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September 30, 2020

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**RE: TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS V. ATLAS
MORTGAGE PARTNERS, LLC, APD Case No. 03.06-200381J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
FINANCIAL INSTITUTIONS,**

Petitioner,

v.

ATLAS MORTGAGE PARTNERS, LLC,

Respondent.

APD Case No. 03.06-200381J

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came to be heard *de novo* on August 18, 2020, via WebEx¹ video conference before Administrative Judge Rachel Waterhouse, assigned by the Secretary of State, Administrative Procedures Division, sitting on behalf of the Commissioner of the Tennessee Department of Financial Institutions (Department). Staff Attorneys Todd A. Staley and Eric E. Rogers represented the Department's Compliance Division (Petitioner). The Respondent, Atlas Mortgage Partners, LLC (Respondent), did not appear or participate in the hearing and no one appeared on the Respondent's behalf.

NOTICE AND ORDER OF DEFAULT²

Pursuant to Tenn. Code Ann. § 4-5-309, the Petitioner moved for default based on the failure of the Respondent, or an attorney on its behalf, to attend or participate in the scheduled hearing after receiving proper notice thereof.

The Petitioner served the Notice of Charges and Opportunity for Hearing by publication upon the Respondent. A notice ran for four (4) consecutive weeks on February 7, February 14,

¹ Due to continuing precautions relating to the COVID-19 Pandemic, the hearing was not be held in-person as originally noticed because state office buildings were not re-opened to the public and all in-person hearings had been suspended in favor of electronic hearings. The Petitioner's counsel agreed to a video conference hearing.

² On the hearing date, the Respondent did not call or connect to the WebEx meeting at any time during the roughly one-hour hearing, after receiving proper notice.

February 21, and February 28, 2020, in *The Leaf-Chronicle*, a newspaper of general circulation in Clarksville, Montgomery County, Tennessee, where the Respondent held its principal office.

On May 28, 2020, an Order Setting Hearing was entered and mailed to the parties setting this matter for a hearing on August 18, 2020, at 9:00 a.m. Central Time to be held at the Tennessee Tower in Conference Room H on the 3rd floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243. Thereafter, on August 5, 2020, an Order Setting Hearing By Video Conference, specifically WebEx, was entered and mailed to the parties setting the August 18, 2020, hearing via WebEx. The August 5, 2020, Order provided specific instructions and links for how to participate in the WebEx hearing. Both Orders were sent by first-class, U.S. Mail, to the last known address for the Respondent and were not returned to sender as undeliverable. Therefore, it is presumed under the law that the Orders were properly delivered.

Both Orders referred to above contained the language: “The parties are cautioned that any failure by either party to ‘participate in a pre-hearing conference, hearing or other stage’ of these proceedings, including compliance with the pre-hearing filing deadlines, may result in that party being held in default pursuant to Tenn. Code Ann. § 4-5-309.”

The facts established at the hearing demonstrate that the Notice of Hearing and Charges and service thereof upon the Respondent was legally sufficient in accordance with Tenn. Code Ann. § 4-5-307 and Tenn. Comp. R. & Regs. (Rule) 1360-04-01-.06.

Based on the failure of the Respondent to attend or participate in the hearing, pursuant to Tenn. Code Ann. § 4-5-309 and Rule 1360-04-01-.15, the Petitioner’s Motion For Default was GRANTED and the Respondent was held in DEFAULT. Pursuant to Rule 1360-04-01-.15(2)(b), the hearing was held on an uncontested basis.

INITIAL ORDER

The subject of the hearing was the Petitioner's allegations that the Respondent violated TENN. CODE ANN. § 45-13-401(7) of the Tennessee Residential Lending, Brokerage, and Servicing Act (Tennessee Mortgage Act). For the alleged violation, the Petitioner seeks refunds be made by the Respondent to the customers.

After consideration of the pleadings, argument of counsel, evidence admitted during the hearing, and the entire Record, this Initial Order is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

David Axford, Chief Investigator for the Department's Compliance Division, testified on behalf of the Petitioner. Six exhibits were entered into evidence during the hearing.

FINDINGS OF FACT

1. The Petitioner's Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Mortgage Act and any rules promulgated pursuant to the Tennessee Mortgage Act. TENN. CODE ANN. § 45-13-103.

2. The Petitioner is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Tennessee Mortgage Act. TENN. CODE ANN. § 45-13-105(3).

3. The Respondent was formerly licensed with the Department (License No. 112542) as a mortgage lender doing business in the state of Tennessee at 2515 Wilma Rudolph Blvd., STE 102, Clarksville, Tennessee 37040.

4. The Respondent was a domestic limited liability company with a principal address at 2515 Wilma Rudolph Blvd, STE 102, Clarksville, Tennessee 37040. The Respondent filed dissolution documents with the Tennessee Secretary of State on February 1, 2019.

5. On March 27, 2018, the Department began an on-site examination of the Respondent, which was completed on April 10, 2018.

6. The Respondent paid referral fees to Richard Jackson, who was not affiliated with the Respondent, involving a total of thirty-eight (38) residential mortgage loans in violation of TENN. CODE ANN. § 45-13-401(7) and the Real Estate Settlement Procedures Act, compiled at 12 U.S.C. § 2601 *et seq.*

7. Mr. Jackson resided in the eastern part of Tennessee and sent referrals for residential mortgage loans from that region to the Respondent. There were 38 instances throughout 2016 and 2017 where mortgage loan origination activity occurred and the Respondent paid Mr. Jackson a portion of the origination fees. This information was not included on Closing Disclosures provided to borrowers. Instead, Mr. Jackson was compensated by the Respondent by checks after the closings. The amount of fees paid to Mr. Jackson through these transactions total \$45,118.00.

8. The Respondent engaged in communications with Mr. Jackson in which the Respondent and Mr. Jackson discussed interest rates and origination fees similar to communications typically held between a mortgage lender and a mortgage loan originator.

9. Mr. Jackson was not a licensed mortgage loan originator sponsored by the Respondent or a mortgage loan broker licensed under the Act. At no time was there a sponsored relationship between the Respondent and Mr. Jackson that would permit the Respondent to pay Mr. Jackson a portion of the origination fee.

10. The Respondent has never filed the prescribed form or paid the sponsorship fee to sponsor Mr. Jackson as a mortgage loan originator affiliated with the Respondent, nor has Mr. Jackson applied for a mortgage broker license.

11. The Respondent and Mr. Jackson failed to meet the statutory requirements that would permit the Respondent to pay Mr. Jackson a portion of an origination fee to compensate Mr. Jackson for performing mortgage loan origination activities.

APPLICABLE LAW

1. TENN. CODE ANN. § 45-13-105(16)(A) provides that a mortgage loan originator, in pertinent part, “[m]eans an individual who for compensation or gain or in the expectation of compensation or gain: takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan...”

2. TENN. CODE ANN. § 45-13-301(a) requires, 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.”

3. TENN. CODE ANN. § 45-13-303 provides, in pertinent part, that “no mortgage loan originator license issued under this part is considered active unless the individual has also been sponsored by a licensed mortgage lender...”

4. TENN. CODE ANN. § 45-13-401(7) states that it is a violation of this chapter for any person subject to this chapter to:

Fail to comply with any other state or federal law, or rules or regulations promulgated under any state or federal law, applicable to any business authorized or conducted under this chapter, including, but not limited to, **the Real Estate Settlement Procedures Act, compiled in 12 U.S.C. § 2601 et seq. [emphasis added]**, the Truth In Lending Act, compiled in 15 U.S.C. § 1601 et seq., and the Equal Credit Opportunity Act, compiled in 15 U.S.C. §§ 1691-1691f;...

5. Regulations promulgated under the Real Estate Settlement Procedures Act, compiled in 12 U.S.C. § 2601 *et seq.*, specifically 12 CFR § 1024.14(b) (Regulation X) provide, in part, that no person shall give and no person shall accept any fee, kickback or other thing of

value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person.

6. TENN. CODE ANN. § 45-13-405(a) provides that:

If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter or any administrative rule issued pursuant to this chapter, the commissioner may take any or all of the following actions:

- (1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter;
- (2) Require the refund of any interest, fees or charges collected by the person in violation of this chapter or any administrative rule issued pursuant to this chapter;
- (3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter; or
- (4) Suspend or revoke any license issued under this chapter.

ANALYSIS AND CONCLUSIONS OF LAW

1. In accordance with Rules 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner proved by a preponderance of evidence the facts set forth in the above Findings of Facts.

2. The Petitioner has shown by a preponderance of the evidence that, while licensed with the Department, the Respondent violated the Tennessee Mortgage Act, specifically TENN. CODE ANN. § 45-13-401(7), by paying Mr. Jackson a portion of the origination fee in multiple incidences as a fee, kickback, or other thing of value when there was no sponsored relationship between Respondent and Mr. Jackson. The above-described conduct is a prohibited act and practice pursuant to the Real Estate Settlement Procedures Act.

3. TENN. CODE ANN. § 45-13-405(a)(2) allows for refunds to be made to affected customers for origination fees collected by the Respondent and paid to Mr. Jackson in violation of the Tennessee Mortgage Act.

4. From the foregoing, it is CONCLUDED and DETERMINED that the proof adduced at hearing provides adequate grounds for ordering refunds to be made to affected customers for origination fees collected by the Respondent and paid to Mr. Jackson in violation of the Tennessee Mortgage Act, and the Petitioner has shown that refunds in the amount of \$45,118.00 are appropriate.

JUDGMENT

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

a. The Respondent shall refund to the affected customers the fees collected by the Respondent and paid to Mr. Jackson in violation of the Tennessee Mortgage Act in the amount of \$45,118.00, which refunds shall be made by the Respondent coordinating with the Department's Compliance Division;

b. The Compliance Division shall provide to the Respondent a list of affected customers and the specific amount of fees relating to each; and

c. The Respondent shall pay the costs of this proceeding.

This Initial Order is entered to protect the public and consumers of mortgage products in 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 **30th day of September, 2020**.


RACHEL L. WATERHOUSE
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
30th day of September, 2020.



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

NOTICE OF FILING PROCEDURES

Due to the COVID-19 pandemic, APD has changed its filing procedures. Until further notice, filings should be made by **email** to APD.Filings@tn.gov or by **facsimile** to 615-741-4472. Paper filings should only be made by mail if a litigant has no access to either email or facsimile. If you are filing by email, documents should be saved in PDF format prior to filing. Each document to be filed must be a separate PDF. Only one filing method should be used. Please name PDFs for filing in the following format:

“APD CASE NUMBER YOUR NAME ABBREVIATED NAME OF DOCUMENT BEING FILED AGENCY NAME”

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case (**COMMISSIONER**), called an Initial Order, was entered on **September 30, 2020**. 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. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than **October 15, 2020**. 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 disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

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. Such an Appeal must be received by the 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**. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the **COMMISSIONER**, along with the specific reasons for your appeal. The APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **October 15, 2020**. 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 a stay must be received by the APD within 7 days of the date of entry of the Initial Order, which is no later than . *See* TENN. CODE ANN. § 4-5-316.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the **COMMISSIONER** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **COMMISSIONER** rendered a Final Order, the **COMMISSIONER** will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the **COMMISSIONER**; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the 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 (a) the date of entry of a Final Order; or (b) 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. 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.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the **COMMISSIONER** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **COMMISSIONER** rendered a Final Order, the **COMMISSIONER** will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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