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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA	:	PA DEPT OF BANKING
DEPARTMENT OF BANKING,	:	Docket No.: 080317 (ENF-ORD)
	:	
v.	:	
	:	
JAMES C. PLATTS.	:	
	:	

NOTICE OF RIGHT TO APPEAL

You, James C. Platts, are hereby notified that you have the right to appeal the attached Final Determination and Order (the "Order") issued by the Commonwealth of Pennsylvania Department of Banking, which adopts the Proposed Final Order of the Hearing Officer dismissing your appeal for failure to prosecute and maintaining the effectiveness of the Order of Prohibition.

If you wish to appeal the attached Order you must file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court within 30 days of the date of mailing of the attached Order, in accordance with and pursuant to Title 65 P.S. § 66.4(a). If you file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court, the petition for review must comply with Pennsylvania Rules of Appellate Procedure 1511 et seq.

Failure to file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court pursuant to the Pennsylvania Rules of Appellate Procedure will result in the attached Order becoming final and unappealable.

Please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You should consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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: Docket No.: 080317 (ENF-ORD)
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v.

JAMES C. PLATTS.

Final Determination and Order

Upon consideration of the pleadings, the testimony and exhibits presented at the hearing on this matter, the Proposed Report and Proposed Final Order dated May 29, 2009, issued by Hearing Officer Linda C. Barrett, Esquire, the Letter of Exceptions filed by Respondent, the Reply Brief filed by the Bureau and the record, the Proposed Final Order of the Hearing Officer Linda C. Barrett, Esquire is hereby **affirmed and adopted**. Respondent James Platts is in default of the orders of the Hearing Officer pertaining to the legal procedure regarding his appeal of the December 4, 2008 Order of Prohibition and therefore his appeal is dismissed.

I. Procedural Background

The Department issued an Order of Prohibition on December 4, 2008, barring Respondent from participating in the first or secondary mortgage loan business in Pennsylvania. On December 9, 2008, Respondent sent an appeal in the form of a letter to the Department's docketing office. The Department answered Respondent's appeal on December 24, 2008. On January 15, 2009, Steven Kaplan, Secretary of Banking, designated Victoria A. Reider, Executive Deputy Secretary, as the adjudicator (the

“Adjudicator”) in this matter in accordance with section 206 of the Administrative Code of 1929, 71 P.S. § 66. On February 12, 2009, Deputy Secretary Reider designated Linda Barrett to act as the presiding officer for the Department of Banking in this matter (the “Hearing Officer”). On February 25, 2009, the Department received a two-page letter from Respondent requesting that the Department withdraw the Order of Prohibition.

From February 27, 2009 through May 20, 2009, the Hearing Officer issued a total of four orders, dated February 27, 2009, March 19, 2009, April 23, 2009, and May 20, 2009. The February and March 2009 orders requested that Respondent file a pre-hearing statement by March 12, 2009, in anticipation of a pre-hearing conference call scheduled for March 13, 2009. On April 21, 2009, the Department filed a Motion to Compel Participation, and, in the Alternative, for Default Judgment. The April and May 2009 orders requested that Respondent file a response to the Department’s Motion to Compel and advised Respondent that failure to respond could result in a default judgment. Respondent failed to participate in a March 13, 2009, pre-hearing conference call. Respondent’s only written response to the Hearing Officer’s orders was a May 2, 2009, letter mailed to Department counsel. In the May 2, 2009, letter, Respondent requested that the Department withdraw the Order of Prohibition or postpone the hearing until January 2011.

The Hearing Officer held the hearing on its scheduled date of June 9, 2009. The Department attended and Respondent appeared via teleconference technology. The Hearing Officer postponed the hearing based upon Respondent’s objections that he did not receive certain documents from the Department due to confusion with the Hazelton prison’s mail system.

On June 15, 2009, the Hearing Officer issued a fifth order requesting Respondent that draft a pre-hearing statement identifying the specific documents Respondent intended to use and the witnesses he intended to call and addressing the issue of collateral estoppel raised by the Department. The Hearing Officer directed Respondent to file the pre-hearing statement by July 15, 2009, and advised Respondent that failure to comply could result in an entry of default judgment. Respondent did not file the pre-hearing statement, but instead sent a letter on July 13, 2009, to the Department and not the Hearing Officer. The Hearing Officer issued a proposed report on August 13, 2009.

On August 14, 2009, Counsel to the Adjudicator received the Hearing Officer's proposed report. On August 28, 2009, the Department of Consumer Services Division received a letter from Respondent. Although the letter is not drafted in the traditional form of exceptions, the Department treated the Respondent's letter as exceptions to the Proposed Report and filed a Brief Opposing Respondent's Exceptions on October 5, 2009.

II. Findings of Fact

The Adjudicator adopts the findings of fact as set forth in the Proposed Report which are set forth fully below:

1. The Department commenced this action against Respondent on December 4, 2008 by issuing an Order of Prohibition barring Respondent from working in the mortgage loan business as regulated by the Mortgage Act 7 Pa.C.S. § 6101, *et seq.* based upon the entry of permanent injunctions by the Allegheny County Court of Common Pleas ("Court") on September 8, 2008. (Official Notice, Department Records, Order of Prohibition, Exhibit A).
2. The Court entered its order based upon a complaint filed by the Pennsylvania Office of Attorney General through its Bureau of Consumer Protection to redress, *inter alia*, violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*; specifically

alleging that Respondent, individually and, as President of certain real estate entities, perpetrated a massive real estate financial scam upon Pennsylvania consumers from January 2004 at least through November 13, 2007. (Official Notice, Department Records, Order of Prohibition, Exhibit A).

3. Respondent filed an appeal on December 18, 2008. (Official Notice, Department Records).

4. The Department filed an Answer to the Petition of Appeal on December 24, 2008. (Official Notice, Department Records).

5. Respondent is presently incarcerated at the United State(sic) Penal Institution (USP) at Hazleton (sic)¹. (Official Notice, Department Records, February 9, 2009; N.T. *passim*).

6. On February 27, 2009, the assigned Hearing Officer issued an order scheduling a pre-hearing telephonic conference call for March 13, 2009 at 10:00 a.m. (Official Notice, Department Records, February 27, 2009 Order).

7. Counsel for the Department was directed to place the call. *Id.*

8. The Department agreed to make arrangements for Respondent to participate by video conference because he is currently incarcerated at the USP Hazleton (sic). (N.T. *passim*; Official Notice, Department Records, February 9, 2009).

9. The February 27, 2009 Order directed that original pre-hearing statements be filed with the Department's docket clerk for this matter. (Official Notice, Department Records, February 27, 2009 Order).

10. The February 27, 2009 Order directed that each party serve a copy of the pre-hearing statement upon the opposing party and to the Hearing Officer's attention, by no later than March 12, 2009. *Id.*

11. The Department filed its pre-hearing statement on March 12, 2009. (Official Notice, Department Records).

12. Respondent did not file the required pre-hearing statement by March 12, 2009 with the Docket Clerk as instructed by the February 27, 2009 Order. (Official Notice, Department Records).

13. A telephonic conference call was held on March 13, 2009 at 10:00 a.m. (Official Notice, Department Records, March 19, 2009 Order).

¹ Respondent is incarcerated at the United States Penitentiary (USP) in Hazleton, West Virginia.

14. Respondent refused to leave his cell to participate in the call although his case manager, Tammy Tichenell had made arrangements for him to participate. *Id.*

15. Ms. Tichenell participated in the call to respond to questions regarding Respondents' availability for a video conference hearing. *Id.*

16. The original purpose of the pre-hearing conference call was to discuss possible hearing dates as well as any substantive or procedural matters before the hearing. (Official Notice, Department Records, February 27, 2009 Order).

17. After the pre-hearing conference call was held, the Hearing Officer issued a second order directing Respondent to comply with pre-hearing directives including the filing of a pre-hearing statement by April 3, 2009. (Official Notice, Department Records, March 19, 2009 Order).

18. A hearing was scheduled for June 9, 2009. *Id.*

19. Respondent did not file a pre-hearing statement by April 3, 2009. (Official Notice, Department Records).

20. On April 21, 2009, the Department filed a Motion to Compel Participation, and, In the Alternative, for Default Judgment against Respondent. (Official Notice, Department Records, Motion to Compel Participation and In the Alternative, for Default Judgment).

21. The Department's motion outlined Respondent's continued failure to cooperate with directives in connection with his pre-hearing obligations, specifically his attendance at a pre-hearing conference call arranged for March 13, 2009 and the filing of a pre-hearing statement by April 3, 2009 as Respondent ignored a prior directive to file said statement by March 12, 2009. *Id.*

22. The motion also explained that Respondent has asked counsel for the Department for a continuance on two occasions. *Id.*

23. No requests for a continuance outlining the reasons for a continuance were filed with the Hearing Officer or the Docket Clerk after the pre-hearing orders of February 27 and March 29, 2009 were issued. (Official Notice, Department Records).

24. On April 23, 2009, Respondent was directed to file a response to the Department's Motion to Compel, and in the Alternative, Motion for Default Judgment by May 15, 2009. Respondent was also instructed to

specifically address the issue of collateral estoppel and provide an explanation as to why he had refused to comply with his hearing obligations and why he could not appear for the hearing when the Department and USP Hazleton (sic) had made special arrangements for his appearance at the hearing scheduled for June 9, 2009. (Official Notice, Department Records).

25. Respondent did not file an Answer to the Motion with the docket clerk as instructed although counsel for the Department did supply a May 2, 2009 typewritten letter received by counsel on May 9, 2009 that was construed as a response. (Official Notice, Department Records).

26. The May 2, 2009 letter advanced three reasons why the hearing scheduled for June 9, 2009 should have been continued until after January 1, 2011. First, respondent wished a change of venue since he did not have the financial means or transportation to travel to Harrisburg. (Official Notice, Department Records).

27. On May 20, 2009, the Hearing Officer ruled that travel to Harrisburg was not an issue because arrangements for Respondent to appear by video conference from USP Hazelton had already been made by the institution and the Department. (Official Notice, Department Records, May 20, 2009 Order).

28. In the May 2, 2009 letter, respondent also maintained that he could not be prepared to present evidence at the hearing because he did not have legal counsel. (Official Notice, Department Records).

29. Respondent offered no explanation as to why he could not retain counsel in his May 2, 2009 letter. (Official Notice, Department Records, May 20, 2009 Order).

30. The Hearing Officer advised Respondent that he could retain counsel to appear at the June 9, 2009 hearing. The Hearing Officer ruled Respondent would be permitted to represent himself at the hearing if Respondent could not retain counsel. (Official Notice, Department Records, May 20, 2009 Order).

31. In his May 2, 2009 letter, Respondent represented that he could not adequately present a defense because his incarceration precluded his access to "reference materials, valuable documents, briefs... and/or witnesses..." Respondent's May 2, 2009 letter did not describe the specific materials that he would seek to introduce or his efforts to obtain those documents. (Official Notice, Department Records, May 20, 2009 Order).

32. In her May 20, 2009 Order, the Hearing Officer ruled that as an inmate at a federal penal institution, Respondent had access to a law library and legal reference materials to assist in his preparation for the hearing. The Hearing Officer also advised Respondent that to the extent that the records he sought were in the possession of other individuals, he could make an application for a subpoena for the records under the General Rules of Administrative Practice and Procedure ("GRAPP"). (Official Notice, Department Records, May 20, 2009 Order).

33. Additionally, the Hearing Officer also advised Respondent of his right to make application for witnesses to attend the June 9, 2009 hearing to testify on his behalf. (Official Notice, Department Records, May 20, 2009 Order).

34. After consideration of these issues, the Hearing Officer denied the request for postponement of the hearing scheduled for June 9, 2009 and permitted Respondent to appear by video conference. (Official Notice, Department Records, May 20, 2009).

35. Respondent was once again advised that failure to appear may result in an entry of default. (Official Notice, Department Records, May 20, 2009 Order).

36. At the same time, the Department was directed to provide Respondent with a copy of all documents it intended to introduce at the June 9, 2009 hearing including any documents it had to establish the affirmative defense of collateral estoppel. *Id.*

37. On June 9, 2009, the parties appeared for the hearing. Respondent appeared *pro se*. (N.T. *passim*).

38. Prior to commencing testimony on the appeal, Respondent made an oral motion for postponement. (N.T. 6).

39. Respondent declined to be placed under oath to testify about the facts that supported his motion but maintained that he was unable to retain counsel or obtain documents to assist with his defense until after his release from incarceration sometime after January 2011. (N.T. 6-11, 13).

40. Respondent represented that he did not have sufficient funds to retain counsel because those funds had not been released by the Allegheny Court of Common Pleas. (N.T. 8).

41. During the discussion of the motion, the question of whether Respondent had access to the documents the Department intended to introduce in the proceedings was raised. (N.T. 14-16, 20-23).

42. Denise Buggy, a paralegal for the Department, testified that documents were expressed mailed via the United States Post Office on June 2, and June 4, 2009 to Respondent at USP Hazelton, P.O. 2000, Bruceton Mills, West Virginia 26525. Respondent's inmate identification number was not included on those mailings. The Mailings were addressed to the attention of Respondent's case manager, Tammy Tichenell. Ms. Buggy testified that the USPS confirmed delivery of both packages to the institution. (N.T. 28-35).

43. Tammy Tichenell testified that neither package was listed in the institution mail log but noted that the failure to list the inmate identification number and including her as a possible recipient would delay delivery and, in fact, impede delivery because institution staff cannot take delivery of inmate mail. As a result of this delivery complication, Respondent was unable to have possession of the documents to be used at the hearing. For this reason, the hearing was continued. (N.T. 19-20, 24-25, 37-39; Official Notice, Department Records, June 15, 2009 Order).

44. In an Order issued on June 15, 2009, the Department was directed to assure delivery of its proposed exhibits to Respondent and advise the Hearing Officer that those documents had in fact been delivered to him by no later than June 30, 2009. (Official Notice, Department Records, June 15, 2009 Order).

45. On June 30, 2009, the Department confirmed delivery of its pre-hearing documents to Respondent. (Official Notice, Department Records).

46. Respondent was ordered to review the documents provided by the Department; and, by no later than July 15, 2009, file a statement with the hearing officer identifying the specific documents that he needed for the hearing in this matter. Respondent was ordered to describe why each document was necessary. He was directed to identify the exact whereabouts of the documents he needed and the custodian of those documents. (Official Notice, Department Records, June 15, 2009 Order).

47. During the hearing on June 9, 2009, Respondent repeatedly maintained that he could not adequately present a defense because his incarceration precludes his access to "reference materials, valuable documents, briefs... and/or witnesses..." Respondent did not describe the specific materials that he would seek to introduce or his efforts to obtain those documents. (N.T. *passim*).

48. The purpose of the July 15, 2009 statement was to give Respondent the opportunity to identify needed materials. (N.T. 46-47; Official Notice, Department Records, June 15, 2009 Order).

49. Respondent does have access to writing materials and a law library at USP Hazleton (sic) and attorneys, including Legal Aid attorneys who are permitted to visit prisoners. (N.T. 40-42).

50. During the hearing, the Hearing Officer elected to hold any ruling on Respondent's motion for continuance in abeyance pending his July 15, 2009 submission. (N.T. 46-49; Official Notice, Department Records, June 15, 2009 Order).

51. After the hearing, Respondent was also again directed to file an Answer to the Department's Motion to Compel, and in the Alternative, Motion for Default Judgment by July 15, 2009. (Official Notice, Department Records, June 15, 2009 Order).

52. Respondent was instructed to specifically address the issue of collateral estoppel and why the documents that he has stated he needs to defend himself would be relevant to the current proceeding. *Id.*

53. Respondent was also ordered to identify the names and addresses of any witnesses he wished to call at any future hearings on the merits. *Id.*

54. Respondent did not file an Answer to the Complaint or an Answer to the Motion for Default Judgment or comply with directives to submit a list of documents and witnesses. (Official Notice, Department Records).

Proposed Report, pp. 3 – 11.

III. Factual Background

A. The 2007 Attorney General Indictment

On November 13, 2007, the Pennsylvania Attorney General's Office filed an indictment in the Allegheny County Court of Common Pleas ("Court of Common Pleas") against Respondent, and his business, Easy Realty Solutions, Inc., located in western Pennsylvania. The indictment alleged Respondent committed thirteen violations of the Unfair Trade Practices and Consumer Protection Law ("Consumer Protection Law")

while serving as the President, Secretary, Treasurer and only known officer or employee of Easy Realty Solutions, LLC.

The Court of Common Pleas issued a revised final Permanent Injunction Order on September 10, 2008, enjoining Respondent from engaging in numerous activities related to the realty and mortgage business. Respondent contends he filed an appeal to the Permanent Injunction in the Court of Common Pleas. During the hearing, a Bureau employee testified that the Bureau attempted to check the status of Respondent's appeal, but found no appeal filed with the Court of Common Pleas by Respondent.

B. The Order of Prohibition

The Department of Banking, Bureau of Compliance, Investigation and Licensing ("the Bureau") issued an Order of Prohibition barring Respondent from working in the mortgage loan business as regulated by the Mortgage Act. The Bureau issued the December 2008 Order of Prohibition based upon the September 2008 Permanent Injunction issued by the Allegheny Court of Common Pleas. The Order of Prohibition barred Respondent, "as a natural person, corporation or any other form of organization of any kind whatsoever" from working in the mortgage loan business. Respondent contends he needed to retrieve documents located in Florida in order to testify or participate in the hearing on his appeal.

C. Respondent's Incarceration

At all times pertinent to this matter, Respondent was incarcerated in federal prison in Hazelton, West Virginia after being convicted of the felony federal offense of tax evasion. Respondent estimates he will be released from federal prison in or around January 2011. Respondent appeared for his hearing with the Allegheny Court of

Common Pleas regarding the Permanent Injunction via teleconference equipment available at Hazelton.

IV. Legal Discussion

The Bureau's Order of Prohibition states that Respondent's prohibition from operating in the mortgage industry in Pennsylvania is due to the Court of Common Pleas issuing the September 2008 Permanent Injunction. The Hearing Officer found the Bureau served Respondent with the Order of Prohibition in accordance with the law and the Bureau afforded Respondent the opportunity to be heard in connection with his appeal. Respondent waived his right to counsel and failed to file required documents in response to pre-hearing orders. The Hearing Officer determined Respondent's failure to respond to her order caused him to be in default.

The Bureau does not contest the Hearing Officer's proposed findings. Respondent contests numerous findings of the Hearing Officer. The essence of Respondent's objections are that the Bureau needed to postpone the appeal hearing until his release from prison because he has documents stored in Florida relating to the underlying Attorney General indictment charges. Respondent contends the Bureau should have considered the validity of the underlying indictment charges before issuing its Order of Prohibition. Respondent contends the Court of Common Pleas did receive his appeal and 500 page brief and the court's denial of receipt is an example of the "massive corruption" in this matter. Respondent also contests facts decided in the underlying matter by the Court of Common Pleas, such as whether his involvement in second mortgages constituted the "writing" of a mortgage.

Based upon the pleadings, testimony and exhibits presented at the hearing, the briefs of the Bureau and letters of the Respondent, and all other matters of record, the Adjudicator finds that the Bureau presented sufficient evidence to establish that Respondent is in default. Specifically, the Adjudicator finds Respondent in default of the Hearing Officer's two orders to file a pre-hearing statement and two orders to respond to the Bureau's Motion to Compel.

A. Administrative Rules of Procedure Require Compliance with Directives.

"The rules of administrative procedure are not mere suggestions, and compliance with them is necessary for the orderly administration of state government." *Snyder Memorial Health Center v. Department of Public Welfare*, 898 A.2d 1227, 1229-30 (Pa. Cmwlth. 2006). The General Rules of Administrative Practice and Procedure (GRAPP) authorize parties to file motions without regard to limitation and authorize the presiding officer to dispose of motions to dismiss if such disposition is part of a recommendation for a final agency determination. 1 Pa. Code §§ 35.177-35.180 and § 35.187. Administrative agencies have the inherent power to control their own dockets by dismissing appeals when a party fails to comply with a rule or order. *Burch v. Department of Public Welfare*, 815 A.2d 1143. (Pa. Cmwlth. 2002). Whether an administrative appeal on the basis of non pros is proper lies with whether the requirements for non pros were met and whether the parties were afforded due process-not whether the parties have failed to comply with a rule or order. *Barr Street Corp. v. Department of Public Welfare*, 881 A.2d 1278, 1284-85 (Pa. Cmwlth. 2005).

Respondent failed to file either a pre-hearing statement as ordered by the Hearing Officer, or a response to the Bureau's Motion to Compel. Respondent contends he did

file the documents, but the record reflects Respondent sent no documents to the Hearing Officer. Respondent sent general letters to the Bureau, but the letters failed to discuss the issues the Hearing Officer ordered Respondent to address. The Adjudicator finds Respondent failed to file the documents the Hearing Officer requested.

B. Access to Counsel.

Any party may be represented by counsel or may proceed without counsel at an administrative hearing. 2 Pa.C.S.A. § 502, *Shenk v. State Real Estate Commission*, 527 A.2d 629, 631 (Pa. Cmwlth. 1987). The responsibility to secure counsel is on the party wishing to have legal representation. *Shenk v. State Real Estate Commission*, 527 A.2d 629, 631 (Pa. Cmwlth. 1987). Appearance by a party at a scheduled hearing without counsel present constitutes a knowing and voluntary waiver of the right to counsel when the party received prior written notice from the hearing officer of the right to counsel. *Novak v. Commonwealth, Insurance Department*, 525 A.2d 1258 (Pa. Cmwlth. 1987).

At the June 9, 2009 hearing, the Hearing Officer granted Respondent's request for a continuance in order for Respondent to receive exhibits from the Bureau which had been misdirected in the mail. The Hearing Officer did not place Respondent under oath, but he commented on the record that he believed retaining counsel to be impossible due to his incarceration and monetary situation. Respondent's case worker testified under oath that although the prison places limits on inmates' phone time, Respondent did have access to the telephone. Respondent's case worker also testified that the prison permits private and court appointed counsel to meet with inmate clients.

The Adjudicator finds Respondent Platts received prior notice of his right to counsel and voluntarily appeared unrepresented at the June 9, 2009 hearing. *See Novak*

v. *Commonwealth, Insurance Department*, 525 A.2d 1258 (Pa. Cmwlth. 1987). The Adjudicator finds Respondent's protestation regarding his alleged lack of funds does not constitute a waiver of his choice to continue pro se because a party's assertion that an inability to afford counsel is the reason for the pro se appearance does not render the waiver of counsel ineffective. See *Shenk v. State Real Estate Commission*, 527 A.2d 629, 631 (Pa. Cmwlth. 1987). The Adjudicator finds, based upon the testimony and argument presented by both the Bureau and Platts, that Platts had ample notice and opportunity to secure counsel in this matter and by appearing without counsel he waived his right to counsel at the hearing. *Shenk v. State Real Estate Commission*, 527 A.2d 629, 631 (Pa. Cmwlth. 1987).

C. Collateral Estoppel.

Collateral estoppel is an affirmative defense which must be raised by the party who asserts the defense. Fed.R.Civ.P. 8(C); Pa.R.Civ.P. 1030; *Birdsboro Municipal Authority v. Reading Co.*, 758 A.2d 222, 225 (Pa. Super. Ct. 2000). A party is collaterally estopped from litigating an issue "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second) of Judgments § 27 (1982). In order to successfully assert that the doctrine of collateral estoppel applies, the party asserting the defense must meet the following four prongs: "(1) An issue decided in a prior action is identical to one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action;

and (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.” *Rue v. K-mart Corp.*, 713 A.2d 82, 85 (Pa. 1998). Even if an appeal is filed regarding the final judgment in the prior action, the judgment is final for purposes of “collateral estoppel unless and until it is reversed on appeal.” *Irizarry v. Office of General Counsel*, 934 A.2d 143 (Pa. Commw. 2007) citing *Huynh v. Workers Compensation Appeal Board (Hatfield Quality Meats)*, 924 A.2d 717 (Pa. Cmwlth. 2007).

An administrative agency may give collateral estoppel effect to the determination of another tribunal even though different policy considerations are behind the agency’s adjudication. *Health v. Pa. Bd. of Probation and Parole*, 869 A.2d 39, 46 (Pa. Cmwlth Ct. 2005). Collateral estoppel and similar preclusive defenses may be raised in administrative proceedings by way of a motion to dismiss. *Kartoka v. Workers’ Comp. Appeal Bd.*, 840 A.2d 1040, 1043 (Pa. Cmwlth. Ct. 2003). Collateral estoppel may apply in matters where a permanent injunction is issued because permanent injunctions are based on final adjudications on the merits. *O.D. Anderson, Inc., et. al. v. Cricks*, 815 A.2d 1063 (Pa. Super. 2003).

The Bureau raised the affirmative defense of collateral estoppel in its Motion to Compel after Respondent failed to file a pre-hearing statement and sent letters to the Bureau addressing issues already decided in the Permanent Injunction Order. The Bureau argued Respondent is collaterally estopped from litigating issues related to the Permanent Injunction of the Court of Common Pleas. Respondent does not directly dispute that collateral estoppel applies in this matter, rather he states the hearing should be postponed in order to permit him to obtain documents to dispute whether he involved

himself in the mortgage business. The Permanent Injunction included findings of fact as to Respondent's involvement in mortgage business activities.

The Adjudicator finds the Court of Common Pleas, in its Permanent Injunction, already addressed the issue of Respondent's involvement in the mortgage business. Although the Court of Common Pleas is not an administrative tribunal, the Adjudicator can give collateral estoppel effect to the decisions of other tribunals. *See Health v. Pa. Bd. of Probation and Parole*, 869 A.2d 39, 46 (Pa. Cmwlth Ct. 2005). The Adjudicator finds the Permanent Injunction constitutes a final judgment on the merits. *O.D. Anderson, Inc., et. al. v. Cricks*, 815 A.2d 1063 (Pa. Super. 2003). The Adjudicator finds Respondent was a party to the Permanent Injunction as reflected in the caption of the Permanent Injunction. (Ex.)

The Adjudicator concludes Respondent had a full and fair opportunity to litigate regarding his actions with respect to mortgages in the Court of Common Pleas. Respondent contends he did not have a full and fair opportunity in the Court of Common Pleas and states he appealed the decision. The Adjudicator sees no evidence that an appeal is pending in the Court of Common Pleas. Even assuming *arguendo* an appeal was pending, *Irizarry* and *Huynh* hold that until Respondent successfully overturns the Permanent Injunction, the judgment is final. The Adjudicator finds, based upon the testimony and argument presented by both the Bureau and Platts, the Bureau successfully asserted the doctrine of collateral estoppel as to the issue of Respondent's involvement in the mortgage business because all four prongs required to prove the applicability of collateral estoppel are present in this matter. *See Kartoka v. Workers' Comp. Appeal Bd.*, 840 A.2d 1040, 1043 (Pa. Cmwlth. Ct. 2003).

III. Conclusion

Based upon consideration of the pleadings, the testimony and exhibits presented at the hearing on this matter, the Proposed Report and Proposed Final Order dated May 29, 2009, issued by Hearing Officer Linda C. Barrett, Esquire, the Letter of Exceptions filed by Respondent, the Reply Brief filed by the Department of Banking through the Bureau of Supervision and Enforcement, the record and the reasons set forth above, it is hereby

ORDERED and **DECREED** that Respondent James Platts is in default of the orders of Hearing Officer Linda Barrett and his appeal is dismissed with prejudice.

Victoria A. Reider,
Executive Deputy Secretary

Date of mailing: 3-18-10

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED

2010 MAR 18 PM 2:53

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU OF
COMPLIANCE, INVESTIGATION AND
LICENSING,

PETITIONER,

v.

JAMES C. PLATTS

RESPONDENT.

PA DEPT OF BANKING

Docket No.: 080334 (ENF-ORD)

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2010, I caused to have served a true and correct copy of the foregoing documents and all attachments thereto and/or enclosures therewith, upon the following individuals in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

By Hand Delivery:

✓ Lauren A. Sassani
Assistant Counsel
PA Department of Banking
17 N 2nd Street, Suite 1300
Harrisburg, PA 17101

By United States First Class Mail:

James C. Platts
Register #09684-068
USP Hazelton
P.O. Box 2000
Bruceton Mills, WV 26525

By:

~~Robert C. Lopez~~
Deputy Chief Counsel
Counsel to the Adjudicator
Pennsylvania Department of Banking
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101