

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING**

**John James Blystone,
Petitioner.**

v.

**Bureau of Compliance, Investigation and Licensing,
Department of Banking**

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: **Docket No. 090240 (LIC)**
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MEMORANDUM AND ORDER

This matter arises on Petitioner's Petition to Challenge Denial of Mortgage Application (Petition), filed December 21, 2009, asking for reconsideration of his application for a license as a mortgage originator, which the Department of Banking (Department) denied based on § 6133(d)(1) of the Mortgage Loan Industry Licensing and Consumer Protection Law, Act of July 8, 2008, P.L. 796, No. 56 (Mortgage Act), 7 Pa. C.S. § 6101 *et seq.* In his Petition, he indicated that, on May 30, 2007, he pled guilty to two criminal felony counts in the Court of Common Pleas of Delaware County, asserted that a felony itself does not disqualify an applicant from licensing approval and that the felonies of which he was convicted do not meet the statutory criteria for denial of an application based on felonies involving an act of fraud, dishonesty, breach of trust or money laundering, and asked that his application be reconsidered and his request for licensing approved. Petitioner did not assert that there were facts that, if known, would result in a change of the outcome as to his mortgage loan originator license application, nor did he request a hearing.

The Bureau filed an Answer on February 19, 2010, pointing out that Petitioner does not dispute the factual assertions made, that he was convicted of two felonies in the year 2007 and that he rests his Petition solely on conclusions of law requiring no response, and requesting that the denial of Petitioner's mortgage originator license application be upheld as a matter of law,

based on the requirements of the SAFE Act and the Mortgage Act. Petitioner filed no response to the Bureau's Answer.

Under these circumstances, the Answer of the Bureau will be treated as a Motion for Summary Judgment. In civil practice, a motion for summary judgment is governed by Pa.R.Civ.P. Rule 1035.2 which, in pertinent part, provides that

... any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

While these proceedings are governed by the GRAPP rather than by the rules of civil procedure, *see* 1 Pa. Code § 31.1(a),¹ and the GRAPP do not specifically provide for a motion for summary judgment, neither is such a motion prohibited, and a variety of motions are permissible under the GRAPP at § 35.177² and 35.178.³ For the purpose of ruling on a motion for summary judgment, the civil rules are instructive as to the standard to be applied.

¹Section 31.1 provides as follows:

§ 31.1. Scope of part.

(a) This part governs the practice and procedure before agencies of the Commonwealth except as otherwise provided in this section.

(b) This part is not applicable to a proceeding before an agency to the extent that the applicable statute governing or authorizing the proceeding sets forth inconsistent rules on the same subject.

(c) This part is not applicable to a proceeding before an agency to the extent that the agency has promulgated inconsistent regulations on the same subject.

²§ 35.177. Scope and contents of motions.

After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired, except as may be otherwise expressly provided in this chapter. Other motions may be made as provided for elsewhere in this chapter. Motions shall set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority relied upon.

The purpose of a summary judgment motion is to avoid a useless trial. *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900 (Pa. 1989) at 902. In considering a motion for summary judgment, the finder of fact must examine the whole record, including the pleadings, any depositions, any answers to interrogatories, admissions of record, if any, and any affidavits filed by the parties, and after a thorough examination, will determine the question of whether there is a genuine issue as to any material fact. *Id.* at 903. All doubts as to the existence of a genuine issue of material fact are to be resolved against the granting of summary judgment, and summary judgment is not permissible where the evidence depends on oral testimony. *Id.* If no genuine issue of material fact exists, the moving party is entitled to judgment as a matter of law. *Hoffman* at 902.

Because Petitioner does not dispute the underlying facts, does not assert any additional facts which he believes might impact the decision on his application, and essentially asserts only that the Bureau committed an error of law in denying his mortgage loan originator license application, there are no issues of fact in this matter. Rather, there is only an issue of law pertaining to the proper interpretation of the Mortgage Act. Moreover, Petitioner has not requested a hearing, but has asked only for reconsideration of his application on the basis of his interpretation of the law. Therefore, under the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code § 31.1 *et seq.*, at § 35.101,⁴ Petitioner is deemed to have waived

³§ 35.178. **Presentation of motions.**

Motions may be made in writing at any time and motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately.

⁴The GRAPP, at § 35.101, provide in pertinent part as follows:

§ 35.101. **Waiver of hearing.**

... A party not requesting oral hearing in its pleadings shall be deemed to have waived a hearing for the purpose of such disposition. . .

a hearing for the purpose of the disposition of this matter. Proceeding as if the Commonwealth's Answer were a Motion for Summary Judgment is, therefore, appropriate.

The record to be examined comprises the Petition to Challenge Denial of Mortgage Application and the Answer of the Bureau of Compliance, Investigation and Licensing. Petitioner admitted in his Petition that "[o]n May 30, 2007, [he] pled guilty to two criminal felony counts." He asserts no other facts but simply makes the legal argument that the felonies of which he has been convicted do not meet the criteria set forth in § 6133(d)(1) of the Mortgage Act for disqualification of an applicant for licensure. In this, however, Petitioner is mistaken.

The relevant portions of § 6133(d)(1) of the Mortgage Act provide as follows:

§ 6133. Issuance of license

* * *

(d) Denial of license due to conviction.—

(1) . . . The department *shall* deny a mortgage originator license if the applicant has been convicted of any felony during the seven-year period preceding the date of the license application *or* at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust or money laundering, unless the applicant has been pardoned for the conviction. . . .

* * *

(Emphasis added). As this part of subsection (d)(1) is written, there are two circumstances related to a criminal conviction in which it is mandatory (as evidenced by use of the mandatory term "shall") for the Department to deny a license. The first is where an applicant has been convicted of *any* felony during the seven-year period preceding the date of the license application. The second is where an applicant has been convicted *at any time before the date of the application* of a felony that involved an act of fraud, dishonesty, breach of trust or money laundering.

It is clear from the use of the term "or" to connect the two clauses of the sentence quoted above, from § 6133(d)(1), that the provision states two separate bases for denial of an application, rather than a single basis, as Petitioner interprets the provision. In other words, *any* felony conviction that occurs in the seven years just before the application will disqualify an applicant from licensure. It does not matter what kind of felony it is.

But if an applicant has a felony conviction that is more than seven years old, it must involve an act of fraud, dishonesty, breach of trust or money laundering in order to disqualify the applicant under this provision. In writing the license disqualification provision in this way, the legislature recognized that some felonies, by reason of the passage of time and the fact that they do not implicate characteristics, like honesty, that a mortgage loan originator licensee must possess, should not permanently bar the applicant from licensure. Others, which directly involve the applicant's honesty and therefore could impact his ability to practice with honesty and integrity, should serve as a permanent disqualification. Petitioner's disqualification is of the former nature -- a temporary disqualification, lasting until the convictions are more than seven years old.

Based on this analysis, the reconsideration of Petitioner's application in light of his admission that he was convicted of two felonies in 2007 yields a decision no different from that originally rendered by the Bureau. Petitioner was convicted of two felonies during the seven-year period preceding the date of his license application. It does not matter what the felonies were; because of the time frame, denial of his license application is mandatory under § 6133(d)(1) of the Mortgage Act. Accordingly, the following order shall issue:

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ORDER

AND NOW, this 5th day of March, 2010, based upon the foregoing discussion, it is hereby ordered that the instant appeal of the denial of Petitioner's application for a mortgage originator license, styled a Petition to Challenge Denial of Mortgage Application, is **DISMISSED** and the Bureau's denial of Petitioner's application for issuance of a mortgage originator's license is **AFFIRMED**.

This is a final order in accordance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.226(a)(4).

BY ORDER:

Ruth D. Dunnewold
Hearing Examiner

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