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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO

In re Mortgage Loan Originator
License Application of:

RICHARD ROBERT MARTINEZ,
NMLS ID No. 6527,
Applicant

Docket No. 2019-16-57

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

This matter came before the hearing officer on an evidentiary hearing on June 24, 2020, at 9:00 a.m.. Tom Donovan, Deputy Attorney General appeared on behalf of the Department of Finance. Richard Martinez appeared representing himself. Mr. Martinez by agreement of the parties appeared telephonically.

FINDINGS OF FACT

1. Mr. Martinez filed a 2019 application for a Mortgage Loan Originator License (Form MU4) with the Department of Finance (hereinafter the Department). Exhibit 1; Hearing Transcript Pg 11, Lines 19-25; Pg 12, Ln 8-17. (hereinafter Hrg Tr Pg/Ln).
2. The application form, in Section 6 requires that the applicant provide responses to a series of questions concerning background information. These questions include matters regarding any criminal record of the applicant. Exhibit 1.
3. The Department as part of the application process and review of an applicant conducted a background investigation and review of public records concerning him. Hrg Tr Pg 17, Ln 13-25; Pg 18, Ln 1-12.

4. This check revealed the existence of a felony conviction of Mr. Martinez which had occurred in 1991. Exhibits 2, 3, 4 and 5; Hrg Tr Pg 18, Ln 16-21.
5. Mr. Martinez had previously been granted a Mortgage Loan Originator License by the Department as recently as 2008. Exhibit 7; Hrg Tr Pg 13, Ln 13-18.
6. The Department in the investigation made inquiry of Mr. Martinez as to the existence of the felony and the failure to disclose such information. Exhibits 6, 7 and 8; Hrg Tr Pg 21, Ln 21-25; Pg 22, Ln 1-15.
7. Following several exchanges Mr. Martinez ultimately presented a response to the Department regarding his inaccurate disclosure. Exhibit 9; Hrg Tr Pg 32, Ln 3-20.
8. The Department issued an Order denying Mr. Martinez's license application and Mr. Martinez requested a hearing on this matter.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code §26-31-306(1)(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.

2. As found in the language of Idaho Code §26-31-313(b), the Director may decline to issue a license when an applicant withholds information or makes a material misstatement of fact in an application. Idaho Code §26-31-313(b).
3. The Department asserts that the failure to disclose the existence of the prior felony conviction represents withholding information and a material misstatement on an

application. These failures are asserted to also show insufficient character and general fitness pursuant to Idaho Code §26-31-306(1)(d).

4. Mr. Martinez at the hearing claimed that he misunderstood the nature of the inquiry concerning prior convictions as found in the Form MU4 and that he had interpreted the request as one seeking information as to whether his status had changed following his previous application and licensed status in 2008. He further asserted that the claimed omission/error was not attempt to conceal the information. This claim is made based in part upon the fact that in his 2008 license application materials he had indicated that he had been charged with a felony.

5. The inquiries of the Department following receipt of Mr. Martinez's materials attempted in part to obtain an explanation for this inconsistency but the Department received responses which were incomplete or failed to directly address the Department's questions.

6. Although Mr. Martinez did ultimately provide an explanation, the exchanges between the Department and Mr. Martinez illustrate the importance of the initial failure to provide correct and accurate responses in the Form MU4.

7. The Form MU4 is not, with the subject inquiry, a form which is easily misunderstood. The question reads:

Have you ever been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?

8. The evidence in this matter, does not illustrate a situation where a claimed lack of understanding or ignorance of the true nature of the inquiry somehow equates with insufficient knowledge to accurately fill out the required disclosure information

requested in the application (Form MU4).

9. The disclosure of the felony is pertinent to the determination by the Department of the character and the fitness of an applicant. An applicant is under a duty to answer questions in a diligent and accurate manner. Inadvertence, unintentional omission or confusion regarding the information sought may on occasion be an excuse. The error as presented though does not support such excuse in this instance.

10. Mr. Martinez cannot claim a misunderstanding of the information sought as a defense for the lack of accuracy in the responses provided. After the error the continued failure to simply and directly respond to the Department's inquiries further emphasized the concern by the Department over the claimed inadvertent inaccuracies rather than resolving the matter.

11. In these circumstances 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. This is within the scope of the Department's valid concerns over accuracy of information presented in an application and further in the examination and determination of the character and fitness of an applicant.

12. The evidence establishes that the Director can conclude that Mr. Martinez withheld information and made a material misstatement of fact in his application regarding his past felony conviction. This provides grounds to the Director to deny the application pursuant to Idaho Code §§26-31-306(1)(d), (1)(h); and §26-31-313.

PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Department's Notice of Intent to Issue Order of Denial of Mortgage Loan Originator License Application of Mr. Martinez dated January 10, 2020, 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 23rd day of July, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 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 State of Idaho Department of Finance P.O. Box 83720 Boise, ID 83720-0031	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Richard Robert Martinez 5041 N Chimney Peak Ave. Meridian, ID 83646	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile

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