FINAL ORDER
DATE 9/27/10

IN THE MATTER OF:	BEFORE THE MARYLAND
Clifford Quinn, Jr.,	COMMISSIONER OF
Applicant.	FINANCIAL REGULATION
	Case No.: DLR-CFR-76B-10-03958

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 27 day of July, 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: _____
Mark Kaufman
Deputy Commissioner of Financial Regulation

CLIFFORD QUINN, JR.,	*	**BEFORE EILEEN C. SWEENEY,**
APPLICANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
COMMISSIONER OF FINANCIAL	*	**ADMINISTRATIVE HEARINGS**
REGULATION	*	**OAH CASE No: DLR-CFR-76B-10-03958**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 7, 2009, the Maryland Commissioner of Financial Regulation (CFR), Department of Labor, Licensing and Regulation (Department), denied the Applicant's application for the renewal of his mortgage originator's license. On December 17, 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 March 30, 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. The Applicant represented himself.

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 his mortgage originator's license?

SUMMARY OF THE EVIDENCE

Exhibits

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

CFR #1	February 12, 2010 Notice of Hearing and attached December 7, 2009 letter from the Department to the Applicant with envelope and unsigned return receipt
CFR #2	January 4, 2010 letter from the CFR to the OAH
CFR #3	December 14, 2009 letter from the Applicant to the CFR
CFR #4	December 7, 2009 letter from the CFR to the Applicant, with December 11, 2009 certified mail receipts
CFR#5	March 30, 2010 licensing information
CFR#6	October 27, 2009 application, with June 8, 2009 attachment
CFR #7	May 24, 2000 and May 31, 2005 court records, United States District Court, District of Maryland, Case No.: A W-00-0275.002; April 26, 2007 Federal Bureau of Prisons Inmate Locator
CFR #8	January 10, 2007 letter from the CFR to the Applicant

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

APP #1	March 19, 2009 Memorandum from the OAH to the Applicant, with attachments
APP #2	April 27, 2007 letter from the CFR to the Applicant
APP #3	June 8, 2009 Financial Regulation – Renewal Application
APP #4	March 28, 2010 letter from Deborah Laggini "To Whom It May Concern"

Testimony

The Applicant testified on his own behalf and offered the testimony of Deborah Laggini, Long and Foster Real Estate, Inc.

The CFR offered the testimony of Calvin I. Wink, Jr., Acting Assistant Commissioner of Enforcement and Complaints, CFR.

PROPOSED FINDINGS OF FACT

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

1. On or about September 9, 2002, the Applicant was convicted of the following felonies: conspiracy to defraud the government; conflict of interest; solicitation of a bribe by public officials; and wire fraud.

2. The Applicant's felonies involved acts of fraud, dishonesty and breach of trust.

3. On or about November 29, 2006, the Applicant filed an application for a mortgage originator's license with the CFR. As part of the application process, the Applicant disclosed his criminal history.

4. On or about January 10, 2007, the CFR notified the Applicant that his application for a mortgage originator's license was denied based on his failure to satisfy the Commissioner that he met the requirements for obtaining a license. The Assistant Commissioner advised the Applicant as follows:

> An applicant must be "of good moral character" and have the "general fitness to warrant the belief that the applicant will act as a mortgage originator in a lawful, honest, fair and efficient manner." FI § 11-605(a)(2). The Commissioner may deny a license application filed by an individual who has committed an act that would serve as sufficient ground for suspension or revocation of an existing Mortgage Originator License, or a Mortgage Lender License (under FI, Title 11, Subtitle 5). FI §11-605(b). Such grounds include a felony or misdemeanor conviction "that is directly related to the fitness and qualification of the individual to act as a mortgage originator." FL § 11-615(a).

> In your case, the documents reviewed reflect that you were convicted of numerous felonies, conspiracy to defraud the government; conflict of interest; solicitation of bribe by public officials; wire fraud on October 28, 2002. The serious nature of your felony convictions directly and negatively relates to your fitness and qualification to act as a mortgage originator.

(CFR #8.)

5. On April 27, 2007, the Commissioner of Financial Regulation, Charles Turnbaugh, approved the issuance of a license to the Applicant following an administrative hearing. The Commissioner stated:

> I have considered the testimony and exhibits presented to me at the hearing of the referenced matter on April 26, 2007. With the opportunity to observe the demeanor of the witnesses and to assess their credibility, I have determined that your application for a mortgage originator license is approved.
>
> While your criminal conviction in 2002 is a serious matters [sic], I note that the events that led to that conviction occurred a decade ago. Significantly, I am also persuaded by the character references and recommendations you provided. . . . The testimony and evidence presented satisfies me that you are currently of good moral character and have general fitness to warrant the belief that you will act as a mortgage originator in a lawful, honest, fair and efficient manner. In view of your apparent rehabilitation, the denial of your license because of your prior conviction would not serve the public interest.

(APP #2.)

6. The CFR issued a mortgage originator license to the Applicant on or about June 27, 2007.

7. On or about October 27, 2009, the Applicant applied for a renewal of his mortgage originator's license. As part of the application process, the Applicant again disclosed

his criminal history.[1]

8. On December 7, 2009, the Commissioner, Sarah Bloom Raskin, denied the Applicant's application for the following reasons:

> The denial of your application results from your failure to satisfy the Commissioner that you qualify for the license as specified in FI § 11-605. The applicant must "demonstrate 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." FI § 11-605(a)(3). The Commissioner may not issue a mortgage loan originator license unless the Commissioner finds "the applicant has not been convicted of, pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period immediately preceding the date of the application for licensing or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering." FI §11-605(a)(2).
>
> The Commissioner may deny a license application filed by an individual who has committed an act that would serve as sufficient ground for suspension or revocation of an existing Mortgage Originator License, or a Mortgage Lender License (under FI, Title 11, Subtitle 5). FI § 11-607(e)(2). Such grounds include a felony or misdemeanor conviction "that is directly related to the fitness and qualification of the individual to act as a mortgage originator." FI § 11-615(a)(2). Such grounds also include where a licensee "[o]therwise 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." FI § 11-615(a)(5).
>
> In your case, the documents reviewed reflect that you were convicted of numerous felonies, conspiracy to defraud the government; conflict of interest; solicitation of a bribery [sic] public officials; wire fraud on October 28, 2002. The serious nature of your felony and other convictions directly and negatively relates to your fitness and qualification to act as a mortgage originator.

(CFR #4.)

[1] The licensing information submitted by the CFR indicates that on or about June 8, 2009, the Applicant applied for a renewal of his mortgage originator's license and that a license was issued on that date (mailed June 23, 2009), with a December 31, 2009 expiration date. The CFR apparently renewed the license at that time without further consideration of the Appellant's felony convictions.

DISCUSSION

On December 7, 2009, the Commissioner, Sarah Bloom Raskin, denied the Applicant's October 20, 2009 application for renewal of his mortgage originator's license, indicating that the denial resulted from the Applicant's failure to satisfy her that he 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 2002 felony convictions of conspiracy to defraud the government; conflict of interest; solicitation of a bribe by public officials; and wire fraud, and found that the serious nature of the convictions directly and negatively relates to the Applicant's fitness and qualification to act as a mortgage originator.

The Appellant did not dispute the convictions, but contended that the CFR improperly applied the current version of section 11-605 to his renewal application, is barred from denying his renewal application by a decision made by the former Commissioner on April 27, 2007 granting him an initial license despite his convictions, and was required but failed to show grounds for a denial based on sections 11-607(e)(2), 11-615(a)(2) and (5), and 11-615(b). The Applicant further argued that the CFR's denial of his renewal application should be reversed because he is the sole support for his two children, he has already paid enough for his behavior, including incarceration, the statutes of which he was convicted are before the United States Supreme Court for being unconstitutionally vague, and the charges against him were overstated and politically motivated.

Legal Background

In April 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.

(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).[2] 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--

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

(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).

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:

. . .

(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[.][3]

[3] 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.

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.

Applicability of Current Law

The Appellant argued that only new applicants are subject to current section 11-605; applicants for renewals are not subject to it. I did not find merit in the Applicant's argument.

Section 11-609 makes it clear that section 11-605 is to apply to renewals of licenses as well as 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).[4] Even if I were to deem the statutory language ambiguous, any ambiguity is resolved by looking to the statutory purpose of the SAFE Act, "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud [in the residential mortgage industry]". 12 U.S.C.A. § 5101.

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[4] *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).

Failure to Meet Qualifications

For the following reasons, I find that the CFR properly concluded that the Applicant did not meet the applicable minimum standards for the issuance of a license based on section 11-605(a)(2)(ii).[5]

Clearly, convictions of conspiracy to defraud the government, conflict of interest, solicitation of a bribe by public officials; and wire fraud are necessarily crimes involving fraud, dishonesty, and a breach of trust. Thus, the CFR properly denied the renewal application based on section 11-605(a)(2)(ii).[6]

Because I have found that the CFR properly relied upon section 11-605(a)(2)(ii), it is not necessary for me to address the applicability of the more general language of section 11-605(a)(3).

Prior CFR Decision to Grant License

The CFR did not dispute that on or about January 10, 2007, the CFR notified the Applicant that his original application for a Maryland mortgage originator's license was denied based on his criminal background, which included the 2002 felony convictions, or that on or about April 27, 2007, the then-Commissioner of Financial Regulation overturned that denial following an administrative hearing.

The Applicant argued, in essence, that the CFR is collaterally estopped from denying his renewal application because it previously determined, after a hearing relating to his initial application for licensure, that he is "of good moral character and [has] general fitness to warrant

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[5] At the hearing, the CFR did not appear to rely upon section 11-605(a)(2)(i) (conviction of felonies during the seven-year period immediately preceding the date of the application for licensing) as a basis for its denial. Indeed, the CFR presented insufficient evidence to establish the dates of the convictions. A January 10, 2007 letter from the CFR indicates an October 28, 2002 conviction date; however, court records submitted by the CFR indicated that the "Date of Original Judgment' was September 9, 2002.

[6] The Applicant offered alleged details regarding the underlying acts involved; however, it is not my role to retry the criminal matters.

the belief that [he] will act as a mortgage originator in a lawful, honest, fair and efficient manner" and that "[i]n view of [his] apparent rehabilitation, the denial of [his] license because of [his] prior conviction would not serve the public interest." (APP #2.)

The CFR contended, however, that the Commissioner's denial of the Applicant's renewal application was based on her discretionary authority under the language of section 11-605 in effect at that time and that a new determination regarding the Applicant's qualifications was properly made at the time of his renewal application, applying the current minimum standards.

In *Colandrea v. Wilde Lake Community Ass'n, Inc.*, the Court of Appeals discussed the doctrine of collateral estoppel:

> If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding. . . . When the principle of collateral estoppel applies, facts or issues decided in the previous action are conclusive only if identical to facts or issues presented in the subsequent proceeding.

Colandrea v. Wilde Lake Community Ass'n, Inc., 361 Md. 371, 388-389 (2000) (citations omitted).

A four-part test must be satisfied in order for the doctrine of collateral estoppel to be applicable:

> 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
>
> 2. Was there a final judgment on the merits?
>
> 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
>
> 4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Id. at 391 (citations omitted).

In this case, the earlier hearing related to an initial application under the earlier version of section 11-605, rather than to a renewal application under current law. As discussed above, under the current law enacted since Congress passed the SAFE Act, the Commissioner "may not issue a mortgage loan originator license" to the Applicant who, preceding the date of the application, was convicted of a felony involving acts of fraud, dishonesty, a breach of trust, or money laundering. Md. Code Ann., Fin. Inst. § 11-605(a)(2)(ii). I have found that the current version of section 11-605(a)(2)(ii) is applicable to renewals. Furthermore, the Commissioner did not make a determination in April 2007 with regard to the issue of whether the convictions were based on acts involving fraud, dishonesty, and/or a breach of trust, focusing instead on the Applicant's subsequent behavior and rehabilitation. Thus, the issue presently in question was not decided at the prior proceeding and the doctrine of collateral estoppel does not apply.

Applicability of Section 11-615(b)

The Applicant contended that the CFR must establish that it properly denied his renewal application for a reason that would allow for the revocation or suspension of a license according to section 11-607(e). I did not find merit in his argument. That statute provides that the Commissioner may deny an application "[i]f the applicant fails to qualify for a license under this subtitle; **or** . . . [f]or any reason that a license may be revoked or suspended under [§ 11-615(b) of] this subtitle or a mortgage lender license may be suspended or revoked under § 11-517 of this title." Md. Code Ann., Fin. Inst. § 11-607(e) (emphasis supplied). In this case, I have found that the CFR properly denied the Applicant's renewal application because he failed to qualify for a license under section 11-605((a)(2)(ii). Thus, it is not necessary for me to determine whether the CFR established a reason for the denial which would also be a reason for revocation or suspension.

Personal Considerations

I sympathize with the Applicant's frustration with the impact the more stringent licensing requirements will have on his livelihood. Indeed, he has paid dearly for his transgressions, serving time in prison. As discussed above, however, the Commissioner no longer has the discretion to grant or renew licenses for applicants with the Applicant's criminal history.

Supreme Court Appeal and Political Motivation

The Applicant argued that the criminal statutes of which he was convicted are being challenged in an appeal to the United States Supreme Court; however, he failed to show that those alleged legal proceedings are relevant to his 2002 convictions. He also testified regarding the political climate at the time charges were brought against him and the circumstances leading to his convictions, which he implied made the convictions improper or unfair, but it is not my role to retry his criminal cases. Thus, the convictions and the resulting denial of his renewal application must stand.

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) (Supp. 2009).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Commissioner of Financial Regulation deny the Applicant's application for renewal of his mortgage originator's license.

June 18, 2010
Date Decision Mailed

Eileen C. Sweeney
Administrative Law Judge

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