

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

IN THE MATTER OF:

GARY GARNIK ZAKARYAN,
Petitioner,

v.

**TENNESSEE DEPARTMENT OF
FINANCIAL INSTITUTIONS,**
Respondent.

APD Case No. 03.00-231423J

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came to be heard on April 14, 2023, at nine o'clock (9:00) a.m., central time, via WebEx video/audio conference before Administrative Law 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 Troy A. McPeak and Eric E. Rogers, Staff Attorneys with the Tennessee Department of Financial Institutions (hereinafter "Department"). Gary Garnik Zakaryan (hereinafter "Petitioner") did not appear.

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, the Notice of Charges and Opportunity for Hearing on March 15, 2023.

2. The record demonstrates that an order was entered on March 31, 2023, setting this matter for a hearing on April 14, 2023, at nine o'clock (9:00) a.m., central time, via WebEx video/audio conference. True and correct copies of the order were emailed to the Petitioner and the Respondent at their email address of record on file in this proceeding.

3. The record demonstrates that Troy A. McPeak and Eric E. Rogers were present at the hearing on behalf of the Respondent.

4. The Petitioner responded multiple times by email regarding the Notice of Charges and Opportunity for Hearing but did not attend or otherwise participate in the hearing of this manner after due notice thereof.

5. The record demonstrates that Troy A. McPeak, 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 of Rules & Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.") 1360-04-01.15 (2004).

6. The record demonstrates that the 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 TO TENN. CODE ANN. § 4-5-317. THE PETITION FOR RECONSIDERATION MUST BE FILED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, VIA EMAIL TO APD.Filings@tn.gov OR VIA FAX TO 615-741-4472. ALTERNATIVELY, A PETITIONER FOR RECONSIDERATION CAN BE MAILED TO 312 ROSA L. PARKS AVENUE NORTH, 8TH FLOOR, WILLIAM SNODGRASS TENNESSEE 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

7. 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 mortgage loan origination pursuant to TENN. CODE ANN. § 45-13-301(a) of the “Tennessee Residential Lending, Brokerage and Servicing Act” (hereinafter “Tennessee Mortgage Act”).

8. 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 in 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 pursuant to TENN. CODE ANN. § 45-13-301(a) of the Tennessee Mortgage Act. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

9. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Mortgage Act and any rules promulgated pursuant to TENN. CODE ANN. § 45-13-103 of the Tennessee Mortgage Act and TENN. CODE ANN. § 45-1-104 relative to all of Title 45.

10. The Respondent is the lawfully designated representative through which the Commissioner, pursuant to TENN. CODE ANN. § 45-1-107, regulates any and all persons subject to the Tennessee Mortgage Act.

11. The Petitioner is a natural person with a last known address of 1316 North Pacific Avenue, Glendale, California 91202.

12. On or about December 1, 2017, the Respondent received an application on behalf of the Petitioner. The Petitioner submitted the application to 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 of the Tennessee Mortgage Act.

13. As part of the application process, the Petitioner authorized the Commissioner and/or the Nationwide Multistate Licensing System (“NMLS”) to obtain an independent credit report from a consumer reporting agency pursuant to TENN. CODE ANN. § 45-13-302(a)(4)(A) of the Tennessee Mortgage Act.

14. After receiving the Petitioner’s authorization to obtain a credit report, the Respondent received a copy of the Petitioner’s credit report and reviewed said credit report.

15. Based upon information contained in the Petitioner’s credit report, the Respondent forwarded the Petitioner a letter dated January 10, 2018, requesting information and/or documentation regarding certain item(s) on said credit report. Additionally, the letter

stated that if the Petitioner failed to respond within thirty (30) days, then the application may be considered incomplete which could serve as a basis to deny Petitioner's application.

16. In a letter dated March 14, 2018, the Commissioner denied the application because the Petitioner had failed to submit the credit report information and documentation and had failed to submit a complete application for licensure as a mortgage loan originator as required by TENN. CODE ANN. § 45-13-302(c) of the Tennessee Mortgage Act. The letter provided written notice of the grounds supporting the denial and provided written notice of the Applicant's right to submit a written demand for a hearing pursuant to TENN. CODE ANN. § 45-13-302(d) of the Tennessee Mortgage Act.

17. In an e-mail dated March 22, 2018, the Petitioner submitted a written demand for a hearing pursuant to TENN. CODE ANN. § 45-13-302(d) of the Tennessee Mortgage Act.

18. The record demonstrates that the Petitioner did not attend or participate in the hearing of this matter on April 14, 2023, after due notice thereof.

CONCLUSIONS OF LAW

19. TENN. CODE ANN. § 45-13-301(a) 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...."

20. Pursuant to TENN. CODE ANN. § 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. An individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition;

(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.

21. TENN. CODE ANN. § 45-13-302(d) of the Tennessee Mortgage Act states:

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 under this subsection (d) 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.

22. 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.”

23. TENN. CODE ANN. § 4-5-309(b) states, in pertinent part, “[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...”

24. 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.”

25. 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.”

26. TENN. COMP. R. & REGS 1360-04-01-.15(1)(a) 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...”

27. TENN. COMP. R. & REGS 1360-04-01-.15(1)(d) 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 1360-04-01-.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.”

28. TENN. COMP. R. & REGS 1360-04-01-.15(2)(a) 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.”

29. TENN. CODE ANN. § 45-13-302(d) 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.

30. The record demonstrates that the Petitioner did not attend or otherwise participate in the hearing of this matter after due notice thereof.

31. 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 the 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) 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.

32. The findings of fact and conclusions of law as stated in paragraphs one (1) through thirty-one (31), 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) 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 for a license 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) of the Tennessee Mortgage Act.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **1st day of May, 2023**.



STEVE R. DARNELL
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 **1st day of May, 2023**.

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 **May 1, 2023**. 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 **May 16, 2023**. 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 **May 16, 2023**. 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 **May 8, 2023**. 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.

**IN THE MATTER OF:
GARY GARNIK ZAKARYAN V. TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

APD CASE No. 03.00-231423J

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