

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
FINANCIAL INSTITUTIONS,**

Petitioner,

v.

LEWISBURG QUICK CASH,, *et al,*

Respondents.

**APD Case No. 03.00-210849J *et al*
TDFI No. 20-193 *et al.***

INITIAL ORDER

These matters were heard *de novo* on August 4, 2021, in Nashville, Tennessee, before Administrative Judge Claudia Padfield, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Commissioner of the Tennessee Department of Financial Institutions (“Department”). Troy McPeak, Associate General Counsel, represented Petitioner, the Department. Respondents, Lewisburg Quick Cash *et al*, were not present nor was an attorney present on behalf of Respondents. The date by which an INITIAL ORDER is due in these matters is November 4, 2021.

NOTICE OF DEFAULT

Petitioner moved for default based on failure of Respondents, or a representative on their behalf, to appear at the scheduled hearing after receiving proper notice thereof. In support of the motion, Respondents were successfully served with the MOTION REQUESTING THE ASSIGNMENT OF AN ADMINISTRATIVE JUDGE TO CONDUCT CONTESTED CASE¹ to the addresses of record on July 6, 2021, but did not file any responses.

¹ These documents are typically styled “Notice of Hearing and Charges”. While the Department chose to style these matters differently, the document filed contains the necessary notice regarding the alleged facts, applicable law, and sanctions sought as set out in TENN. CODE ANN. § 4-5-307.

Pursuant to the ORDER SETTING PRE-HEARING CONFERENCE issued on April 28, 2021, a telephone PRE-HEARING CONFERENCE was held on May 26, 2021. Greg Frasier, as the owner of the three entities in question, participated in the PRE-HEARING CONFERENCE on behalf of Respondents. Mr. Frasier did not raise any issues regarding proper service at the PRE-HEARING CONFERENCE. By agreement of the parties, the hearing was scheduled for August 4, 2021. Respondents were properly provided with the ORDER SETTING HEARING issued on May 26, 2021.

The RECORD indicates that service was legally sufficient in accordance with TENN. CODE ANN. § 4-5-307 and TENN. COMP. R. & REGS. 1360-04-01-.06 and 1360-04-01-.15(c). While Respondents have participated in some proceedings, Respondents have failed to participate in every step of the proceedings. The Department's MOTION FOR DEFAULT was **GRANTED**. Respondents were held in **DEFAULT** pursuant to TENN. CODE ANN. § 4-5-309, and the Department was permitted to proceed on an uncontested basis.

INITIAL ORDER

The subject of this hearing was the proposed disciplinary action of Respondents and entry of an Order denying Respondent's license renewals for violations of TENN. CODE ANN. §§ 45-15-106, 45-17-104(a), 45-17-106(a)(2), and 45-17-110(a).

After consideration of the evidence, testimony of the witness, arguments of counsel, and the entire record in this matter, it is determined that Respondents' acts and conduct constitute violations under TENN. CODE ANN. §§ 45-15-106, 45-17-104(a), 45-17-106(a)(2), and 45-17-110(a) such that the revocation of their licenses under the Tennessee Title Pledge Act and the Tennessee Deferred Presentment Services Act is appropriate. It is hereby **ORDERED** that the Department's denial of Respondents' license renewal applications is **UPHELD**. It is **ORDERED** that Respondents' license renewal applications are properly **DENIED**, and all licenses are **REVOKED**.

SUMMARY OF THE EVIDENCE

David Axford, Chief Administrator for Safety and Soundness, Compliance Division of the Tennessee Department of Financial Institutions, testified at the hearing on behalf of the Department. Three exhibits were entered into evidence. COLLECTIVE EXHIBIT 1 consists of the Affidavit and Attachments of Tommy R. Hardwick filed on June 16, 2021, pursuant to TENN. CODE ANN. § 4-5-313. COLLECTIVE EXHIBIT 2 consists of the Nationwide Multistate Licensing System & Registry (NMLS) Financial Statements for Respondents. COLLECTIVE EXHIBIT 3 consists of the Affidavit of Service and Attachments.

BURDEN OF PROOF

The Department argued at the outset of the hearing that Respondents have the burden of proof in these matters. In support of their position, the Department points to the eligibility requirements for license under TENN. CODE ANN. § 45-15-106. Subsection (f) states, in pertinent part, “In the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant.” In further support of their position, the Department also points to the language under TENN. CODE ANN. § 45-17-113(c) which states, in pertinent part, “In the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant.” The filing requirements for both Acts are different for an entity seeking a license than for a business that already possesses a license.

Respondents have been charged with violations under title 45, chapters 15 and 17. Chapter 15 does not include a definition of applicant or licensee. Respondents meet the definition of title pledge lender as defined in TENN. CODE ANN. § 45-15-103(11), which states, “‘Title pledge lender’ means any person engaged in the business of making title pledge agreements or property pledge agreements with pledgors.” Respondents meet the definition of

licensee as defined in TENN. CODE ANN. § 45-17-102(5), which states, “‘Licensee’ means a person licensed to provide deferred presentment services pursuant to this chapter.”

In administrative proceedings, the burden of proof rests on the one seeking relief or the party wishing to change the status quo. “The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to the issue.” TENN. COMP. R. & REGS. 1360-04-01-.03(7). “It is well established in Tennessee case law that the burden of proof is on the party having the affirmative of an issue, and that burden does not shift.” *Big Fork Mining Co. v. Tennessee Water Quality Control Bd.*, 620 S.W.2d 515, 520 (TENN. CT. APP. 1981). Here, the Department is seeking relief in that they wish to have their denials of Respondents’ license renewal applications upheld. In cases involving state actions against a license – whether they be for denial, revocation, or suspension – the state actor has the burden of proof. *Estrin v. Moss*, 430 S.W.2d 345, 353-354 (TENN. 1968); *see also Martin v. Sizemore*, 78 S.W.3d 249, 267 (TENN. 2001). The right to engage in a chosen profession or occupation without unreasonable governmental interference or deprivation is both a property and liberty interest protected by the Tennessee Constitution. *Livesay v. Tennessee Bd. of Examiners in Watchmaking*, 322 S.W.2d 209 (TENN. 1959). That the licensee had to request a hearing, after the Department denied the renewal applications, in order to contest the Department’s actions does not change who has the burden of proof. *Estrin*, at 353-354.

Respondents already held licenses such that they were licensees and title pledge lenders. Upon issuance of those licenses, Respondents had property and liberty interests in maintaining those licenses. The hearing was the first opportunity available to Respondents to challenge the Department’s decisions regarding their licenses. The denial of the renewal applications changes the present state of affairs – that Respondents were properly licensed to conduct business under the Tennessee Title Pledge Act and the Tennessee Deferred Presentment Services Act. While

the Department contends Respondents are applicants such that they met said definition and the burden shifts to them, the application statutes differentiate between an entity that already has a license or is a title pledge holder and one is initially seeking to obtain a license or title pledge holder status. A due process right has attached to the licenses already issued such that the Department has the burden of proving why those licenses should not be renewed.

FINDINGS OF FACT

1. Respondents were previously granted licensure by the Division under the Tennessee Title Pledge Act and the Tennessee Deferred Presentment Services Act; the exact date of the initial licensures was not submitted into evidence and is not part of the RECORD. Greg Frasier is the owner of Lewisburg Quick Cash, Shelbyville Quick Cash, and Columbia Quick Cash. A separate license is required for each location under both referenced Acts, and Respondents were granted the six licenses in question in the instant cases.

2. Connie Frazier is the agent for service of process pursuant to TENN. CODE ANN. § 45-17-105 for each issued license.

3. On or about December 5, 2019, Respondents submitted renewal applications to the Division pursuant to TENN. CODE ANN. §§ 45-15-106 and 45-17-110. Renewal applications are required yearly under both Acts.

4. Each renewal application is required to include a “balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm.” TENN. CODE ANN. §§ 45-15-106(d)(2) and 45-17-106(a)(2). None of Respondents’ renewal applications included the necessary documentation from either a certified public accountant or a public accounting firm.

5. On or about December 9, 2019, the Division notified Respondents that the applications were incomplete as they did not include the required documentation from either a certified public accountant or a public accounting firm.

6. Respondents supplemented their renewal applications on December 19, 2019, by providing the Division with documentation from Hardwick and Company, a public accounting firm.

7. Tommy R. Hardwick is a certified public accountant with Hardwick and Company.

8. In reviewing the documentation Respondents submitted to the Division that Respondents alleged was produced by Mr. Hardwick and his firm, Mr. Hardwick responded to the Division, "I did not prepare any of these compilation reports or financial statements, and I have not done any work for these corporations. The use of my name or that of my firm, Hardwick and Company, PA was not authorized." COLLECTIVE EXHIBIT 1, p. 2.

9. Respondents willingly and knowingly made a materially false representation to the Department with the intent to deceive the Department.

10. The Department denied all six of Respondents' renewal applications on or about July 17, 2020.

11. Respondents timely filed a written request for a hearing pursuant to TENN. CODE ANN. §§ 45-15-106(f) and 45-17-113.

APPLICABLE LAW

1. TENN. CODE ANN. § 4-5-101 et. al (Uniform Administrative Procedures Act).
2. TENN. CODE ANN. § 4-5-307, which states, as follows:

In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. (b) In all proceedings the notice shall include: (1) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes

and rules involved; and (3) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) days prior to the time set for the hearing.

3. TENN. CODE ANN. § 4-5-320, which states, in pertinent part, as follows:

(c) No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct that warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

4. TENN. CODE ANN. § 45-15-103 provides the following pertinent definition:

(11) "Title pledge lender" means any person engaged in the business of making title pledge agreements or property pledge agreements with pledgors.

5. TENN. CODE ANN. § 45-15-106 provides, in pertinent part:

(d)(2) A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm not affiliated with the applicant. For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public account or public accounting firm not affiliated with the applicant, accompanied by a projected income statement demonstrating that the title pledge lender will have adequate capital after payment of start-up costs.

6. TENN. CODE ANN. § 45-17-102 provides the following pertinent definition:

(5) "Licensee" means a person licensed to provide deferred presentment services pursuant to this chapter.

7. TENN. CODE ANN. § 45-17-104(a) provides:

(a) To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant shall have a minimum net worth determined in accordance with generally accepted accounting principles of at least twenty-five thousand dollars (\$25,000) available for the operation of each location; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether the qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant:

(B) The competence, experience, integrity and financial ability of any person who is a director, officer, or ten percent (10%) or more shareholder of the applicant or owns or controls the applicant; and

(C) Any record, on the part of the applicant, or any person referred to in subdivision (a)(2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice that constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(b) The requirements set forth in subdivisions (a)(1) and (2) are continuing in nature.

8. TENN. CODE ANN. § 45-17-106(a)(2) provides:

A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm. For a newly created entity, the commissioner may accept a balance sheet only, accompanied by a projected income statement demonstrating that the license will have adequate capital after payment of start-up costs.

9. TENN. CODE ANN. § 45-17-113 provides:

Licenses issued pursuant to this chapter shall expire on December 31. A license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of § 45-17-104 and the payment to the commissioner annually, between November 1 and December 31, of the nonrefundable supervision fee, as provided in § 45-1-118(i). A licensee making timely and complete application and

payment for renewal of its license shall be permitted to continue to operate under its existing license until its application is approved or denied.

10. TENN. CODE ANN. § 45-17-113 provides:

(a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In any hearing, the burden of providing that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act.

CONCLUSIONS OF LAW

Mr. Axford provided credible testimony regarding Respondents' actions and licensure history. The testimony of Tommy R. Hardwick through his properly submitted affidavit is found to be credible.

Respondents knowingly and willfully made misrepresentations on their license renewal applications with the intent to deceive the Department. Respondents failed to submit complete license renewal applications that satisfied the licensing requirements and qualifications under the Tennessee Title Pledge Acts and the Tennessee Deferred Presentment Services Act.

The Department has met its burden of proof by a preponderance of the evidence that Respondents' license renewal applications should be denied, and the licenses should be revoked. The Department has proven by a preponderance of the evidence that Respondents' actions were

in violation of TENN. CODE ANN. §§ 45-15-106, 45-17-104(a), 45-17-106(a)(2), and 45-17-110(a).

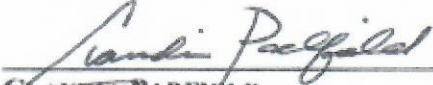
ORDER

It is therefore **ORDERED** that the Department's actions in the denial of Respondents' renewal applications are **UPHELD**. Respondents' licenses as previously issued under the Tennessee Title Pledge Act and the Tennessee Deferred Presentment Services Act are **NOT RENEWED** and are hereby **REVOKED**.

This INITIAL ORDER, imposing revocation of licensure against Respondents, is entered to protect the public and consumers in the State of Tennessee, consistent with the purposes fairly intended by policy and provisions of the Law.


It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **24th day of September, 2021**.



CLAUDIA PADFIELD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **24th day of September, 2021**.



STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS (COMMISSIONER)**, called an Initial Order, was entered on **September 24, 2021**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than **October 11, 2021**. A new 15 day period for the filing of an appeal to the **COMMISSIONER** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be received by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSIONER** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **October 11, 2021**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The COMMISSIONER decides to Review the Initial Order:** In addition, the **COMMISSIONER** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSIONER** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be received by APD within 7 days of the date of entry of the Initial Order, which is no later than **October 1, 2021**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102