

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BANKING AND FINANCE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 86-2718  
 )  
 WILLIAM MCCAFFREY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Final hearing in the above-styled action was held in Tallahassee, Florida on October 6, 1986, before Mary Clark, hearing officer of the Division of Administrative Hearings.

The parties were represented as follows:

For Petitioner: Robert K. Good, Esquire  
Office of the Comptroller  
400 West Robinson Street, Suite 501  
Orlando, Florida 32801

For Respondent: Clyde M. Taylor, Jr., Esquire  
1105 Hays Street  
Tallahassee, Florida 32301  
(did not appear at hearing)

Background and  
Procedural Matters

This proceeding commenced with Petitioner's Notice of Intention to Suspend and Administrative Charges and Complaint, dated June 26, 1986. The notice informed William David McCaffrey of the Department's intention to suspend his mortgage solicitor's license for violations of Section 494.05, Florida Statutes. Through counsel, Mr. McCaffrey responded with a Petition for Formal Hearing pursuant to Section 120.57(1), Florida Statutes.

The case was forwarded to the Division of Administrative Hearings and the Notice of Hearing was provided to counsel of record.

On September 30, 1986, Respondent's counsel filed a motion for continuance. For the reason set forth here and in the Post-Hearing Order dated October 6, 1986, that motion was denied. Respondent was not represented and did not appear at the hearing.

Petitioner, through counsel, did appear at the hearing and submitted two exhibits, certified copies of court records in Case number CR 85-53 PHX, from the U.S. District Court for the District of Arizona. No testimony was taken.

Petitioner requested and was granted ten days to submit a proposed recommended order. The proposed findings of fact thus submitted have been incorporated in this recommended order.

Respondent was also informed in the Post-Hearing Order referenced above of the right to file a proposed recommended order or brief within ten days. While styled "Respondent's Proposed Findings of Fact and Conclusions of Law", the pleading filed by Respondent only presented argument for reconsideration of the motion for continuance.

This warrants further brief discussion of the basis for denial. On its face the motion set out good cause for continuance; it was also timely filed. This does not imply, however, that an opposing party should not have the opportunity to respond. The rules of procedure for administrative hearings provide for a seven-day response period, plus three days for mailing. Rules 22I-6.02 and 22I-6.06 Florida Administrative Code. During the week before the hearing, the hearing officer twice attempted to contact Mr. Taylor to inform him of his need to set up a telephone hearing or get the concurrence of opposing counsel. That explicit message was given twice to Mr. Taylor's secretary. On the second occasion she assured the hearing officer that the earlier message was given to Mr. Taylor. In the absence of any follow-up from Mr. Taylor, a rational assumption was that the scheduling conflict had been resolved. On the morning of the hearing, when opposing counsel had already traveled to Tallahassee, Mr. Taylor's secretary called to ask about the continuance. The hearing was scheduled in Tallahassee for the convenience of Respondent and his attorney. The motion for continuance states that the federal court appearance was scheduled before the administrative hearing. The priority of one type of case over another is immaterial; any "damage" to Respondent would have been avoided by the simple expedient of immediately informing the hearing officer and opposing counsel of the scheduling conflict as soon as it was discovered or by following through after being reminded of Rule 22I-6.16 Florida Administrative Code.

Reconsideration of the motion for continuance is DENIED.

#### Issue

The issue in this proceeding is whether William David McCaffrey's mortgage solicitor's license should be suspended for violation of section 494.05(1), Florida Statutes.

#### FINDINGS OF FACT

1. The pleadings in this case, Petitioner's Notice of Intention to Suspend" and Respondent's "Petition for Formal Hearing" establish the following uncontroverted facts:

a) William D. McCaffrey is a mortgage solicitor holding license number HK0007207.

b) The Department of Banking and Finance is charged with the responsibility and duty of administering and enforcing the provisions of the Mortgage Brokerage Act, including the duty to suspend the license of those persons registered under the act for violations of the terms therein.

c) William D. McCaffrey has been convicted of a federal offense and is presently in federal custody at the Federal Correctional Institute in Montgomery, Alabama.

2. On November 13, 1985, Respondent pled guilty to "Interstate transportation of fraudulently obtained credit cards, in violation of title 15 U.S. Code, Section 1644(b) as charged in count 6 of the Indictment". (Petitioner's Exhibit #2)

3. Count 6 of the indictment provides:

Count Six

On or about December 13, 1982, defendants WILLIAM D. McCAFFREY and WILLIAM BARTRAM III did knowingly, with unlawful and fraudulent intent, transport and cause to be transported in interstate commerce from Clarkston, Georgia, by way of Nevada, to the District of Arizona, a fraudulently obtained American Express Credit Card in the name of William Smith, knowing said credit card to have been fraudulently obtained.

All in violation of Title 15, United States Code, Section 1644(b), and Title 18, United States Code, Section 2. (Petitioner's Exhibit #1)

4. The U.S. District Court for the District of Arizona in case #CR 85-53 PHX adjudged William D. McCaffrey guilty as charged and convicted, sentenced him to imprisonment for 5 years, and ordered that he pay a fine of \$10,000 and make restitution to American Express in the amount of \$5,481.27. (Petitioner's Exhibit #2 Judgement and Probation/Commitment Order)

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Section 120.57(1) Florida Statutes.

6. The Department of Banking and Finance may suspend a mortgage broker's or solicitor's license for a period not exceeding 2 years upon a finding that the licensee has been guilty of:

A crime against the laws of this state or any other state or of the United States, involving moral turpitude or fraudulent or dishonest dealing...  
Subsection 494.05(1)(d) Florida Statutes.

7. Count 6 of the indictment and the finding and judgement of the Arizona Federal District Court clearly describe the crime to which William D. McCaffrey pled guilty as a crime involving fraudulent or dishonest dealing.

8. In his petition for formal hearing Respondent argues that the offense for which he was convicted is in no way related to his duties, rights and

privileges under his mortgage license. Section 494.05, Florida Statutes does not require a finding that the crime is directly related to the Respondent's practice of business under his license. Honesty, truthfulness and integrity are attributes which the legislature has determined are required for individuals who deal with the public as mortgage brokers or solicitors. Subsection 494.04(4) Florida Statutes.

9. The agency proved that Respondent was judged guilty of a federal crime involving fraudulent or dishonest dealing. Respondent is not entitled to administrative relitigation of the prior judgement of guilt. McGraw V. Department of State, Division of Licensing, 491 So 2nd 1193 (Fla. 1st DCA 1986)

#### RECOMMENDATION

Based upon the foregoing it is recommended that a final order be entered suspending Respondent's mortgage solicitor's license for a period of two years.

DONE AND ORDERED this 23rd day of October 1986, in Tallahassee, Florida.

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MARY CLARK  
Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of October, 1986.

#### COPIES FURNISHED:

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