FINAL ORDER
Date: 6/1/09

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| IN THE MATTER OF | * | BEFORE THE |
| MARGARETTA M. MURPHY | * | COMMISSIONER OF |
| | * | FINANCIAL REGULATION |
| Applicant | * | OAH NO.: DLR-CFR-76B-08-32246 |

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**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 1st day of May, 2009 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.

Sarah Bloom Raskin

Sarah Bloom Raskin
Commissioner of Financial Regulation

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| MARGARETTA M. MURPHY, | * | BEFORE WILLIAM SOMERVILLE, |
| APPELLANT | * | AN ADMINISTRATIVE LAW JUDGE |
| v. | * | OF THE MARYLAND OFFICE OF |
| OFFICE OF THE COMMISSIONER OF | * | ADMINISTRATIVE HEARINGS |
| FINANCIAL REGULATION | * | OAH CASE NO: DLR-CFR-76B-08-32246 |

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# 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 June 17, 2008, the Office of the Commissioner of Financial Regulation, Department of Labor, Licensing and Regulation (Agency) denied the Appellant's application for a mortgage originator's license. On or about June 25, 2008, the Appellant filed a request for hearing to challenge that determination, and the Agency referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on December 17, 2008, at the OAH in Hunt Valley, Maryland. [1] Assistant Attorney General Kris M. King represented the Agency. The Appellant represented herself.

I heard this case pursuant to the applicable statute, Md. Code Ann. Fin. Inst. § 11-608 (Supp. 2008). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2008),

[1] The Agency delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order. Agency Exhibit 2.

OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

## ISSUE

Did the Agency properly deny the Appellant's application for a mortgage originator's license?

## SUMMARY OF THE EVIDENCE

Exhibits

The Agency offered the following documents, which were admitted into evidence:

Agency #1 - Notice of Hearing

Agency #2 - Referral Letter, 8-7-08

Agency #3 - Request for hearing, 6-25-08

Agency #4 - Notice of Action, 6-17-08

Agency #5 - Packet of license history, criminal history and application documents.

The Appellant offered the following document, which was admitted into evidence:

Appellant #1 - Note, 7-2-08.

Testimony

The Applicant testified on her own behalf.

The Agency did not present witnesses.

## FINDINGS OF FACT

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

1. The Appellant's criminal history reflects arrests and convictions for several crimes, as follows:

   July 23, 2003 – Arrested for CDS possession, Guilty, probation

   August 11, 2003 – Arrested for misdemeanor theft, Guilty

September 3, 2003 – Arrested for misdemeanor theft, Guilty, 90 days in jail

September 25, 2003 – Arrested for felony theft, Guilty

May 13, 2005 – Arrested for misdemeanor theft, Guilty, nine months in jail.

2. The Appellant last used drugs on July 17, 2005.

3. In recent years, the Appellant has lived in various residential programs and recovery houses such as the Gaudenzia program, the TASK program, and others.

4. The Appellant was released from Gaudenzia in July 2006.

5. The Appellant began showing an interest in mortgage loan origination work in October 2005, while confined at the Gaudenzia treatment program. During that time, she worked with National Fidelity Mortgage, and later with Key Financial. She did not originate any loans in Maryland.

6. On May 22, 2008, the Appellant applied to the Agency for a mortgage originator's license.

7. The Agency denied a mortgage originator's license to the Appellant on June 17, 2008. As legal authority, that notice document cited, generally, among other provisions, section 11-605(b) of the Financial Institutions Article.

8. The Appellant began working with the Mountain Manor treatment center in October 2008.

## DISCUSSION

The Appellant has the burdens of production and persuasion to demonstrate that she is of good moral character and has general fitness to warrant the belief that she will act as a mortgage originator in a lawful, honest, fair, and efficient manner. Md. Code Ann., Fin. Inst. § 11-605(a)(2) (Supp. 2008).

In this case, the Agency alleged, generally, in the notice of action that the denial was based on section 11-605(b) of the Financial Institutions Article, among other code sections. (Agency Exhibit 4.) That code section contains both the mandatory denial and the discretionary denial provisions. I conclude that the Appellant was properly notified that both the mandatory denial and discretionary denial portions of section 11-605(b) were a basis of the Agency's action. Md. Code Ann., State Gov't §10-207 (reasonable notice requirement).

The Agency argued that the Appellant has not shown that she is "of good moral character" as required by statute. Md. Code Ann., Fin. Inst. § 11-605(a)(2). The Agency argued that it should prevail on the mandatory denial provisions of the statutory scheme, Md. Code Ann., Fin. Inst. § 11-605(b)(2) (commissioner shall deny an application), as well as under the discretionary provisions of the statutory scheme, Md. Code Ann., Fin. Inst. § 11-605(b)(1) (commissioner may deny an application). The Agency relies on the evidence of the Appellant's criminal history.

With regard to the mandatory denial provisions of the statute, the Agency determined that the Appellant was generally unfit, as a matter of law, by virtue of the provisions of the disqualification statute. Md. Code Ann., Fin. Inst. § 11-605(b)(2) (Supp. 2008). That statute provides:

> (2) The Commissioner shall deny an application for a license filed by an individual who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery.

Md. Code Ann., Fin. Inst. § 11-605(b)(2) (Supp. 2008). Thus, if an applicant has been convicted of a felony involving theft, within the previous ten years, the applicant is statutorily disqualified from obtaining a license. In the instant case, the Appellant was convicted of felony theft within the past ten years. The Agency has met its burdens under this code section.

The Agency also determined that it had discretion to deny the license under the statutory scheme. Md. Code Ann., Fin. Inst. §§ 11-605(b)(1) and 11-615 (Supp. 2008) (commissioner may suspend or revoke a license under certain conditions). The Agency argued that, separate and independent from the mandatory disqualification statute, it has discretion to deny the application for a license because the Appellant has committed acts that would serve as sufficient grounds for suspension of a license. Md. Code Ann., Fin. Inst. § 11-605(b)(1). The Agency points to the Appellant's recent criminal history, as set forth in Finding of Fact one through four, above. The discretionary denial portion of the statute provides:

> Except as provided in paragraph (2) of this subsection, 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.

Md. Code Ann., Fin. Inst. § 11-605(b)(1).

The Appellant's theft convictions set forth in Finding of Fact one, above, demonstrate separate acts, as well as a pattern of conduct, that serve as sufficient grounds for suspension under the mortgage originator statutes. They certainly demonstrate dishonesty. Md. Code Ann., Fin. Inst. § 11-615(a)(5). Dishonesty is a trait that is directly related to the fitness and qualification of a person to act as a mortgage originator. Md. Code Ann., Fin. Inst. § 11-615(a)(2). I cannot determine, on the basis of the record before me, that the Agency abused its discretion by denying the Appellant's application under the discretionary provisions of the applicable statute. Md. Code Ann., Fin. Inst. § 11-605(b)(1).

The Appellant suggested that she is currently trustworthy and that mortgage origination work is overseen by many people such that there is no way to be dishonest in the position. Although she appears to be on the right path to demonstrate rehabilitation eventually, she cannot refute the fact that she was convicted of felony theft in 2003. She also has not refuted the facts

that demonstrate a pattern of theft. Nor has she persuaded me that the Agency abused its discretion by denying her application under the discretionary provisions of the law.

## CONCLUSIONS OF LAW

I conclude as a matter of law that the Agency properly denied the Appellant's application for a mortgage originator's license. Md. Code Ann., Fin. Inst. §§11-605(b)(1) and (2) and 11-615(a) (Supp. 2008).

## RECOMMENDED ORDER

I recommend that the Office of the Commissioner of Financial Regulation **ORDER** that the Appellant's application for a mortgage originator's license be **DENIED**.

March 16, 2009
Date Decision Mailed

William J.D. Somerville, III/ncp
William J.D. Somerville, III
Administrative Law Judge

WS/
# 102929

Copies mailed to:

Margaretta M. Murphy
564 47th Street
Baltimore, MD 21224

Kris M. King
Assistant Attorney General
500 N. Calvert Street, Room 406
Baltimore, MD 21202

Sarah Bloom Raskin
Commissioner
Office of the Commissioner
of Financial Regulation
500 N. Calvert Street, Room 402
Baltimore, MD 21202