, shall conduct any

further proceedings necessary to complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.”

32. TENN. COMP. R. & REGS. 1360-04-01-.15(1)(a) (2004) states, in pertinent part, that “[t]he failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309....”

33. TENN. COMP. R. & REGS. 1360-04-01-.15(1)(d) (2004) states “[i]f the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1360-4-1-.06, subsections (2)(a) through (2)(d), where appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.”

34. TENN. COMP. R. & REGS. 1360-04-01-.15(2)(a) (2004) states “[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.”

35. TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act places the burden of proof on the Petitioner to prove by a preponderance of the evidence that the Petitioner is entitled to a mortgage loan originator license.

36. The record demonstrates that Curtis D. Johnson, Jr., attorney for the Petitioner, sent Joseph A. Schmidt, attorney for the Respondent, an email on July 8, 2010 (07/08/10), providing written notice that the Petitioner would not attend the hearing to oppose the

Commissioner's denial of the Petitioner's application for a license to lawfully engage in the business of a mortgage loan originator and authorizing the Respondent's attorneys to make the aforementioned representation to the Administrative Judge at the hearing.

37. The record demonstrates that the Petitioner and his attorney did not attend or participate at the hearing of this matter after due notice thereof.

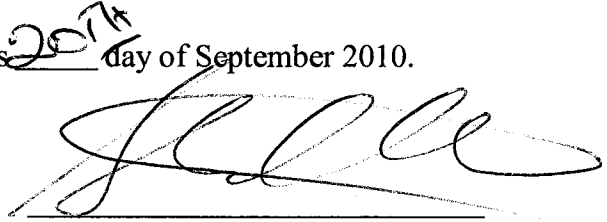
38. The Petitioner's failure to attend or participate at the hearing of this matter after due notice thereof is grounds for holding the Petitioner in default. Upon entry in the record of the default of the Petitioner at a hearing, the charges shall be dismissed as to all issues on which the Petitioner bears the burden of proof. TENN. CODE ANN. § 45-13-302(d) (Supp. 2009) of the Tennessee Mortgage Act places the burden of proof on the Petitioner to prove by a preponderance of the evidence that the Petitioner is entitled to a mortgage loan originator license.

39. The findings of fact and conclusions of law as stated in paragraphs one (1) through thirty-eight (38), incorporated by reference as though specifically set forth herein, are sufficient to establish that the Petitioner failed to carry the burden of proving by a preponderance of the evidence that the Petitioner is entitled to a mortgage loan originator license under TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of the Tennessee Mortgage Act.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Petitioner is hereby held in **DEFAULT** for failing to attend or participate at the hearing of this matter after due notice thereof, that all issues on which the Petitioner had the burden of proof are hereby **DISMISSED**, and that the Commissioner's decision to deny the Petitioner's application to lawfully engage in the business of a mortgage loan originator is hereby **UPHELD** due to the Petitioner's failure to carry the burden of proving by a preponderance of the evidence that the

Petitioner is entitled to a mortgage loan originator license under TENN. CODE ANN. § 45-13-301(a) (Supp. 2009) of the Tennessee Mortgage Act.

This Initial Order entered and effective this 20<sup>th</sup> day of September 2010.



Steve R. Darnell  
Administrative Judge

Filed in the Administrative Procedures Division of the Tennessee Department of State  
this 20<sup>th</sup> day of September 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.