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DEPARTMENT OF FINANCE
STATE OF IDAHO

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO

In re Mortgage Loan Originator
License Application of:

JOHN C. SANFORD,
NMLS ID No. 1841401,
Applicant

Docket No. 2019-16-53

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND PRELIMINARY ORDER**

This matter came before the hearing officer on an evidentiary hearing on February 25, 2020. Thomas Donovan, Deputy Attorney General appeared on behalf of the Department of Finance. John Sanford appeared representing himself.

FINDINGS OF FACT

1. The NMLSR (the Nationwide Mortgage Licensing System and Registry) is the licensing and applications system used by The State of Idaho Department of Finance (hereinafter the Department) for the filing of mortgage loan originator license applications. The system incorporates standardized forms, one of which is the subject application form MU4. . Exhibit 1; Hearing Transcript Pg 10, Lines 5-9. (hereinafter Hrg Tr Pg/Ln).
2. Mr. Sanford filed a 2019 application for a Mortgage Loan Originator License (Form MU4) with the Department. Exhibit 1; Hrg Tr Pg 9, Ln 25; Pg 10, Ln 1-3, 19-25.

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER

3. A section of the application requires the applicant to provide responses to a series of questions concerning the applicant's background including matters regarding financial affairs, criminal activities and involvement in civil litigation. Exhibit 1.
4. Of relevance here is that Mr. Sanford answered no to three questions on the application, one, concerning whether he had been the subject of a foreclosure action within the past 10 years, two, whether he had any unsatisfied judgments or liens against him, and three, if he had ever been convicted of or pled guilty to a misdemeanor involving theft. Exhibit 1; Hrg Tr Pg 11, Ln 24-25; Pg 12, Ln 1-23.
5. Mr. Sanford also provided as part of the application an attestation that his answers to questions on the application were accurate and true. Hrg Tr Pg 13, Ln 12-25; Pg 14, Ln 1-7.
6. The Department as part of the application process and review of Mr. Sanford's application conducted a background investigation and review of public records concerning him. Hrg Tr Pg 14, Ln 20-25; Pg 15, Ln 1-24.
7. This investigation revealed the existence of two related Notices of Default which concerned real property owned by Mr. Sanford. Exhibits 2, 3 and 4; Hrg Tr Pg 16, Ln 4-17.
8. The Notices of Default concerned the primary residence of Mr. Sanford. Hrg Tr Pg 56, Ln 12-13.
9. Applicants can, as part of the NMLS system, utilize a published policy guidebook to assist in the application process. This guidebook identifies guidelines and disclosure requirements with application. In these requirements the guidebook indicates that a

foreclosure action when initiated, whether or not final should be disclosed. Exhibit 5; Hrg Tr Pg 20, Ln 20-25; Pg 21, Ln 1-3.

10. The background check also revealed a default judgment entered in 2009 against Mr. Sanford which was renewed in 2014 and again in 2019. Exhibits 7, 8 and 9; Hrg Tr Pg 22, Ln 1-25; Pg 23, Ln 1-3.

11. This judgment concerned a contested outstanding medical expense. Hrg Tr Pg 52, Ln 1-25; Pg 53, Ln 1-23.

12. The Department in its investigation also obtained copies of a filing of a complaint against Mr. Sanford along with a corresponding guilty plea and judgment for a charge of petit theft which occurred in 1996. This was originally entered as a withheld judgment following Mr. Sanford's guilty plea, but a Judgment of Conviction revoking the withheld judgment was entered subsequently in 1998. Exhibits 10, 11 and 12; Hrg Tr Pg 23, Ln 13-25; Pg 24, Ln 1-25; Pg 25, Ln 1-12.

13. The Department denied Mr. Sanford's application and Mr. Sanford requested a hearing on this denial.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 26-31-305(1) an applicant for a mortgage loan originator license is to use in the filing of their application, the Nationwide Mortgage Licensing System and Registry (NMLSR) system and in a form required by the Director of the Department of Finance.

2. Idaho Code § 26-31-306(l)(h) requires that the applicant provide all requested information. Under Idaho Code § 26-31-305(10) such information is to be disclosed in a complete manner.

3. Pursuant to Idaho Code § 26-31-306(l)(d) the Director shall not issue a mortgage loan originator license unless the Director first makes, among other requirements, a finding that the applicant has demonstrated:

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 within the purposes of this part.

4. The Director under the provisions of Idaho Code §26-31-313(1)(b), may decline to issue a license when an applicant withholds information or makes a material misstatement of fact in an application.

5. The Department asserts that the failure to disclose the information concerning the Notices of Default, the unsatisfied judgment and the misdemeanor involving theft represent grounds under Idaho Code § 26-31-313(l)(b) for the Director to deny Mr. Sanford's license application.

6. Mr. Sanford, at the hearing, presented testimony in his defense that the events surrounding the Notices of Default were in essence an accounting or transcription error with the mortgage companies involved and that ongoing and continuing efforts at resolution had been undertaken. In turn Mr. Sanford asserted that he was unaware of the existence of Notices of Default. Hrg Tr Pg 50, Ln 1-13; Pg 51, Ln 17-25; Pg 55 Ln 16-20.

7. As to the unsatisfied judgment, Mr. Sanford asserted that he was aware that a dispute existed over the amount owed, but was unaware that the judgment remained outstanding and that he believed it had previously either been satisfied or was otherwise invalid. Hrg Tr Pg 52 Ln 19-25; Pg 53 Ln 1-23; Pg 58 Ln 19-25.

8. Mr. Sanford provided testimony regarding the misdemeanor offense for which he

had been convicted and asserted that he believed at the time his application was submitted all relevant information concerning his record had in fact been attached and uploaded to the application and that it erroneously had been omitted. Hrg Tr Pg 54 Ln 1-25; Pg 55 Ln 1-2.

9. First as to the information regarding the prior misdemeanor charge, the evidence submitted leads to the conclusion that it is insufficient to constitute grounds itself for denial of the license. Testimony by Mr. Sanford illustrated a clear, albeit unsuccessful intent, to provide this information with the application by upload. The information itself concerned a violation from approximately twenty five years earlier. Additionally, of note, Mr. Sanford did provide information concerning a second more serious criminal charge, which apparently was reviewed by the Department in the course of considering his license application. Credible evidence exists to believe Mr. Sanford and that this error in failing to attach to the application, materials regarding the second offense, was excusable as inadvertence. It is fair also to conclude that no deliberate attempt was made to conceal a lesser offense when disclosure was made of a greater one.

10. Next as to the other items, that of the information concerning the Notices of Default and the outstanding judgment, while Mr. Sanford has provided explanations regarding his errors or omissions concerning his application answers and corresponding information submissions, the fact remains that at a minimum certain matters presented to the Department in the application were false and material to the question of his capability to qualify for license issuance.

11. The issues with his own mortgage company, which as testified to were ongoing, should have at a minimum alerted Mr. Sanford, when filling out his application, for the

need to be fully apprised of the exact status of the matter and in turn the existence of the Notices of Default which were still pending and of record approximately six months before he filed his application with the Department. Mr. Sanford should have obtained definitive information from the mortgage company of the status prior to his application being submitted. The claim of ignorance of the true nature of a pending claim does not automatically equate with an excusable inadvertent omission or insufficient knowledge to accurately fill out the required disclosure information requested in the Mortgage Loan Originator License application (Form MU4). An applicant is required to provide full disclosure of such matters; this in turn mandates that they seek all relevant information pertaining to the inquiries in the application.

12. Next, in a similar manner a claim of ignorance regarding the status of the prior outstanding judgment is also insufficient to constitute mere inadvertence or lack of knowledge sufficient to overturn the decision of the Director. Again, even though asserted that the outstanding nature of the judgment was unknown, this illustrates a type of indifference to the accuracy of the information provided in the application. This represents a material concern to the Department.

13. Mr. Sanford cannot claim ignorance of the exact status of the judgment against him as a defense for the lack of accuracy in the responses provided to the disclosure questions. Even if the matter was believed to have been resolved or otherwise satisfied, Mr. Sanford as part of the process of applying for his license should have verified that status in order to ensure he properly provide the required information and attest to the answers provided. The information sought by the application creates the duty for an applicant to answer questions in a diligent and accurate manner to the best of their

knowledge. Inadvertence or unintentional omission is not here a sufficient excuse.

14. The failure to accurately disclose this information constitutes an omission and misstatement which is material to the necessary information gathered by the Department in consideration of the applicant's qualifications.

15. This in turn represents a failure on Mr. Sanford's part to meet the requirements of Idaho Code § 26-31-306(1)(d) and (1)(h).

16. The evidence establishes that the Director has a sufficient basis to conclude that Mr. Sanford withheld information and made a material misstatement in his application. This provides grounds to the Director to deny the application for an Idaho mortgage loan originator license pursuant to Idaho Code §26-31-306(1)(d), (1)(h) and § 26-31-313(1)(b).

PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Department's Order Denying Mortgage Loan Originator License Application of Mr. Sanford dated December 16, 2019, should be AFFIRMED.

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Finance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Finance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of the petition for

reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Finance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Finance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Finance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Finance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Finance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

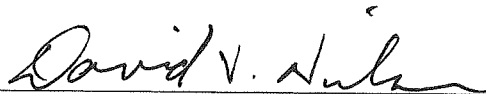
DATED this 3rd day of April, 2020.

By: David V. Nielsen
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 2020, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

Thomas A. Donovan Deputy Attorney General State of Idaho Department of Finance P.O. Box 83720 Boise, Idaho 83720-0031	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
John C. Sanford 4150 E. Chinden Blvd. Eagle, ID 83616	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile



David V. Nielsen