

**BEFORE THE IDAHO DEPARTMENT OF FINANCE**

In Re Mortgage Loan Originator	)	
License Application of:	)	AGENCY Case No. 2024-16-08
	)	
SHANNON LYNN VILLEGGIANTE,	)	OAH Case No. 24-250-01
NMLS ID No. 483007,	)	
	)	
Appellant.	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
	)	<b>PRELIMINARY ORDER</b>
_____	)	

**PROCEDURAL BACKGROUND**

This matter was initiated after the Director of the Idaho Department of Finance (“IDF”) issued an Order Denying Mortgage Loan Originator License Application and Notice of the Opportunity to Appeal on May 6, 2024 (“Denial Order”), which was thereafter timely appealed by the applicant-appellant, Shannon Lynn Villeggiante (“Appellant Villeggiante”).

Following assignment of this matter by IDF to the Office of Administrative Hearings on May 21, 2024, the undersigned hearing officer was appointed to preside over this matter on May 24, 2024. The evidentiary hearing in this matter was initially set for September 10, 2024; the hearing was later reset to November 7, 2024, primarily to allow Appellant to gather additional anticipated evidence in advance of the hearing. (September 3, 2024 Prehearing Conference, at 6:37-12:07).

The evidentiary hearing in this matter was ultimately conducted on November 7, 2024. At the conclusion of the hearing, Appellant Villeggiante was

afforded leave until November 13, 2024 to submit additional materials into the record. On November 13, 2024, Appellant Villeggiante submitted a letter from her tax preparer, dated November 12, 2024.<sup>1</sup> The parties thereafter submitted written closing statements: Appellant Villeggiante on November 26, 2024, and IDF on December 3, 2024.

This matter is now fully submitted and ripe for determination.

### **EVIDENTIARY MATTERS**

In advance of the hearing, as per the Hearing Order of June 4, 2024, the parties submitted proffered written exhibits in advance of the evidentiary hearing of November 7, 2024.

Appellant Villeggiante submitted proposed exhibits 1-6<sup>2</sup> in conjunction with her prior Answers to Interrogatories, dated October 24, 2024. No objection was lodged by IDF to any of these proposed exhibits; as all appeared appropriate for admission pursuant to Idaho Code §67-5251(1), all of Appellant Villeggiante's exhibits were admitted. Transcript of November 7, 2024 Evidentiary Hearing ("Transcript"), at ll. 12:16-13:2. Additionally, Appellant Villeggiante's discovery responses were accepted as a written testimonial submission, as the responses were verified by Appellant Villeggiante; no objection was made by IDF to admission. *Id.* at ll. 13:3-13; *see* Respondent's Answers to Interrogatories and Requests for Production, dated October 24, 2024 ("Written Testimony"); *accord, generally*, I.C. §67-5251(2). Finally, no objection was lodged by IDF regarding

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<sup>1</sup> For ease of reference, this letter is referred to as "Exhibit 7" herein.

<sup>2</sup> Appellant Villeggiante's exhibits were marked as Exhibits A-F; to avoid confusion with IDF's labeling, these exhibits were referred to by corresponding numbering of 1-6 (A = 1, B = 2, etc.).

Appellant Villeggiante's November 12 submission of a letter from her tax preparer, which otherwise appears appropriately admissible pursuant to Idaho Code §67-5251(1). *See generally* Department's Closing Statement, dated December 3, 2024.

IDF submitted proposed exhibits marked as IDF-A through IDF-G. *See* Department's Exhibit and Witness List, dated August 27, 2024. No objection was lodged by Appellant Villeggiante to any of these proposed exhibits; as all appeared appropriate for admission pursuant to Idaho Code §67-5251(1), all of IDF's exhibits were admitted. Transcript at ll. 12:16-13:2.

### **FINDINGS OF FACT<sup>3</sup>**

1. The Appellant, Shannon Lynn Villeggiante, a resident of the state of California, applied for an Idaho Mortgage Loan Originator (MLO) license on March 29, 2024, by filing an individual Form MU4, which seeks information about an applicant's qualifications to be licensed as a mortgage loan originator, through an online application on the Nationwide Multistate Licensing System and Registry (NMLSR), a.k.a. the Nationwide Multistate Licensing System (NMLS), under her NMLS number (483007). *See* IDF Exh. A; Transcript at ll. 46:9-17 & 47:12-48:13. This application was attested to and submitted by the Appellant on March 29, 2024. *Id.*

2. The application Form MU4 seeks information about an individual

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<sup>3</sup> Appellant Villeggiante's challenge to the Denial Order is grounded in a dispute with IDF regarding her knowledge, and status, of alleged tax lien(s), which was the focus of the evidentiary hearing and the submissions made to the Hearing Officer. Where supported by evidence in the record and not otherwise disputed by Appellant Villeggiante, the Hearing Officer adopts, in whole or in part, certain of the Findings of Fact made in the Denial Order, as set forth herein.

applicant's qualifications to be licensed as a mortgage loan originator. See IDF Exh. A. A section of the application is entitled "Disclosure Questions" and consists of a series of questions that inquire into an applicant's history regarding financial, criminal, civil judicial, and regulatory matters. *Id.*, pp. 8-9.<sup>4</sup>

3. Pertinent to Appellant Villeggiante's qualifications, and salient to the dispute in this matter, is Question D under "Financial Disclosure," which asked as follows: "Do you have any unsatisfied judgments or liens against you?" IDF Exh. A, p. 8. Appellant Villeggiante responded "No" to this question in her application. *Id.* Appellant Villeggiante did no research before submitting the application to confirm that she did not have any outstanding liens, and did not check with the Alameda County Recorder's Office for any tax liens. Transcript at ll. 30:16-31:5.

4. A "MIDEX Report" was created on or about April 1, 2024, by IDF regarding Appellant Villeggiante's publicly available information. IDF Exh. B. The MIDEX Report tentatively reflected one outstanding federal tax lien in the amount of \$185,493.00 (recorded in Alameda County on July 21, 2015 under file number 2015201618), in relevant part as follows:

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<sup>4</sup> IDF submitted its proposed exhibits as a consolidated document with a single set of numbering. Thus, for pagination cites herein, page cites refer to the Bates coding at the lower right corner of IDF's consolidated exhibit submission.

2.	Federal Tax Lien	See Details	\$185,493.00	07/21/2015	2015201618	California
<b>Debtor 1</b> <ul style="list-style-type: none"> <li>•Spangler, Shannon</li> <li>•2503 Encanto Way</li> <li>Dublin, CA 94568-2685</li> </ul> <b>Creditor 1</b> <ul style="list-style-type: none"> <li>•Internal Revenue Service</li> </ul> <b>Filing 1</b> <ul style="list-style-type: none"> <li>•Type: Federal Tax Lien</li> <li>•Agency: Alameda County / Recorder Of Deeds</li> <li>•Agency State: CA</li> <li>•Agency County: Alameda</li> </ul>						

IDF Exh. B, p. 24. The MIDEX Report also identified “Spangler” as a variant last name for Appellant Villeggiante. *Id.*, p. 13; *accord* IDF Exh. A, pp. 2-3 (“Other Names” section of March 29, 2024 application). IDF subsequently obtained a copy of a Notice of Federal Tax Lien (Serial Number 165987315) for the lien identified in the MIDEX Report, which confirmed the MIDEX Report information regarding that lien. IDF Exh. D. The lien at issue is comprised of unpaid balances for 1040 taxes for the tax periods ending 2006, 2007, 2009, 2011, and 2012. *Id.* For each tax period at issue, the lien identified a “Last day for Refiling” date, as follows: 2006, July 27, 2021; 2007, July 13, 2021; 2009, May 18, 2021; 2011, August 27, 2024; and 2012, May 13, 2025. *Id.* Appellant Villeggiante has not previously disputed that information with the IRS. Transcript at ll. 34:21-23.

5. On April 1, 2024, IDF provided Appellant Villeggiante a notice of intent to deny the application within approximately one month based on the outstanding tax lien unless Appellant Villeggiante was able to provide

documentation to satisfy IDF that the tax lien had been resolved prior to the application submission date of March 29, 2024. IDF Exh. C, p. 38. The notice was provided through the online Nationwide Multistate Licensing System (“NMLS”), and specifically provided as follows:

**PRIVATE - The Department has obtained Public Records information showing an outstanding lien which requires disclosure under Disclosure Question D of your MU4 filing: (Federal Tax Lien, Instrument Number 2015201618 filed in Alameda County on 07/21/2015.) This information was not disclosed in the application submitted to the Department on March 29, 2024. Therefore, the Department deems the application to be inaccurate and subject to Denial. Provide supporting documents evidencing the item was fully resolved prior to March 29, 2024, and that disclosure of the information was not required. Your response must be received by no later than close of business on April 29, 2024. Alternatively, you may withdraw your application prior to close of business on April 29, 2024, and re-apply with a corrected application. Correcting the initial MU4 filed on March 29, 2024, to include required disclosure item will not be accepted without the withdrawal of the application and filing of a new application. If you do not take either of these two actions prior to close of business on April 29, 2024, the Department intends to deny your application. For a list of the appropriate supporting documents, review the Disclosure Explanations – Document Upload reference guide on the NMLS Resource Center. All documents must be uploaded and attached to an explanation through NMLS. If the outstanding item was not fully resolved prior to March 29, 2024, the Department intends to submit your application for a formal denial on April 29, 2024.**

*Id.* No response from Appellant Villeggiante was received by IDF by April 29, 2024. Transcript at ll. 55:4-56:22. The Denial Order thereafter issued on May 7, 2024, concluding that Appellant Villeggiante “made a material misstatement of fact in her application, which is grounds to deny her application for licensure. She answered a question inaccurately and failed to disclose tax liens. The false answer to disclosure question (D) and failure to disclose the outstanding tax liens

prohibits the Director from issuing a license to the Applicant pursuant to Idaho Code § 26-31-306(1)(d) and (h) and § 26-31-313(1)(a) and (b).” Denial Order, Conclusions of Law, ¶15, pp. 4-5.

6. Appellant Villeggiante timely appealed the Denial Order on May 20, 2024. See Department’s Closing Statement at p. 3.

7. The tax lien at issue is not identified to Appellant Villeggiante in various documents provided by her as exhibits:

- Policy of Title Insurance document, dated May 18, 2020, regarding real property located at 2503 Encanto Way, Dublin, CA (Exh. 1);
- Alta Combined Settlement Statement & Closing Disclosure documents, dated November 10, 2021, regarding purchase of real property at 1461 Rolling Fairway, Davenport, FL (Exh. 2); and
- Equifax, Experian, and TransUnion credit report documents, dated August 14, 2024 (Exh. 3).

8. Appellant Villeggiante’s tax preparer provided a letter dated October 24, 2024, in conjunction with these proceedings, advising that he “was not previously aware of this lien due to IRS procedural rules concerning the notification process,” as “tax preparers do not receive direct communications from the IRS about liens or other actions on a taxpayer’s account unless a valid Power of Attorney (Form 2848) had been submitted and approved by the IRS.” (Exh. 5, *amended by* Exh. 7.) By way of his amended letter of Nov. 12, 2024, Appellant’s tax preparer added that he did have authorization form 8821, which

“authorizes the IRS to disclose confidential tax information to the person you appoint.” (Exh. 7.)

9. Appellant Villegiante also provided a refund notice from the IRS, dated September 26, 2024, which addressed amounts owed with respect to her 1040 taxes for the tax period ending 2012, and advising Appellant that “[w]e temporarily closed your collection case for the tax types and periods below. We determined you don’t have the ability to pay the amount(s) you owe at this time.” (Exh. 4.) The letter included a “What you need to do” section which advised Appellant to “[f]ile all future tax returns and pay any amount(s) you owe on time” and to “[c]onsider making voluntary payments toward the amount(s) you owe, when possible, to minimize additional interest and applicable penalties”. *Id.* A “What you need to know” section was also included, which stated as follows:

Although we temporarily closed your case for collections, you still owe the IRS an amount(s). We may re-open your case in the future if your financial situation improves. Because you still owe the IRS an amount(s), we’ll continue to add applicable penalties and interest to your account and we can make other adjustments and offsets, such as applying future federal tax refunds to the amount(s) you owe. Additionally, your state tax refunds may be subject to levy under the State Income Tax Levy program (SITLP). Furthermore, if your case is re-opened, the IRS will notify you to resolve your federal tax debts. If your federal tax debts are not resolved after repeated notifications, the IRS could issue a levy or file a Notice of Federal Tax Lien or potentially certify you to the Department of State for denial of revocation of passport. For more information visit [www.irs.gov](http://www.irs.gov) and search Revocation or Denial of Passport in Case of Certain Unpaid Taxes.

*Id.* The letter made no reference to amounts due to the IRS for the tax periods ending 2006, 2007, 2009, and 2011, nor indicate any release of an existing lien.

*Id.*



10. Appellant Villeggiante also provided an August 5, 2024 notice from the IRS regarding a refund due regarding her 2023 overpayment. Exh. 6. This notice makes no reference to any outstanding tax lien, but also advises Appellant that “[w]e applied \$67.51 of your 2023 overpayment to an unpaid balance”; specifically, “[w]e applied \$67.51 of your 2023 Form 1040 overpayment to an amount owed for 2020”. *Id.*

### **CONCLUSIONS OF LAW**

1. Because she is challenging IDF’s action, Petitioner Villeggiante bears the burden of proving that IDF acted improperly in issuing the Denial Order, and must do so by a preponderance of the evidence. *See, e.g., Intermountain Health Care, Inc. v. Board of Cnty. Comm’rs of Blaine Cnty.*, 107 Idaho 248, 251 (Ct. App. 1984), *reversed on other grounds by* 109 Idaho 299 (1985) (burden of proof is on the party challenging government action); *accord*, 2 Am. Jur. 2d Administrative Law §342 & IDAPA 62.01.01.477.

#### Receipt of April 1, 2024 Notice

2. As an initial matter, Appellant Villeggiante contends that she “did not receive timely notice of the deadline to respond by April 29, 2024,” arguing that there was an incorrect work email in her NMLS account such as prevented her from seeing a notification email from the NMLS regarding the April 1, 2024 notice from IDF, which email was also misdirected to her spam/junk folder in her personal email account. *See, e.g.,* Written Testimony, Response to Interrogatories Nos. 5-7; Transcript at ll. 31:13-33:12. The undisputed testimony by witness Kristen Lolo, a financial examiner at IDF, is that the April

1 notice from IDF was available to Appellant on the NMLS system, and that Appellant had a responsibility to check her NMLS account for application-related updates from IDF. Transcript at ll. 54:12-56:8. On cross-examination, Appellant Villeggiante testified that she did not log back into the NMLS after March 29 to check on the status of her application. Transcript at ll. 32:1-10.

3. Idaho Code §26-31-305(6) provides:

(6) Upon written request, an applicant for a license under this part is entitled to a hearing on the question of his qualifications for a license if:

- (a) The director has notified the applicant in writing that his application has been denied and the request for a hearing is made not more than fifteen (15) days after the director mailed the written notification of denial; or
- (b) The director has not issued the applicant a license within sixty (60) days after a complete application for the license was filed.

If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. The director shall state, in substance, his findings that support a denial of an application.

4. As reflected in the Denial Order, the denial of Appellant's application was predicated on the Director's determination that "[t]he Applicant made a material misstatement of fact in her application[.]" Denial Order, Conclusions of Law, ¶15, pp. 4-5.

5. By statute, no advance notice or cure period is required prior to the denial of an application by the Director. See I.C. §26-31-305(6); *compare with* I.C. §26-31-305(7)(authorizing 60-day cure period for an incomplete application before the application is deemed withdrawn and void; deficiency notice permitted

to be served by mail, email, or posting on NMLSR). Instead, a denied applicant's right to hearing – that is, to put on evidence and contest the Director's decision – arises after either a denial (as here) or inaction by the Director. *Id.* In this matter, Appellant Villeggiante has been fully afforded her statutory due process right to contest the denial, irrespective of whether she had an opportunity to 'cure' or otherwise contest the Director's anticipated denial in the time period between April 1st and April 29th.

6. Accordingly, Appellant Villeggiante has not met her burden with respect to this alleged error.

#### Misstatement regarding Tax Lien

7. In denying Appellant's application, the Director specifically found as follows:

15. The Applicant made a material misstatement of fact in her application, which is grounds to deny her application for licensure. She answered a question inaccurately and failed to disclose tax liens. The false answer to disclosure question (D) and failure to disclose the outstanding tax liens prohibits the Director from issuing a license to the Applicant pursuant to Idaho Code § 26-31-306(1)(d) and (h) and § 26-31-313(1)(a) and (b).

16. The Director finds it appropriate to deny the application because the Applicant's failure to provide the information on the Form MU4 regarding the tax liens demonstrates that the Applicant lacks the appropriate character and 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 the Act. Because the Director cannot make the requisite findings under Idaho Code § 26-31-306(1)(d) and/or (h), it is appropriate to deny the Applicant's request for an Idaho mortgage loan originator license, pursuant to Idaho Code § 26-31-313(1).

Denial Order, Conclusions of Law, ¶¶15-16, pp. 4-5.<sup>5</sup>

8. Idaho Code §26-31-305 provides, in relevant part:

LICENSE AND REGISTRATION APPLICATION. (1) Applicants for a license under this part shall apply through the NMLSR in a form prescribed by the director. Each form shall include such content as the director may reasonably require, shall be updated as necessary to keep the information current and shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200).

...

(3) Applicants for licensure under this part shall submit the following to the NMLSR:

...

(b) Personal history and experience in a form prescribed by the NMLSR, including the authorization for the NMLSR and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the fair credit reporting act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

...

(10) A license applicant under this part shall make complete disclosure of all information required in the license application. A license applicant or person acting on behalf of the applicant is not liable in any civil action other than a civil action brought by a governmental agency related to an alleged untrue statement made pursuant to this section, unless it is shown that:

(a) The license applicant, or person acting on behalf of the license applicant, knew at the time that the statement was made that it was materially false; or

(b) The license applicant or person acting on behalf of the license applicant acted in reckless disregard as to

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<sup>5</sup> IDF's Closing Statement also alleges violations of Idaho Code §26-31-317 – specifically, subsections (7) and (10). See Department's Closing Statement at p. 8. Neither of these were a basis for the Director's Denial Order – and do not appear to have been raised in either IDF's Prehearing Statement or at the hearing – and thus will not be considered in this FOFCOL, as the Appellant has not had a full and fair opportunity to develop her appeal to address these new allegations.

the truth or falsity of the statement.

(emphases added).

9. Idaho Code §26-31-306(1)(d) and (h) provide as follows:

ISSUANCE OF LICENSE — LICENSE NOT ASSIGNABLE OR TRANSFERABLE — INACTIVE LICENSE STATUS. (1) The director shall not issue a mortgage loan originator license under this part unless the director first makes the following findings:

...

(d) 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 within the purposes of this part. The director shall not base a license application denial under this part solely on a license applicant's credit score or credit report. For purposes of this section, a license applicant is not financially responsible if he has shown a disregard for the management of his personal financial affairs. A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following:

(i) A current outstanding judgment, except a judgment issued solely as a result of medical expenses;

(ii) A current outstanding tax lien or other government lien or filing;

(iii) A foreclosure within the past three (3) years; or

(iv) A pattern of delinquent accounts within the past three (3) years.

...

(h) The applicant has provided information on the application as required in section 26-31-305, Idaho Code.

(emphases added).

10. Idaho Code §26-31-313(1)(a) and (b) further provide:

ENFORCEMENT AUTHORITY, VIOLATIONS AND PENALTIES. (1) In order to ensure the effective supervision and enforcement of this part, the director may, pursuant to chapter 52, title 67, Idaho Code:

(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, or rule or order issued under this chapter;

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee under this part fails at any time to meet the requirements of section 26-31-306, Idaho Code, or section 26-31-309, Idaho Code, or withholds information or makes a material misstatement in an application for a license or renewal of a license[.]

11. That the Director was entitled to information regarding the existence of outstanding tax liens as part of the application process is beyond dispute. *See* I.C. §26-31-305(1) & (3). Likewise, an applicant – like Appellant – is required to provide all such requested information in the application, which, here, expressly includes information regarding outstanding tax liens. I.C. §26-31-305(10), I.C. §26-31-306(1)(d)(ii) & IDF Exh. A, p. 8.

12. The record reflects that, as of the time of the application submission (March 29, 2024), there existed a Notice of Federal Tax Lien filed in Alameda County against Appellant which had not been released or otherwise fully expired as of April 1, 2024, as at least two of the unpaid balances in the lien (for tax periods ending 2011 and 2012, for \$74,100.13 and \$52,256.25, respectively) were still within their refiling deadlines. IDF Exh. D; *accord* 26 U.S.C. §§6327 & 6502.

13. The record further reflects that while the IRS deemed the currently outstanding lien amounts for the tax period ending 2012 “temporarily closed” per its September 26, 2024 letter, that IRS letter makes clear on its face that the IRS is still seeking the amounts at issue, both inviting the Appellant to make voluntary payments and reserving the rights of the IRS to re-open the case to

seek recovery of those amounts. Exh. 4. In short, nothing in the September 26, 2024 IRS letter suggests that the unsatisfied tax lien has been released by the IRS, and certainly not at the time of the March 29, 2024 application. *Id.*; see also generally 26 U.S.C. §6325.

14. Accordingly, Appellant's 2015 IRS tax lien, which was still current and outstanding at the time of application, was required to have been disclosed on Appellant's March 29, 2024 application, but was not. IDF Exh. D; §26-31-305(3) & (10).

15. In determining both that an unsatisfied tax lien existed, and that such information was required to be disclosed on Appellant's application but was not, the remaining analysis addresses Appellant's primary defense in this action: a lack of knowledge regarding the tax lien. See generally, Written Testimony, Response to Interrogatories Nos. 1-4; Exhs. 1-7; Transcript at ll. 16:19-19:17.

16. Based upon the testimony and record presented, the Hearing Officer initially finds credible the Appellant's contention that she was not aware of an unsatisfied tax lien at the time of her application.

17. However, per Idaho Code §26-31-313(1)(a), the Director may deny an application simply based upon a violation of any provision of Chapter 31, Title 26 of the Idaho Code, to include a failure to include information in an application mandated by Idaho Code §26-31-305, irrespective of whether the omission of information was accidental or intentional.

18. Accordingly, the Director's denial of Appellant's application pursuant to Idaho Code §26-31-313(1)(a) was correctly made.

19. Likewise, per Idaho Code §26-31-313(1)(b), the Director has the authority to deny an application where an applicant “makes a material misstatement in an application for a license or renewal of a license,” which is the determination that was made by the Director. Denial Order, Conclusions of Law, ¶¶15-16, pp. 4-5.

20. The existence of an unsatisfied tax lien is clearly material to an application, being both an inquiry in the application itself, and also referred to as a decision point in Idaho Code §26-31-306(1)(d)(“A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following: ... (ii) A current outstanding tax lien or other government lien or filing[.]”).<sup>6</sup> *Accord, e.g., Bringman v. New Albertsons, Inc.*, 157 Idaho 71, 75, 334 P.3d 262, 266 (2014)(“In short, the test for materiality is relevance.”).

21. Further, the term “misstatement” does not necessarily implicate intentional and/or malicious conduct – it can include accidental or negligent conduct, such as a failure to investigate the accuracy of a response. *See MISSTATEMENT*, Black's Law Dictionary (12th ed. 2024)(“misstatement *n.*

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<sup>6</sup> Idaho Code §26-31-306(1)(d) itself directs that the Director “shall not issue a mortgage loan originator license” unless the Director first finds that “[t]he 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 within the purposes of this part.” As above, evaluation of that responsibility, character, and fitness provision can be made upon the mere existence of a current outstanding tax lien, potentially indicating that the Director could deny the application entirely on that ground alone. *Id.* Here, however, the Director instead viewed and considered the responsibility, character, and fitness provision through the lens of Appellant’s failure to disclose the 2015 IRS tax lien, requiring a more extensive analysis of the applicable provisions of Idaho Code §26-31-313 at issue and as discussed herein.



(1790) An erroneous assertion, whether as a result of inadvertence or purposeful deception.”); *cf.*, *e.g.*, Meyer v. Skyline Mobile Homes, 99 Idaho 754, 762, 589 P.2d 89, 97 (1979)(“a finding that a benefit claimant knew or thought it highly probable that he or she did not know what information a question solicited but nevertheless deliberately chose to respond without pursuing clarification would ordinarily support a conclusion of willful falsehood or concealment.”). Thus, even when based upon a lack of knowledge, an incorrect answer can constitute a “material misstatement” on the application.

22. The record does reflect that the Appellant took investigatory steps regarding the existence of a tax lien, but only after the Denial Order. See Exhs. 3 (credit reports dated August 14, 2024), 4 (IRS case closure letter dated September 26, 2024), 5 (tax preparer letter dated October 24, 2024), 6 (IRS refund notice dated August 5, 2024), & 7 (amended tax preparer letter dated November 12, 2024). The record is devoid of any evidence that information regarding the lien question was researched by Appellant prior to submitting her application, whether by, *e.g.*, requesting a tax transcript from the IRS, providing her tax preparer with the necessary IRS Power of Attorney form to make such investigation on her behalf, contacting the Alameda County Recorder, conducting online research of government lien records, etc. Even where Appellant has provided some records that predate the application (*e.g.*, the property records at Exhs. 1 & 2), Appellant herself conceded at hearing that she did not investigate the lien question prior to submitting her application. Transcript at ll. 30:16-22 (“Q. Moving on to your application that you submitted

to the Department of Finance for your Idaho MLO license. Did you do any research before submitting the application to confirm that you didn't have any outstanding liens? A. No, I would never assume to do that. If I don't owe it, I would never assume to look for it."). Given the ready availability of the requested information from 'primary' sources (to wit, the IRS and/or Alameda County) – and the lack of any demonstration that inquiry was made of one or both – a failure to make an investigation of potentially salient information (especially given a history of prior unpaid taxes beyond the amounts in the tax lien at issue) confirms that Appellant Villeggiante's answer was, ultimately, a material misstatement. See, e.g., IDF Exh. C (tax lien information received within 1 business day of application submission); IDF Exh. B, pp. 23-26; & Exh. 6 (IRS refund notice applying a portion of refund to unpaid amounts from tax year ending 2020).

23. Accordingly, the Director's denial of Appellant's application pursuant to Idaho Code §26-31-313(1)(b) was also correctly made.

24. Based on the above, Appellant has also not carried her burden with respect to this alleged point of error.

### **PRELIMINARY ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer **AFFIRMS** the Director's Order Denying Mortgage Loan Originator License Application and Notice of the Opportunity to Appeal, dated May 6, 2024.

## **RULE 626 NOTICE**

**This is a preliminary order of the presiding officer. It can and will become final without further action of the agency, and without any further notice to you, unless any party requests that either the presiding officer or the agency head review it.** If no such request is made within fourteen (14) days of the service of this preliminary order, the order will become final, and you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Idaho Code Sections 67-5270 through 67-5279.

If you disagree with this preliminary order, you may file a “motion for reconsideration” with the presiding officer, or you may file “exceptions” and/or a “petition for review” with the agency head. You are allowed to file all of these.

If you would like to file a motion for reconsideration of this preliminary order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied.

If another party has filed a motion for reconsideration of this preliminary order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it.

You may also file any exceptions you may have to this preliminary order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline.

If another party has filed exceptions to this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.

You may also file a petition for review regarding this preliminary order, with a supporting brief which sets forth the basis for review, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. The agency head may also notify the parties within fourteen (14) days of the service date of this order, that they, by their own choice, are reviewing this preliminary order, which notice will identify the issues the agency head will review. If a motion for reconsideration has been filed with the presiding officer, your petition for review, or the agency head's notice, does not have to be filed until fourteen (14) days after the motion for reconsideration process with the presiding officer is complete.

If another party has filed a petition for review of this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the petition for review. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.

If you would like to request oral argument regarding any motion for reconsideration, exceptions, or petition for review, you must state so in your

filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it.

If an agency head reviews a preliminary order, they have the option of either issuing a final order, remanding the matter back to the presiding officer, or holding additional hearings. You will be notified of the agency head's choice if the preliminary order is reviewed.

IT IS SO ORDERED.

DATED December 30, 2024.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Bryan A. Nickels  
Bryan A. Nickels  
Chief Administrative Hearing Officer

