FINAL ORDER
DATE 9/27/10

IN THE MATTER OF	*	BEFORE THE
BLANCA QUIROGA-PEREZ	*	COMMISSIONER OF
	*	FINANCIAL REGULATION
Applicant.	*	OAH NO.: DLR-CFR-76B-10-03960

* * * * * * * * * * * *

PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 27th day of August, 2010 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Applicant has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Applicant has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

COMMISSIONER OF FINANCIAL REGULATION

By: _____
Deputy Commissioner of Financial Regulation

FINAL ORDER
DATE 9/20/10

BLANCA QUIROGA-PEREZ,	*	BEFORE JENNIFER M. CARTER JONES,
APPLICANT	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
COMMISSIONER OF FINANCIAL	*	ADMINISTRATIVE HEARINGS
REGULATION	*	OAH CASE No: DLR-CFR-76B-10-03960

* * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 10, 2009, the Maryland Commissioner of Financial Regulation (CFR or Commissioner), Department of Labor, Licensing and Regulation (Department), denied the Applicant's application for the renewal of her Mortgage Originator's license. On December 21, 2009, the Applicant filed an appeal, after which the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

I held a hearing on June 22, 2010, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Fin. Inst. § 11-608 (Supp. 2009). Kris King, Assistant Attorney General, represented the CFR. Timothy Maloney, Esquire, represented the Applicant.

The Administrative Procedure Act, the Rules of Procedure of the Department and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-

201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUE

Did the Department properly deny the Applicant's application for renewal of her Mortgage Originator's license?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR submitted the following documents, which I admitted into evidence:

CFR #1	April 26, 2010 Notice of Hearing and attached certified mail return receipts
CFR #2	January 4, 2010 letter from the CFR to the OAH
CFR #3	December 21, 2009 letter from the Applicant to the CFR
CFR #4	December 10, 2009 letter from the CFR to the Applicant, with certified mail receipt
CFR #5	Licensing information for the Applicant, printed on June 21, 2010
CFR #6	June 5, 1998 court records from the United States District Court for the Eastern District of Virginia, Case No: 1:98CR00101-001
CFR #7	October 19, 2009 letter from the Applicant to the CFR
CFR #8	Documents related to the Applicant's October 2009 application for renewal of her Mortgage Originator's License

The Applicant submitted the following documents, which I admitted into evidence:

APP #1	Documents related to the Applicant's original October 2006 application for a Mortgage Originator's License
APP #2	January 23, 2007 letter from the CFR to the Applicant
APP #3	June 18, 2007 letter from Jan Thomas, Associate Broker, Long and Foster Real Estate, Inc.
APP #4	June 19, 2007 letter from the CFR to the Applicant, dated June 19, 2007

APP #5 Documents submitted by the Applicant in support of her October 2009 renewal application

APP #6 December 10, 2009 denial letter from the CFR to the Applicant

APP #7 Letter from Anita Rimler, Secretary of the Commonwealth of Virginia to the Applicant with attached September 26, 2005 Restoration of Rights certificate

Testimony

The Applicant testified on her own behalf and offered the testimony of Joseph Rooney, DLLR Assistant Commissioner of Administration, and CFR Director of Licensing Anne Ecker.

The CFR did not offer the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Applicant began working in the mortgage industry in or about 1993, when she worked as a mortgage loan processor for Luigi Piacentini.[1]

2. The Applicant became aware of business-related irregularities attributable to Mr. Piacentini in or around 1995. Once she became aware of these irregularities, she left Mr. Piacentini's employment and became an independent loan officer.

3. In 1997 the Applicant cooperated in an FBI investigation regarding Mr. Piacentini's business irregularities.

4. After its investigation, the FBI charged the Applicant with wire fraud.

5. The Applicant pled guilty to wire fraud and, on June 5, 1998, she was convicted of the charge in federal court, sentenced to two months in jail, three months in a half-way house, three years probation and she was ordered to pay restitution in the amount of $67,000.00.

6. The Applicant served her sentences in jail and in the half-way house, successfully completed her probation and paid the restitution amount in full.

[1] Luigi Piacentini worked for Intercontinental Mortgage in Rockville, Maryland.

7. The Applicant filed a petition with Virginia Governor Mark Warner for a restoration of her rights, and on September 26, 2005, Governor Warner granted the Applicant's petition and restored her right to vote, hold public office, serve on a jury and to be a notary public. The Governor did not restore the Applicant's right to ship, transport, possess, or receive firearms. (App. 7).

8. The Applicant first applied for a Maryland Mortgage Originator's License (License) in October 2006.

9. The Applicant fully disclosed her 1998 conviction to the CFR when she applied for the License.

10. The applicable law at the time of the Applicant's 2007 License application gave discretion to the Commissioner to deny a Mortgage Originator License if the Applicant had been convicted of fraud.

11. The CFR denied the Applicant's License application on January 23, 2007, due to her conviction for wire fraud.

12. The Applicant appealed the denial of her application and, on June 19, 2007, Deputy Commissioner Joseph E. Rooney (Rooney) conducted a hearing on behalf of the CFR.

13. After considering the Applicant's explanation of the circumstances surrounding her conviction and other factors, Rooney determined that the Applicant was qualified to hold a Mortgage Originator's License.

14. The Applicant obtained her Maryland License in 2007. She also obtained a Virginia Mortgage Originator License.

15. Since obtaining her licenses in Maryland and Virginia, the Applicant has originated a substantial number of loans in both of those states.

16. The Applicant's 2007 License was to expire on October 31, 2009.

17. On October 19, 2009, the Applicant applied for a renewal of her License.

18. On December 10, 2009, CFR Director of Licensing Anne E. Ecker, denied the Applicant's renewal application because she had been convicted of felony wire fraud on March 11, 1998[2] and because she originated three Maryland loans for a company for which she was not properly licensed.

19. The Applicant has applied for a Presidential pardon of her 1998 wire fraud conviction.

DISCUSSION

On December 10, 2009, CFR Director of Licensing, Anne E. Ecker (Ecker), denied the Applicant's October 19, 2009 application for renewal of her Mortgage Originator's license, stating that the denial resulted from the Applicant's failure to satisfy the Commissioner that she qualified for a license as specified in section 11-605(a)(2) and (3). In addition, the Commissioner exercised her discretionary authority to deny the Applicant's application for renewal pursuant to sections 11-607(e)(2), and 11-615(a)(2) and (5) of the Financial Institutions Article. The Commissioner based her decision on the Applicant's 1998 felony conviction for wire fraud, and found that the serious nature of the conviction directly and negatively related to the Applicant's fitness and qualification to act as a Mortgage Originator. The CFR also based its denial on the basis that the Applicant had originated three Maryland loans for a company for which she was not properly licensed.

The Applicant did not dispute the wire fraud conviction, but contended that the CFR improperly applied the current version of section 11-605 to her renewal application retroactively, which violated the prohibition against ex post facto laws; that the CFR's decision to deny her

[2] According to CFR #6, the actual date of the Applicant's conviction was June 5, 1998.

renewal application was arbitrary or capricious; that it violated the Applicant's right to procedural due process; and that she was not subject to denial because she received a pardon for the 1998 conviction.[3] The Applicant further argued that it was Mr. Piacentini, her employer, who conducted illegal activity, and that she has paid for her implication in Mr. Piacentini's illegal activities; that she has been an honest and successful Mortgage Originator and it would be unconscionable to deny her the opportunity to continue to earn a living in this field.

Legal Background

In October 2007, when the Commissioner approved the Applicant for initial licensure, the Maryland laws governing Mortgage Originator licenses provided in pertinent part as follows:

> **§ 11-605 Qualifications for license.**
>
> (a) *In general.* – To qualify for a license, an applicant shall satisfy the Commissioner that:
>
> . . .
>
> (2) The applicant is of good moral character and has general fitness to warrant the belief that the applicant will act as a Mortgage Originator in a lawful, honest, fair, and efficient manner.
>
> (b) *Grounds for denial.* – The Commissioner may deny an application for a license filed by an individual who has committed an act that would serve as a sufficient ground for suspension or revocation of a license under this subtitle or a mortgage lender license under Subtitle 5 of this title.
>
> . . .
>
> **§ 11-607. Investigation and approval.**
>
> (a) *Investigation.* - When an applicant for a license files the application and pays the fees required by § 11-606 of this subtitle, the Commissioner shall conduct an investigation to determine if the applicant meets the requirements of § 11-605 of this subtitle.

[3] The Applicant also argued in her memorandum of law that the CFR included an invalid basis for the denial of her renewal application for a license to the extent that it stated that she originated three Maryland loans for a company with which she was not properly licensed. The Applicant did not offer any evidence regarding this argument at the hearing or otherwise mention her position on this matter at the hearing and, thus, I deem the argument waived.

(b) The Commissioner shall issue a license to an applicant who meets the requirements of § 11-605 of this subtitle.

. . .

(e) *Denial.* - Whether or not an application has been provisionally approved, the Commissioner may deny an application:

(1) If the applicant fails to qualify for a license under this subtitle; or

(2) For any reason that a license may be revoked or suspended under this subtitle or a mortgage lender license may be suspended or revoked under § 11-517 of this title.

. . .

§ 11-615. Violations; penalties.

(a) *Violations.* - Subject to the hearing provisions of § 11-616 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee:

. . .

(2) Is convicted under the laws of the United States or of any state of a felony or a misdemeanor that is directly related to the fitness and qualification of the individual to act as a Mortgage Originator;

. . .

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly.

(b) *Determinations for suspending or revoking license.* - In determining whether a license shall be suspended or revoked for a reason described in subsection (a)(2) of this section, the Commissioner shall consider:

(1) The nature of the crime;

(2) The relationship of the crime to the activities authorized by the license;

(3) With respect to a felony, the relevance of the conviction to the fitness and qualification of the licensee to engage in the mortgage lending or mortgage origination business;

(4) The length of time since the conviction; and

(5) The behavior and activities of the licensee since the conviction. .

Md. Code Ann., Fin. Inst. §§ 11-605(a)(2) and (b), 11-607(a), (b) and (e), and 11-615(a)(2) and (5), and (b) (Supp. 2007).

In June 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act"), encouraging states to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud. 12 U.S.C.A. §§ 5101 through 5116 (Supp. 2010).[4] Section 5104 sets forth certain minimum standards for State-licensed loan originators, including the following:

> (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court--
>
> (A) during the 7-year period preceding the date of the application for licensing and registration; or
>
> (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
>
> (3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter.

12 U.S.C.A. § 5104(b)(2)-(3).

Effective July 1, 2009, the Maryland legislature subsequently amended its mortgage loan originator licensing law to reflect the minimum standards set forth in the SAFE Act. Section 11-605 currently provides in pertinent part as follows:

> **§ 11-605. Qualifications for license.**
>
> (a) *Required findings.*- The Commissioner **may not** issue a mortgage loan originator license unless the Commissioner makes, at a minimum, the following findings:
>
> . . .

[4] All citations to the SAFE Act herein refer to the 2010 Supplement to the 2001 bound volume.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period immediately preceding the date of the application for licensing; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

(3) The applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently[.][5]

Md. Code Ann., Fin. Inst. § 11-605(a)(2) and (3) (Supp. 2009) (emphasis supplied.)

For the following reasons, I find that the CFR properly denied the Applicant's renewal application.

Retroactive Application of Section 11-605 and Violation of the Prohibition against Ex Post Facto Laws

The Applicant argued that the CFR improperly applied the restrictions of section 11-605 to her because the legislature imposed the new qualifications required for obtaining a Mortgage Originator's license in 2008, after the Applicant had initially applied for and received her original License. Relying on *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 173 (4th Cir. 2010), *State Ethics Comm'n v. Evans*, 382 Md. 370 (2004), and *Ficarro v. Dept. of Regulatory Agencies*, 849 P.2d 6 (Col. 1993), the Applicant argued that the imposition of the current version of section 11-605 to her was retroactive and legally deficient because it "attach[ed] new legal consequences to events occurring prior to its enactment." *Applicant's Memorandum of Law* at 8 (citing *Ward*, 595 F.3d at 174). Because 11-605 was improperly applied to the Applicant

[5] Section 11-607(a) now includes a reference to § 11-604 rather than § 11-606. Md. Code Ann., Fin. Inst. § 11-607(a) (Supp. 2009). Subsection (f) of section 11-615 addresses revocation based on circumstances arising during licensure, and subsection (a) now includes the language, "and except as provided in subsection (f). . . ." Md. Code Ann., Fin. Inst. § 11-615(a) and (f) (Supp. 2009). Unless otherwise indicated, all future references to the Financial Institution Article are to the current version.

retroactively, the Applicant argued that the CFR's non-renewal of her License violated the prohibition against Ex Post Facto laws embodied in Article 17 of the Maryland Constitution.

The CFR argued that it did not impose the restrictions of sections 11-605 retroactively. Pointing to the language of section 11-609 of the Financial Institutions Article, the CFR explained that the legislature made it clear that the restrictions of section 11-605 are to apply to renewals of licenses as well as the initial grants of licenses.

That statute provides in pertinent part as follows:

> **§ 11-609 Term, expiration, and renewal of license.**
> . . .
>
> (b) *Renewal.* – On or before November 1 of the year of expiration, a license may be renewed if the licensee:
>
> (1) Subject to subsections (e) and (f) of this section, meets the minimum standards for the issuance of a license and otherwise is entitled to be licensed.

Md. Code Ann., Fin. Inst. § 11-609(b)(1) (Supp. 2009).[6]

As the Supreme Court has explained, there is a "presumption against retroactive legislation [that] is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). The *Landgraf* Court explained that the determination of whether a statute is impermissibly retroactive involved the following inquiry:

> [T]he court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with

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[6] *See also* section 5105 of the SAFE Act, which provides in pertinent part:

> (a) In general
>
> The minimum standards for license renewal for State-licensed loan originators shall include the following:
>
> (1) The loan originator continues to meet the minimum standards for license issuance.

12 U.S.C.A. § 5105(a)(1).

> respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Landgraf, 511 U.S. at 280. *Ward,* 595 F.3d at 172. Therefore the process for determining whether the application of 11-605 to the Applicant would be impermissibly retroactive requires the following three steps:

1. Determine whether the legislature has expressly prescribed the statute's proper reach;

2. If not, determine if the statute would:
    a. impair the Applicant's rights she possessed when she applied for her License;
    b. increase the Applicant's liability for past conduct; or
    c. impose new duties with respect to transactions already completed by the Applicant;

3. If so, determine whether the legislature has expressed clear congressional intent favoring retroactive application of the law.

Express Prescription of the Statute's Proper Reach

It is clear that Congress in the SAFE Act and the Maryland legislature in its revision of section 11-605 of the Financial Institutions Article delineated the proper reach of the statute. The Applicant does not dispute that section 11-605, which announces the minimum qualifications for applicants to receive a Mortgage Originator's license, patently applies to initial applicants as of July 2009. What the Applicant failed to address, however, is the language included in section 11-609, which clearly requires applicants seeking *renewal* of their Mortgage Originator licenses to meet the same qualifications as those announced in 11-605. The language of section 11-609 is *prospective* as to renewal applications after the enactment of the legislation. A reading of the two provisions makes clear that the legislature intended for the reach of the statute requiring minimum qualifications to apply to both new applicants and those who potentially had been licensed for many years preceding an application for a renewal of the license. I find that those provisions are prospective in nature, not retroactive, as the provisions intend to impose upon new

and renewal applicants qualifications for licensure as a Mortgage Originator. Simply because the Applicant once fit within the qualifications as a Mortgage Originator and now she does not, does not merit the conclusion that the statute is retrospective in nature. Certainly, the Applicant cannot expect that the qualifications for the License would remain static.[7] If that were the case, the legislature's right to address perceptibly problematic omissions from statutory mandates would become seriously impaired because it might prove onerous to a population. As the *Landgraf* Court pointed out:

> Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property; a new law banning gambling harms the person who had begun to construct a casino before the law's enactment or spent his life learning to count cards. See Fuller 60 ("If every time a man relied on existing law in arranging his affairs, he were made secure against any change in legal rules, the whole body of our law would be ossified forever"). Moreover, a statute "is not made retroactive merely because it draws upon antecedent facts for its operation." *Cox v. Hart,* 260 U.S. 427, 435, 43 S.Ct. 154, 157, 67 L.Ed. 332 (1922). See *Reynolds v. United States,* 292 U.S. 443, 444-449, 54 S.Ct. 800, 801-803, 78 L.Ed. 1353 (1934); *Chicago & Alton R. Co. v. Tranbarger,* 238 U.S. 67, 73, 35 S.Ct. 678, 680, 59 L.Ed. 204 (1915).

Landgraf, 511 U.S at 270.

Impairment of Rights Possessed; Increase in Liability for Past Conduct; or Imposition of New Duties With Respect to Transactions Already Completed

Even if I were to determine that the legislature was unclear regarding the intended reach of the recently enacted section 11-605, I would nevertheless determine that the application of its requirements are proper. Absent a clear recitation by the legislature of the intended reach of the statute, the Applicant must show that the application of the statute would impair the rights the

[7] Indeed, the Applicant should be presumed to have expected such changes in qualifications in light of the fact that she was not required to have a license when she initially became a Mortgage Originator. Responding to a need for regulation, the legislature imposed qualifications on the right to be a Mortgage Originator and required licensure for that purpose. I find that the requirement that Licensed Mortgage Originators not have a conviction for fraud to be a manifestation of Congress' and the State legislature's response to a need for more stringent licensure requirements.

Applicant possessed when she acted, increase her liability for past conduct, or impose new duties with respect to transactions already completed.

In this case, the Applicant's right to possess her License vested in October 2007, after Rooney determined that she displayed sufficient moral character to meet the qualifications of a Mortgage Originator and she received her initial License. According to section 11-609, which was in effect at the time the Applicant was granted her License,[8] her vested right in her License was not eternal; rather it was predicated on her ability to meet the qualifications for the License upon reapplication. Based on the clear intent of the legislature both before the 2009 change to section 11-605 and after, Mortgage Originators were required to re-apply for their license and meet minimum qualifications at the time of their renewal application. Therefore, the only vested right the Applicant possessed in her License was terminated upon the expiration of the term of the License she obtained in 2007.

Similarly, I find the application of 11-605 did not impose new duties on the Applicant with regard to transactions already completed. Indeed, the CFR did not seek to impair or revoke the License the Applicant possessed at the time of the change to the statutory language.[9] Indeed, despite clear legislative intent to intensify the requirements for Mortgage Originators' licenses, nothing in the statutory changes precluded the Applicant from full use of her License at that time despite her conviction for wire fraud. As I have stated, the only new duty imposed upon the Applicant pertained to the *prospective* transaction of licensure renewal in which her rights had not yet vested.

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[8] Section 11-609 has changed only minimally between when the Applicant received her License in 2007 and the amended version. The provision that required renewal applicants to meet the minimum qualifications for the Mortgage Originators license was essentially the same in both the older and amended versions.

[9] *Contrast with Evans*, 382 Md. 370, cited by the Applicant, in which the Court of Appeals determined that a law permitting the State Ethics Commission to *revoke* a lobbyists' registration based upon fraud convictions one year before the statute was enacted was applied retroactively.

I also find that the change in the law does not increase the Applicant's liability for her past conduct. Clearly, as a result of the change in the law, it is more onerous for the Applicant to qualify for a Mortgage Originator's License. That is not to say that the Applicant is eclipsed from the opportunity to qualify for the License because, as I shall discuss, assuming she meets all of the eligibility criteria, she would be able to obtain her license if she obtained a pardon for her conviction. The stricter qualifications for a Mortgage Originator's License are ancillary to the Applicant's liability for the wire fraud conviction. The fact that the Applicant must now overcome certain obstacles to get her Mortgage Originator's License does not merit the conclusion that the determination of the legislature that stricter requirements are necessary to protect public interests punishes the Applicant. *See Landgraf*, 511 U.S at 270.

Furthermore, the clear statutory purpose and congressional intent behind both the SAFE Act and the Maryland revision to section 11-605 of the Financial Institutions Article is "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud [in the residential mortgage industry.]" 12 U.S.C.A. § 5101.[10] By declining to change the requirements of 11-609, requiring individuals renewing their Mortgage Originator's Licenses to meet the minimum requirements of 11-605, it is clear that the statutory intent was to encapsulate all applicants, new and renewing, within its updated minimum requirements.

Because I have found that the legislature has clearly delineated the proper reach of the statute to apply to both applications for initial and renewal Mortgage Originators' licenses after July 1, 2009, and that the application of 11-605 to the Applicant's renewal application was not retroactively applied, I further find that the application of the statute does not violate the

[10] *See Ficarro*, 849 P.2d 6 (Col. 1993), cited by the Applicant, upholding the legal propriety of a statute that retroactively imposed different legal requirements on bail bondsman to qualify for a license than those in effect at the time they originally applied for a license because the legislature intended such retroactive application.

prohibition on ex post facto laws. Maryland Constitution, Article 17;[11] *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289 (2003).

Arbitrary or Capricious

The Applicant argues that the CFR's determination to deny her renewal application was arbitrary and capricious. Relying on *Maryland Pennysaver Group, Inc. v. Comptroller of Treasury*, 323 Md. 697, 709 (1991) and *Montgomery County v. Anastasi*, 77 Md. App. 126 (1988), the Applicant asserts that the CFR's determination was directly at odds with Mr. Rooney's 2007 determination that the Applicant was fit to work as a Mortgage Originator and, thus, it was unreasonable. I disagree.

As the Applicant points out in her memorandum, in order for a decision to be arbitrary or capricious, it must be made "impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms." *Harvey v. Marshall*, 389 Md. 299 (2005). As I have stated, it is clear that the Congressional intent behind the SAFE Act is "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud [in the residential mortgage industry.]" 12 U.S.C.A. § 5101. As I have also stated, the Maryland revision to section 11-605 mirrored the language of its federal predecessor and implemented the revision pursuant to the purpose enumerated in the SAFE Act. *See* fiscal note, MD B. Hist., 2009 Sess. S.B. 269. Certainly, in light of recent ubiquitous reports and concerns about fraudulent and improper real estate dealings and its effects on the American population and the economy, the legislative intent behind the SAFE Act and, by extension, 11-605 of the Maryland Financial Regulations Article is inherently reasonable. Although the CFR previously determined that the Applicant was qualified to receive a Mortgage Originator's License, its subsequent

[11] Article 17 of the Maryland Constitution provides: "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required.

determination was explicitly based upon the new requirements of 11-605. Because I have found the new requirements of 11-605 to be reasonable, in turn, I find that the CFR's reliance on the new requirements enunciated in 11-605 in support of its denial of the Applicant's License renewal to be reasonable.

Due Process and Denial of the Applicant's Vested Right in her License.

The Applicant argued that she had a vested right in her License and that the CFR's determination to deny her application for renewal of her license without a hearing prior to enforcing that action denied her due process of law. Relying on a medley of Supreme Court cases, including *Bell v. Burson*, 402 U.S. 535 (1971) (State may not suspend a Licensee's driver's license before providing him with a hearing), *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) (employee's wages may not be garnished pre-trial without a hearing), *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare may not be discontinued without a fair hearing), *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), *Barry v. Barchi*, 443 U.S. 55 (1979), and the Maryland case of *Casey v. Mayor of Rockville*, 400 Md. 259 (2007) (holding that a landowner who was preliminarily denied a permit to demolish an 80-year old building without a hearing while the agency determined the historical significance of the property did not violate the landowner's due process rights), the Applicant argues that the CFR's revocation of her license without a prior opportunity to be heard about the propriety of that revocation constituted a denial of her due process rights. I disagree.

In the cases cited by the Applicant, the Supreme Court and the Maryland Court of Appeals determined that a license constitutes a property right in which the owner has a vested interest. To that extent, I agree with the Applicant that, pursuant to the law and to the general principles attendant to due process, had the CFR revoked the License she was granted in 2007 on

the basis that 11-605 now prohibited her from retaining that License, the Applicant would have had a right to a due process hearing because she was being divested of her right to her previously granted License. Unlike the situation in the cases cited by the Applicant, however, as I have stated, the CFR did not revoke the Applicant's License; it *denied her application* for renewal. As I have explained, 11-609 dictates that each holder of a Mortgage Originator's license must reapply each year (every two years prior to the 2009 change to the law) and meet the minimum qualifications for eligibility. Therefore, any property interest the Applicant had in her 2007 License terminated on October 31, 2010, when it expired.

Pardon

The Applicant argued that she has been pardoned of her conviction and as a result of that pardon, under section 11-205(b), her 1997 conviction is not a valid basis for denial of her October 2009 renewal application. In support of her position, the Applicant submitted a letter from Anita Rimler, Secretary of the Commonwealth of Virginia, to the Applicant with an attached September 26, 2005 Restoration of Rights certificate. Pointing out that the term "pardon" is not defined in 11-605(b), the Applicant asserted that the restoration of rights constituted a pardon for the purpose of the statute.

The CFR argued that a Restoration of Rights is not a pardon. Particularly, the CFR asserted that because the Applicant was convicted in federal court of a federal crime, the conviction may only be pardoned by the President of the United States.

Under section 11-605(b) "[a] conviction for which a pardon has been granted is not a conviction for the purposes of subsection (a)(2) of this section." Although the term "pardon" is not defined in the statute, Black's Law Dictionary defines "pardon" as follows:

> The act or an instance of officially nullifying punishment or other legal consequences of a crime. A pardon is usually granted by the chief executive of a government. The President

> has the sole power to issue pardons for federal offenses, and state governors have the power to issue pardons for state crimes.

Black's Law Dictionary 1144 (8th Ed. 2004).

As the Applicant submitted, Article V, Section 12 of the Virginia Constitution provides as follows:

> The Governor shall have the power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.

The Governor's power to pardon is announced in Section 12 separately from his or her power to remove political disabilities. The September 26, 2005 Restoration of Rights certificate purports to remove political disabilities without any mention of the Governor's intent to *pardon* the Applicant. Indeed, the Applicant conceded that the she was aware that she must be pardoned by the President of the United States and that she had applied for such a pardon. The Applicant asserted, however, that she was concerned because she knows that it can sometimes take years to obtain a Presidential pardon and that her ability to support herself would be greatly diminished while she waits for such a reprieve.

Although I sympathize with the Applicant's situation, I find that the Governor of the Commonwealth of Virginia did not pardon her 1998 conviction for wire fraud. Rather, he restored her State rights with the exception of possession of a firearm. Therefore, the Applicant has not received a pardon that would extinguish her 1998 federal conviction for the purposes of qualifying for a Mortgage Originator's License under the July 1, 2009 amendments to the law.

CONCLUSIONS OF LAW

I conclude as a matter of law that the CFR properly denied the Applicant's application for a Mortgage Originator's license. Md. Code Ann., Fin. Inst. § 11-605(a)(2)(ii) and 11-609(b)(1) (Supp. 2009).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Commissioner of Financial Regulation deny the Applicant's application for renewal of her Mortgage Originator's License.

August 20 , 2010
Date Decision Mailed

Jennifer M. Carter Jones
Jennifer M. Carter Jones
Administrative Law Judge

JCJ/kkc
#116107