

IN THE MATTER OF \* BEFORE THE DEPUTY COMMISSIONER  
LATOYA SAMANTHA CALDER, \* OF FINANCIAL REGULATION  
Respondent \* OF MARYLAND  
\* OAH CASE No.: DLR-CFR-76A-11-26193  
\* CFR FILE No.: CFR-EU-2009-088

\* \* \* \* \*

OPINION AND FINAL ORDER

INTRODUCTION

This matter came before the Commissioner of Financial Regulation (the "Commissioner") for argument on exceptions filed by Latoya Samantha Calder (the "Respondent"). On November 7, 2011, Administrative Law Judge A. J. Novotny (the "ALJ") issued a Proposed Decision (the "Proposed Decision") after a hearing on the merits in which the ALJ recommended the Commissioner order that:

- (1) The Respondent pay to the Commissioner a civil penalty of \$15,000.00, calculated as follows: \$5,000 for violations in each of the three cited transactions: the Tiwari loan, the Jiggetts loan and the Ekong loan (collectively, the "Loans");
- (2) The Respondent's mortgage originator's license be revoked; and
- (3) The records and publications of the Commissioner reflect this decision.

The hearing before the ALJ on this matter was held on August 17, 2011. The Respondent was not present for the hearing, notified OAH on the day of the hearing that she was unable to attend, and submitted documentation in lieu of her attendance. On January 12, 2012, the Deputy Commissioner issued a Proposed Order (the "Proposed Order") generally adopting the ALJ's Proposed Decision and Recommended Order.

The Respondent sets forth her exceptions (the "Exceptions") to the Proposed Order in a submission timely received. The Deputy Commissioner received and reviewed the Exceptions and presided over a hearing on the matter on March 5, 2012. The Respondent offered testimony and documents at the hearing on the Exceptions, which the Deputy Commissioner admitted into evidence. In addition to the arguments and testimony received at the hearing on the Exceptions, the record before the Deputy Commissioner in considering the Exceptions in this matter consisted of:

1. The Proposed Decision, including the Statement of the Case, Issues, Summary of the Evidence, Findings of Fact, Discussion, Conclusions of Law, and Recommended Order;
2. The Proposed Order;
3. The Exceptions;
4. All exhibits (the "Exhibits") admitted into the record in the hearing before the ALJ.

Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the Proposed Decision.

The Deputy Commissioner has decided this matter and issues this Opinion and Final Order (the "Final Order") based on the hearing and the record.

#### **FINDINGS OF FACT**

The Deputy Commissioner adopts and incorporates the Findings of Facts in the Proposed Decision. Additionally, at the hearing on the Exceptions the Respondent submitted evidence that she is unemployed and is receiving food stamps and unemployment insurance benefits. She also testified that she has no assets and no job

prospects given her conviction. Given the documentary evidence that she presented, I believe that she is genuinely unable to pay Maryland the \$15,000.00 civil penalty.

## DISCUSSION

### Good Faith

Except as discussed below and noted in the Proposed Order, the Deputy Commissioner adopts the Conclusions of Law of the Proposed Decision.

Footnote 7 in the Discussion of the Proposed Decision provides that COMAR 09.03.09.04(A) is not appropriate to be considered for this matter because the "qualifiers in that section relating to net tangible benefits and non-hirer [sic] priced loans . . . were not referenced in the hearing . . ." The ALJ's reading of COMAR 09.03.09.04(A) is erroneous in that it is too narrow. The regulation provides:

A mortgage loan originator has a duty of good faith and fair dealing in communications and transactions with a borrower, including, *but not limited to*:

- (1) The duty to recommend to a borrower or induce a borrower to enter into only a mortgage loan refinancing that has a net tangible benefit to a borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances; and
- (2) The duty to provide to a borrower who is offered a higher-priced mortgage loan information about the non-higher-priced mortgage loans that the licensee can make available and for which the borrower may qualify.

*Emphasis added.*

In finding that the concept of good faith and fair dealing is limited to net tangible benefits in item (1) and higher-priced mortgage loans in item (2) ignores the words, "including,

but not limited to" in the lead-in language of (A). Good faith and fair dealing encompass broad concepts of fairness that were ignored by the ALJ.

The ALJ's Findings of Fact include that the Respondent, on at least three occasions, was involved in mortgage originations "wherein she intentionally misidentified parties, signatures were forged, and monies were collected and fraudulently disbursed by the Respondent to herself and her confederates." Findings of Fact ¶ 2. I find that misidentification of parties, forgery of signatures and misappropriation of funds collected from clients constitutes dishonesty, unfairness, and bad faith. Accordingly, the ALJ's conclusion that COMAR 09.03.09.04(A) does not apply to the facts of this case is an error of law and is rejected. Based on the facts in the record of the administrative proceedings in this matter, I find that the Respondent violated COMAR 09.03.09.04(A).

#### Penalties

The Proposed Order assesses a total civil monetary penalty of \$15,000.00. The Respondent argues that the amount is excessive given the circumstances of this matter. The Respondent was charged in Prince George's County with Conspiracy to Commit Theft over \$500.00 with respect to the Loans, which together also form the basis for this matter. The Prince George's County Circuit Court, among other penalties, ordered the Respondent to make restitution totaling \$27,000.00 the victims. Proposed Decision, Findings of Fact at ¶ 3 through ¶ 7.

The Respondent does not dispute the applicability of Section 2-115(b) and Section 11-615(e) of the Financial Institutions Article to this matter, which together

provide that there are six factors to be considered in imposing civil monetary penalties: (1) the seriousness of the violation; (2) the good faith of the violator; (3) the violator's history of previous violations; (4) the deleterious effect of the violations on the public and industry involved; (5) the assets of the violator; and (6) any other factors relevant to the determination of the penalty. Except for the sixth factor which is merely a catch-all that allows the ALJ to consider other information, the ALJ addressed each of these considerations.

The Respondent argues that she simply is not able to pay the \$15,000.00 penalty. In imposing the penalties, the ALJ concluded that the nature of the violations was serious and the Respondent had demonstrated bad faith and dishonesty through her participation in the violations. Additionally, the ALJ found that the Respondent had committed multiple violations with respect to each of the Loans. Proposed Decision at p.11. The Respondent does not dispute any of these findings. She simply argues that she is unable to pay the \$15,000.00. Before and at the hearing, the Respondent submitted evidence that she is eligible for and receiving food stamps. She is unemployed and currently receiving unemployment benefits. She testified that she has no other assets.

In light of the Respondent's financial circumstances and standing judicial order for her to pay her victims restitution totaling \$27,000.00, I have determined that the Respondent is genuinely unable pay the \$15,000.00 civil penalty described in the Proposed Order. Although I have determined that she did not act in good faith and have adopted the ALJ's conclusion that the violations were serious, I see no point in expending any additional state resources to collect an uncollectable penalty. Her mortgage loan originator license has been and will continue to be permanently revoked. Finally, I find

that the restitution ordered in the judicial action against the Respondent should not have competition from the civil monetary penalties imposed by the office of the Commissioner of Financial Regulation. The most important financial consequence to the Respondent should be paying back the people she has harmed. Therefore, the Final Order does not impose a civil monetary penalty.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**FINAL ORDER**

The Deputy Commissioner having considered the Exceptions, it is, by the Deputy Commissioner:

**ORDERED**, that the Respondent's mortgage originator's license be revoked; and

**ORDERED**, that the records and publications of the Commissioner reflect this decision.

4/11/12  
Date

Anne Balcer Norton  
Anne Balcer Norton  
Deputy Commissioner of Financial Regulation