IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

WILLIAM E. TAYLOR JR., HOMETOWN LENDERS LLC, WILLIAM E. TAYLOR SR. AND BRYON HEATH QUICK,	:	**Docket Nos.:**
	:	**OSAH-DBF-MLL-1427386-60-Malihi**
Petitioners,	:	**OSAH-DBF-MLL-1427387-60-Malihi**
	:	**OSAH-DBF-MLL-1427389-60-Malihi**
v.	:	**OSAH-DBF-MLL-1427390-60-Malihi**
	:	
DEPARTMENT OF BANKING AND FINANCE,	:	
	:	
Respondent.	:	

For Petitioners:
Kenneth Joe Wilson Jr., Esq.
Ward & Wilson, LLC

For Respondent:
Elizabeth Harris, Esq.
Assistant Attorney General

ORDER GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION AND GRANTING PARTIAL SUMMARY DETERMINATION FOR RESPONDENT

I. BACKGROUND

1.

Respondent, the Georgia Department of Banking and Finance, seeks to revoke the mortgage lending license of Hometown Lenders, LLC (hereinafter "Hometown").

2.

On February 10, 2014, Respondent filed a Motion for Summary Determination in each of the above-docketed matters, asserting that its decision to revoke Hometown's license should be affirmed on the bases of Hometown's employment of two convicted felons in violation of O.C.G.A. § 7-1-1004(h) (hereinafter "the felony conviction issue") and its control of an unlicensed entity in violation of O.C.G.A. § 7-1-1002.

3.

On May 27, 2014, the Court entered an Order denying Respondent's Motion for Summary Determination and granting Summary Determination to Petitioners on the felony conviction issue. The Court's grant of Summary Determination was based on its conclusion that O.C.G.A. § 7-1-1004 granted Respondent the authority to revoke licenses only where a licensee employed convicted felons as "covered employees", defined as employees who both (1) work in Georgia and (2) are authorized to enter, delete, or verify information on mortgage loan documents.

4.

Respondent filed a Motion for Reconsideration on June 6, 2014, requesting that the Court reconsider its interpretation of O.C.G.A. § 7-1-1004, reverse the grant of Summary Determination to Petitioners, and grant Summary Determination to Respondent on the felony conviction issue. Respondent contended in its Motion for Reconsideration that O.C.G.A. § 7-1-1004(h) authorized it to revoke the license of any licensee that employed convicted felons, and that this authority was not contingent upon the employee's presence in the state of Georgia or the capacity in which the employee was retained. Respondent cited tenets of statutory interpretation in support of its contention, and included for the first time a citation to the regulations governing revocation of licenses for employment of convicted felons. Petitioner replied to Respondent's *Motion for Reconsideration* on June 16, 2014.

5.

For the reasons indicated below, Respondent's Motion for Reconsideration is **GRANTED** and the Order Granting Partial Summary Determination to Petitioners is **VACATED**. Additionally, based upon a review of the undisputed facts as originally presented by the parties and a thorough examination of the relevant law, summary determination is **GRANTED** in part to

Respondent. The Court's denial of summary determination to Respondent with respect to Petitioner's alleged violation of 7-1-1002 is unaffected by the present Order and that issue shall be heard along with any remaining issues as originally scheduled in the Court's May 27, 2014 Order.

II. CONCLUSIONS OF LAW

A. Standard Governing Motions for Reconsideration

1.

The Court does not reconsider its decisions as a matter of routine practice. For a party to obtain reconsideration of a decision, "there must be a reason why the court should reconsider its prior decision, and [the movant] must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Coppage v. United States Postal Serv., 129 F. Supp. 2d 1378, 1379 (M.D. Ga. 2001) (quoting Sussman v. Salem, Saxon & Nielson, 153 F.R.D. 689, 694 (M.D. Fla. 1994)). In light of the strong legal arguments submitted by Respondent, the Court concludes that its grant of Summary Determination to Petitioners was erroneous.

B. Respondent's Revocation Authority

2.

Respondent's authority to revoke the license of a mortgage lender that employs a convicted felon is found in O.C.G.A. § 7-1-1004(h), which provides in pertinent part:

> The department . . . may revoke a license . . . if it finds that the . . . mortgage lender . . . licensee, or any person who is [an] . . . employee . . . of the . . . mortgage lender . . . licensee . . . has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state.

O.C.G.A. § 7-1-1004(h) (2013). According to this subsection, a person (other than a mortgage loan originator) shall be deemed to have been convicted of a felony if such person

[1] shall have pleaded guilty or nolo contendere to a charge thereof before a court or

federal magistrate or

> [2] shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on the charge . . .

Id.

3.

An individual's felony conviction shall be considered "cured" and the prohibition against employment shall cease where

> [1] [the] plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or
>
> [2] probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or
>
> [3] the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred or
>
> [4] [the person] shall have received an official certification or pardon granted by the state's pardoning body in the jurisdiction where the conviction occurred.

Id.

4.

Section 1004(h) does not expressly limit Respondent's revocation authority to instances where the licensee has employed a felon as a "covered employee." The plain reading of the statute indicates that Respondent's revocation authority is triggered where it finds that any employee of the licensed mortgage lender has an unremedied felony conviction. Therefore, if Respondent is authorized to revoke only where the licensee has employed a convicted felon as a covered employee, the limitation must be expressed elsewhere in the statute or in the pertinent regulations. *See Risser v. City of Thomasville*, 248 Ga. 866, 866 (1982) ("In the absence of words of limitation, words in a statute should be given 'their ordinary and everyday meaning.'")

(quoting *Richmond County Bd. of Tax Assessors v. Ga. R. Bank & Trust Co.*, 242 Ga. 23, 25 (1943)).

5.

Section 1004(i) places an affirmative duty on licensees to conduct background checks on "covered employees," defined as those who (1) work in the state of Georgia and (2) have the authority to enter, delete, or verify any information on any mortgage loan application form or document. *Id*. The licensee's affirmative duty to obtain these background checks is repeated in section 80-11-1-.05 of the Rules and Regulations of the State of Georgia. Neither § 1004(i) nor the corresponding regulation impose a limitation on Respondent's revocation authority; they both address the licensee's duty to proactively obtain background checks for covered employees.

6.

In its Motion for Reconsideration, Respondent cited Ga. Comp. R. & Regs. 80-11-4-.08 (Restrictions on Employment and Licensing) in support of its interpretation of its revocation authority. This regulation, which Respondent failed to cite in its original Motion for Summary Determination, describes the parameters set forth in § 1004 as follows:

> O.C.G.A. § 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. **Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business** . . . .

Ga. Comp. R. & Regs. 80-11-4-.08(2)(a) (emphasis added). This regulation clearly provides that, although the licensee's duty to obtain background checks is limited to covered employees, the licensee must ensure that it employs no convicted felons, even where no background check is required. Where the licensee "discovers that an employee . . . is a felon who has not satisfactorily 'cured' the conviction, the violation of O.C.G.A. § 7-1-1004 must be immediately

corrected or the license will be subject to revocation." Ga. Comp. R. & Regs. 80-11-4-.08(2)(c). If the licensee hires or continues to employ a person with an unremedied felony conviction, its license is subject to revocation. Ga. Comp. R. & Regs. 80-11-4-.08(2)(b); *see also* Ga. Comp. R. & Regs. 80-11-3-.01(9) (2013) ("Any mortgage broker or mortgage lender licensee . . . who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.GA. § 7-1-1004(h), may be fined five thousand dollars ($5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.").

7.

Based upon a review of the relevant statutory and regulatory authority as more thoroughly presented by Respondent, the Court concludes that Respondent may institute revocation where the licensee has employed an individual with an unremedied felony conviction as defined in O.C.G.A. § 7-1-1004(h). Respondent's revocation authority is not limited to circumstances where the licensee has hired or retained individuals with unremedied felony convictions as covered employees. Accordingly, the Court finds sufficient cause for reconsideration of the Order Granting Partial Summary Judgment to Petitioner. Respondent's Motion for Reconsideration is hereby **GRANTED** and the Order granting partial summary judgment to Petitioner's is hereby **VACATED**.

C. <u>Summary Determination</u>

8.

Having granted Respondent's Motion for Reconsideration, the Court will review Respondent's Motion for Summary Determination anew based upon the accurate interpretation

of the relevant law described *supra*. Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1).

9.

The Court having viewed all of the undisputed material evidence, and in light of the Court's interpretation and analysis *supra*, concludes that there is no genuine issue for determination on the issue of Hometown's violation of Code Section 7-1-1004(h). Accordingly, summary determination is **GRANTED** to Respondent on this issue.

D. <u>Appropriateness of the Proposed Sanction</u>

10.

Under OSAH Rule 15(6), "the ALJ may determine that the matter may better be resolved via an evidentiary hearing and is inappropriate for resolution by a summary determination motion." The Undersigned so finds as to the issue of sanctions.

11.

This Court has the responsibility to independently review the facts and law de novo, "without according deference or presumption of correctness" to the referring agency's decision. *Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc.*, 298 Ga. App. 753, 768 (2009); Ga. Comp. R. & Regs. 616-1-2-.21 (1), (3). Genuine issues of material fact remain as to the appropriate sanction.

12.

The undersigned Administrative Law Judge "has all the powers of the referring agency with respect to a contested case." O.C.G.A. § 50-13-41(b). Further, the ALJ "shall make an independent determination on the basis of the competent evidence presented at the hearing" and "may make any disposition of the matter available to the Referring Agency." GA. COMP. R. & REGS. 616-1-1-.21(1).

13.

Respondent is not required to exercise its revocation authority where a licensee violates Code Section 7-1-1004. *See* O.C.G.A. 7-1-1004(h) ("The department . . . *may* revoke a license . . . if it finds that the . . . mortgage lender . . . licensee, or any person who is [an] . . . employee . . . of the . . . mortgage lender . . . licensee . . . has been convicted of a felony . . .") (emphasis added); Ga. Comp. R. & Regs. 80-11-4-.08(2)(b) ("Hiring or continuing to employ a person with an unremedied felony conviction *subjects* a licensee to revocation of its license."). Indeed, Respondents regulations prescribe alternative penalties for violations of the prohibition against employing convicted felons. Ga. Comp. R. & Regs. 80-11-3-.01(9) ("Any mortgage broker or mortgage lender licensee . . . who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.GA. § 7-1-1004(h), may be fined five thousand dollars ($5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension."). Accordingly, genuine issues of material fact remain with regard to the appropriateness of Respondent's proposed sanction and Respondent's Motion for Summary Determination as to revocation is **DENIED**. A hearing on the remaining issues will be held on

July 22, 2014, at 9 a.m. at OSAH, 230 Peachtree Street, N.W., Suite 850, Atlanta, Georgia 30303.

SO ORDERED, this the 26th day of June, 2014.

_____

MICHAEL MALIHI, Judge