



**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

OLIVER WILLIFORD,
Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,
Respondent.

Docket Number:
OSAH-DBF-MBL-0826481-31-Gatto

SOUTHLAKE MORTGAGE
CORPORATION,
Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,
Respondent.

Docket Number:
OSAH-DBF-MBL-0826484-31-Gatto

MEMORANDUM OPINION AND ORDER

COUNSEL: Delisa Williams, for Petitioners.
Thurbert E. Baker, Attorney General, Daniel M. Formby, Deputy Attorney General, John B. Ballard, Jr., Senior Assistant Attorney General, Oscar B. Fears, III, Assistant Attorney General, for Respondent.

GATTO, Judge.

I. INTRODUCTION

The above-referenced administrative actions were filed by Petitioners Oliver Williford and Southlake Mortgage Corporation appealing a Cease and Desist Order issued to Williford and a Notice of Intent to Revoke Annual License issued to Southlake Mortgage by the Georgia Department of Banking and Finance for alleged violations of the Georgia Residential Mortgage Act. The Department moved for summary judgment arguing that no genuine issues for

determination exist and that it is entitled to judgment as a matter of law. For the reasons indicated below, the Department's motions for summary judgment are **GRANTED**.

II. UNDISPUTED FINDINGS OF FACT

1.

Starting on November 8, 2007, the Department initiated an examination of Southlake Mortgage. (Resp't Mot., Valenzuela Aff. ¶ 4; Pet'r Resp. to Mot. for Summ. J. ("Pet'r Resp." at 2.)

2.

Oliver Williford is the president and one hundred percent owner of Southlake Mortgage. (Resp't Mot., Ex. C at 4-10, Valenzuela Aff. ¶ 5; Pet'r Resp. at 5.)

3.

Southlake Mortgage employed Shirvica J. Phillips as a loan officer beginning on October 30, 2007. (Resp't Mot., Ex. C at 4-23; Pet'r Resp., Ex. B.)

4.

Shirvica J. Phillips completed an Application for Employment with Southlake Mortgage in which she informed Southlake Mortgage that she had been convicted of a felony. (See Resp't Mot., Ex. E, Valenzuela Aff. ¶ 6; Pet'r Resp. at 1.) Notwithstanding Phillips' disclosure of her felony status, Southlake Mortgage elected to employ her. (See Resp't Mot., Ex. C at 4-23; Pet'r Resp. at 2.)

5.

Shirvica J. Phillips was convicted of trafficking in cocaine, a felony, on December 15, 1988. (See Resp't Mot., Ex. D; Pet'r Resp. at 2.)

6.

The Department issued a Cease and Desist Order to Kawana Melvin on December 22, 2004, for submitting false information to lenders in violation of O.C.G.A. §§ 7-1-1013(1), (2) and (6). (See Resp't Mot., Ex. F; Pet'r Resp. at 3.)

7.

This Court upheld the Cease and Desist Order issued by the Department in Kawana L. Melvin v. Department of Banking and Finance, 276 OSAH 296 (Mar. 13, 2006).¹

8.

The Cease and Desist Order was published on the Department's website on April 21, 2006. (Resp't Mot., Shire Aff. ¶ 5.)²

9.

Southlake Mortgage employed Kawana Melvin as a processor from August 21, 2006, until October 1, 2007. (See Resp't Mot., Ex. C at 4-23; Pet'r Resp. at 3.)

10.

During the examination, the Department's examiner discovered in Philip Anthonio's loan file for the property located at 1142 Ashton Park, Lawrenceville, Georgia 30045 a signed and dated but otherwise blank truth-in-lending disclosure statement. (See Resp't Mot., Ex. H, Valenzuela Aff ¶ 7; Pet'r Resp. at 4.)

11.

During the examination, the Department's examiner discovered in the loan file of Rosita A. Airall a settlement statement for the purchase of the premises located at 3300 Dogwood Drive, Unit 211, Atlanta, Georgia 30354. (See Resp't Mot., Ex. J, Valenzuela Aff. ¶ 9; Pet'r Resp. at 5.)

12.

Southlake Mortgage submitted the loan package of Airall to EquiFirst Corporation for funding. (See Resp't Mot., Burrus Aff. ¶ 4 & Ex. 1.)³

¹ The Cease and Desist Order became final by operation of law on or about April 17, 2006. See O.C.G.A. § 50-13-41(e)(1).

² Petitioner's response is not supported by affidavit or other probative evidence. A.R.P. Rule 15(3). Therefore, the Court concludes that this issue is not in dispute.

³ Id.

13.

EquiFirst Corporation funded Airall's loan and disbursed funds at the closing to Lecompte, Inc. \$695.00 for processing services related to Airall's loan. (See Resp't Mot., Burrus Aff. ¶ 4 & Ex. 2; Pet'r Resp. at 5.)

14.

EquiFirst Corporation did not retain Lecompte, Inc. to perform processing services related to Airall's loan. (Resp't Mot., Burrus Aff. ¶ 4.)⁴

15.

Southlake Mortgage retained Lecompte, Inc. to process Airall's loan. (See id.)⁵

16.

Lecompte, Inc. is not licensed or registered with the Department as a mortgage broker or mortgage lender. (See Resp't Mot., Larry Shelley Aff. ¶ 4; Pet'r Resp. at 5.)

17.

During the examination of Southlake Mortgage, the Department's examiner asked Williford if Southlake Mortgage checked the Department's website to determine if Melvin had been issued a Cease and Desist Order prior to hiring her. At that time, Williford informed the Department's examiner that it was not part of Southlake Mortgage's hiring practices and procedures to check the Department's website to determine if an applicant was the subject of a cease and desist order prior to making a job offer. (See Resp't Reply Br. Supp. Summ. J., Valenzuela Supplemental Aff. ¶ 5.)⁶ In a subsequent email, Williford stated to the Department's examiner, "[o]n or around Melvins [sic] employment date, I did not remember seeing her on the Cease and Desist list with the State." The Department's examiner specifically asked Williford "[d]id you check the Department's Cease and Desist list before hiring Kawana

⁴ Id.

⁵ Id.

⁶ Id.

Melvin on [August 21, 2006]?” Williford responded to the question “[i]f the objective of your question is did I check [the Cease and Desist list] specifically for Melvin the answer would be no.” (See Resp’t Reply Br. Supp. Summ. J., Valenzuela Supplemental Aff. ¶ 5, Ex. A.)⁷

III. STANDARD OF LAW

To prevail at summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991).⁸ Thus, “summary judgment is appropriate when the court, viewing all the facts and reasonable inferences from those facts in a light most favorable to the non-moving party, concludes that the evidence does not create a triable issue as to each essential element of the case.” Id. at 495.

On summary judgment, in the absence of substantiating fact or circumstances, conclusory allegations are insufficient to raise a material issue for trial. Brooks v. Boykin, 194 Ga. App. 854, 856 (1990). “Also, in response to a motion for summary judgment, the non-moving party may not rest on generalized allegations, but must come forward with specific facts to show that there is a genuine issue for trial. O.C.G.A. § 9-11-56 (e).” Precise v. Rossville, 261 Ga. 210 (1991); see generally Southeast Reducing Co. v. Wasserman, 229 Ga. App. 1 (1997)(affidavit that is conclusory and unsupported by substantiating fact or circumstances is insufficient to raise a genuine issue of material fact); see also Rule 15(3). Here, however, Petitioners did not meet their burden since they failed to show, by affidavit or other probative evidence, that genuine issues for determination exist. Precise, supra, at 212.

⁷ Id.

⁸ See also Rule 15(1) of this Court’s Administrative Rules of Procedure.

Nonetheless, it does not automatically follow that the motion should be granted, McGivern v. First Capital Income Properties, Ltd., 188 Ga. App. (1988); Hughes v. Montgomery Contracting Co., 189 Ga. App. 814 (1989), since “[a] motion for summary judgment should not be granted unless it affirmatively appears from the pleadings and evidence that the party so moving is entitled to prevail.” Finch v. City of Atlanta, 232 Ga. 415, 416 (1974). See generally O.C.G.A. § 9-11-56 (c); Sanders v. Colwell, 248 Ga. 376 (1981). However, having carefully considered the motions, the court files and all supporting evidence filed therein, and the applicable law, the Court concludes that there exists no genuine issue of material fact and that the Department is entitled to judgment as a matter of law.

IV. ANALYSIS

The Department can revoke the license of a mortgage broker or mortgage lender if that entity employs an individual who has been convicted of a felony involving moral turpitude. The Georgia Residential Mortgage Act provides in pertinent part that:

The department may not issue or may revoke a license if it finds that the applicant, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, has been convicted of a felony involving moral turpitude in any jurisdiction.... For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court ... 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....

(Emphasis added). O.C.G.A. § 7-1-1004(d). Thus, the express terms of the Act prohibit a licensee from employing an individual convicted of a felony involving moral turpitude.

Here, Petitioners have admitted to employing Shirvica J. Phillips after she had been convicted of trafficking in cocaine, a felony, on December 15, 1988. A crime involves moral turpitude if the crime is “contrary to justice, honesty, modesty, good morals or man’s duty to

man.” Jarard v. Clayton County Board of Registrars, 262 Ga. 759, 761 (1993). Furthermore, the sale of cocaine, disregarding its felony punishment, meets the test as being contrary to justice, honesty, modesty, good morals or man's duty to man and is a crime involving moral turpitude. Lewis v. State, 243 Ga. 443, 445-446 (1979). Thus, Phillips was convicted of a felony involving moral turpitude.

Petitioners do not challenge the fact that a convicted felon was employed in violation of the law but instead suggest that Southlake Mortgage's license should not be revoked and Williford should not be issued a Cease and Desist Order because they did not intend to hire a felon. However, the Court agrees with the Department that nothing in O.C.G.A. § 7-1-1004(d) suggests that “intent” is a required element. A fundamental precept of statutory construction is that when a statute is clear on its face a contrary intent cannot be implied. Jersawitz v. Hicks, 264 Ga. 553, 553 (1994); Lunda Construction Co. v. Clayton County, 201 Ga. App. 106, 107 (1991). The statute must not be construed by resorting to subtle or forced constructions for the purpose of limiting or establishing the scope of the statute. Earth Management, Inc. v. Heard County, 248 Ga. 442, 444 (1981).

Petitioners also appear to suggest that because they did not know that Phillips was a convicted felon since they assert that they did not find a criminal history for her when they checked with Advantage Tenet. As indicated *supra*, whether or not Petitioners knew that they employed or intended to employ a felon is irrelevant. Further, the assertion that Petitioners did not know of the violation is not credible. Phillips admitted in her employment application with Southlake Mortgage that she was a convicted felon. Petitioners do not dispute this and, in fact, admit that the human resources manager for Southlake Mortgage noticed that Phillips had indicated she was a convicted felon. However, instead of asking

Phillips about the disclosure in her application, it was “assumed that the felony conviction check was a mere oversight.” Notwithstanding the purported incorrect assumption, Phillips disclosed this fact on her application and the disclosure was noted by the human resources manager.

In addition, the Georgia Residential Mortgage Act mandates that all licensees and applicants conduct background checks on all employees through the Georgia Crime Information Center (“GCIC”). Specifically, O.C.G.A. § 7-1-1004(f) provides in pertinent part that “[e]very licensee and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center.” (Emphasis added.) Notwithstanding the express statutory requirement, Petitioners did not perform a GCIC background check on Phillips but instead contend that they conducted an inadequate search through a company named Advantage Tenet. Petitioners’ failure to conduct a proper background search through GCIC as required by O.C.G.A. § 7-1-1004(f), resulted in the Petitioners impermissibly employing a felon. Notwithstanding, the felon disclosed her conviction to Southlake Mortgage in her employment application. Even with this disclosure, Petitioners still employed Phillips. Although knowledge is not a necessary element for a violation of O.C.G.A. § 7-1-1004(d), Petitioners’ assertion that they did not intend to hire a felon is disingenuous because her conviction was disclosed on her employment application. Although the felony conviction was disclosed, Petitioners elected to employ a convicted felon in direct violation of O.C.G.A. § 7-1-1004(d).

Likewise, O.C.G.A. § 7-1-1004(i) provides in pertinent part that:

The department may not issue and may revoke a license from an applicant or licensee if such person employs any other person against whom a final cease and

desist order has been issued within the preceding five years, if such order was based on a violation of Code Section 7-1-1013... . Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in this subsection.

(Emphasis added.)⁹

The Department issued a Cease and Desist Order to Kawana Melvin for violating O.C.G.A. § 7-1-1013. The Cease and Desist Order issued to Melvin became final on or about April 17, 2006. See O.C.G.A. § 50-13-17(a). The Cease and Desist Order was published on the Department's website on April 21, 2006, and has been maintained on the Department's website continuously since that date. Southlake Mortgage hired Melvin on August 21, 2006, well after her Cease and Desist Order became final. Petitioners have admitted to employing Melvin.

Petitioners attempt to refute their violation of O.C.G.A. § 7-1-1004(i) by asserting that an employee of Southlake Mortgage did not find Melvin's name on the Department's website at the time of her hiring. However, Petitioners do not present any evidence to support the claim that Perez, an employee of Southlake Mortgage, checked the Department's website. In fact, the inadmissible letter of Perez does not even address Melvin. Furthermore, Petitioners provide absolutely no support that anyone at Southlake Mortgage checked the Department's website to determine if Melvin was the subject of a Cease and Desist Order prior to hiring her.

This absence of any support for the asserted claim is not surprising in light of Williford's prior admissions to the Department. During the examination of Southlake Mortgage, the Department's examiner asked Williford if Southlake Mortgage checked the Department's website to determine if Melvin had been issued a Cease and Desist Order prior to hiring her. At

⁹ Effective July 1, 2007, the law was amended to extend the period of time during which a Cease and Desist Order recipient was ineligible for employment from three years to five years.

that time, Williford informed the Department's examiner that it was not part of Southlake Mortgage's hiring practices and procedures to check the Department's website to determine if an applicant was the subject of a cease and desist order prior to making a job offer. This admission is consistent with the e-mail exchange between the Department's examiner and Williford. Notwithstanding the bald assertions in Petitioners' Answer that Southlake Mortgage checked the Cease and Desist list, the undisputed evidence in this case establishes that Petitioners did not examine the Department's website prior to hiring Melvin, an individual who was ineligible for employment.

Petitioners contend that after Williford discovered Melvin's name on the Department's website, she produced a letter indicating that the cease and desist order had been rescinded. The Court does not find this contention credible. O.C.G.A. § 7-1-1004(i) requires employers "to examine the department's records" "before hiring an employee." (Emphasis added). Melvin's employment at Southlake Mortgage ended on October 1, 2007. In Williford's e-mail to the Department's examiner on December 18, 2007, he stated:

In response to your call this morning, I wanted to inform you that I personally did not recognize Kawana Melvins [sic] name on the Department of Banking and Finance [sic] until early November of 2007. On or around Melvins [sic] employment date, I did not remember seeing her on the Cease and Desist list with the State. I often visit the site to get updated on the rulings and legislation as well as to check the Cease and Desist list with the department. I quickly informed Kawana Melvin of my findings and she stated that she had a copy of the dismissal letter. A copy of the letter was scanned and faxed to our HR manager on November 8, 2007 and then forwarded to myself.

(Exhibit A) (Emphasis added). Obviously, since Melvin produced this document to Southlake Mortgage after her tenure had ended, it cannot be credibly argued that Petitioners relied on the "fraudulent" document in employing or continuing to employ Melvin.

As with its violation of O.C.G.A. § 7-1-1004(d) for hiring a convicted felon, Petitioners contend that they should not be subject to administrative action because they did not “intentionally hire someone on the Cease and Desist list.” However, just as with the violation of O.C.G.A. § 7-1-1004(d), intent is not a required element for a violation of O.C.G.A. § 7-1-1004(i). In addition, even if required, public information about the Cease and Desist Order issued to Melvin was available at all times when Petitioners hired Melvin. That is, Petitioners had constructive knowledge of the true facts regarding Melvin’s ineligibility to be employed. See Floyd S. Pike Elec. Contractors v. Williams, 207 Ga. App. 86, 89 (1993). The burden, therefore, is on Petitioners to explain their “failure to ascertain the truth” and to act accordingly. Gulf Life Ins. Co. v. Folsom, 256 Ga. 400, 401 (1986). The Petitioners have not shown any reason for their failure to note Melvin’s status and the decision to hire her. Therefore, even though not a required element for a violation of O.C.G.A. § 7-1-1004(i), the Court concludes that Petitioners knowingly employed an ineligible employee. Further, the Court concludes that Petitioners intentionally did not check the Department’s website to see if Melvin was the subject of a cease and desist order when she was hired as it was not part of Southlake Mortgage’s hiring procedures and practice.

Having concluded that the Department has carried the burden of proof that is required to support the charges against Petitioners, the Court must now consider the reasonableness of the sanctions imposed by the Department. The Financial Institutions Code of Georgia provides for the supervision and examination of licensed mortgage broker to ensure that they operate in a manner consistent with state law, for the protection of the interests of consumers. See O.C.G.A. § 7-1-3(a)(10). Thus, the Georgia Residential Mortgage Act provides in pertinent part that:

Whenever it shall appear to the department that any person required to be licensed ... under this article ... or any person employed by a licensee or registrant

pursuant to Code Section 7-1-1001 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices.

O.C.G.A. § 7-1-1018(a). For the purposes of the Act, "person" is defined as "any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section." O.C.G.A. § 7-1-1018(f) (emphasis added.) Likewise, the Department can revoke a license on any ground for which it could refuse to issue a mortgage broker's license. O.C.G.A. § 7-1-1017(a)(1). The Department can also refuse to issue a license if it determines that an officer of a broker is not of good character or ethical reputation. O.C.G.A. § 7-1-1004(a).

Since Petitioners violated the Georgia Residential Mortgage Act, the Department's decision to issue a Cease and Desist Order issued to Williford and a Notice of Intent to Revoke Annual License issued to Southlake Mortgage was reasonable and proper, in order to protect the interests of consumers. Accordingly,

IV. ORDER

IT IS HEREBY ORDERED THAT the Department's motions for summary judgment are **GRANTED** and its decisions to issue a Cease and Desist Order issued to Williford and to revoke Southlake Mortgage's Annual License for violating the Georgia Residential Mortgage Act are **AFFIRMED**.

SO ORDERED THIS 22nd day of May, 2008.



JOHN B. GATTO, Judge

RE: OLIVER WILLIFORD and SOUTHLAKE MORTGAGE CORPORATION, Petitioners

DOCKET NO.: OSAH-DBF-MBL-0826481-31-Gatto
OSAH-DBF-MBL-0826484-31-Gatto

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Sonny Perdue
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January 22, 2008

VIA CERTIFIED MAIL – 7002 2410 0001 2664 8708

Southlake Mortgage Corporation
Oliver Williford, Owner
3000 Corporate Center Drive, Suite 180
Morrow, Georgia 30260

License Number 14427

NOTICE OF INTENT TO REVOKE ANNUAL LICENSE

Pursuant to O.C.G.A. § 7-1-1017(a)(1), the Georgia Department of Banking and Finance (“Department”) hereby notifies you of its intent to revoke the license issued to Southlake Mortgage Corporation (“Southlake”). The Department has documentation showing that Southlake violated the Georgia Residential Mortgage Act (“GRMA”), O.C.G.A. § 7-1-1000 *et seq.* Specifically, the Department has evidence showing that Southlake made false statements or misrepresented material facts to lenders in violation of O.C.G.A. § 7-1-1013(1), (2) and (6); possessed a loan document signed in blank in violation of O.C.G.A. § 7-1-1013(8); employed a felon in violation of O.C.G.A. § 7-1-1004(d); employed a person against whom a final cease and desist order had been issued within the three preceding years for O.C.G.A. § 7-1-1013 violations in violation of O.C.G.A. § 7-1-1004(i); operated an unapproved branch in violation of O.C.G.A. § 7-1-1006(f); operated a branch with an unapproved branch manager in violation of Department Rule 80-11-1-.04(2); failed to properly maintain a mortgage loan transaction journal in violation of Department Rule 80-11-2-.03; and transacted business in violation of O.C.G.A. § 7-1-1002(a) and (b) with a person who is unlicensed and unregistered, not exempt from licensing and registrations requirements and who is not an employee of a mortgage broker or lender. Further, in violation of O.C.G.A. § 7-1-1002(c), Southlake directly or indirectly controlled a person who violated O.C.G.A. § 7-1-1002(a) and (b).

You may request a hearing to contest the decision of the Department to revoke your license. O.C.G.A. § 7-1-1017(b). The hearing will be held before an administrative law judge of the Office of State Administrative Hearings. You may retain counsel of your choice and subpoena witnesses and documentary evidence. The Office of the Attorney General will represent the Department.

The request for a hearing must be made in writing within 20 days of the date of this Notice. If you do not request a hearing within 20 days of the date of this Notice, the Department will enter a Final Order of Revocation that will be effective the date of issuance. Should you have any questions concerning this matter, please contact Helen O'Leary, Non-Depository Financial Institutions Division Attorney, at (770) 986-1648.

A handwritten signature in black ink, appearing to read "Rod Carnes", written over a horizontal line.

Rod Carnes, CFE
Deputy Commissioner
Non-Depository Financial Institutions Division