

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD RUBLE,

Petitioner,

vs.

Case No. 16-1917

OFFICE OF FINANCIAL REGULATION,

Respondent.

_____ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),^{1/} before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on October 13, 2016, by video teleconference at sites in Lauderdale Lakes, and Tallahassee, Florida.

APPEARANCES

For Petitioner: Christopher Jeffrey Hoertz, Esquire
Gary M. Singer, P.A.
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Sunrise, Florida 33323

For Respondent: Scott R. Fransen, Esquire
Office of Financial Regulation
200 East Gaines Street
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner, Richard Ruble, is entitled to renewal of his loan originator license, pursuant to chapter 494, Florida Statutes.

PRELIMINARY STATEMENT

On December 28, 2015, Petitioner, Richard Ruble, submitted an application for renewal of a mortgage loan originator license. On February 15, 2016, Respondent, Office of Financial Regulation, issued a Notice of Intent to Deny Renewal Application for Loan Originator License Pursuant to Chapter 494, Florida Statutes. On February 15, 2016, Petitioner timely submitted a Request for Hearing and Election of Proceedings, challenging Respondent's proposed denial of his loan originator license.

The matter was referred to DOAH on April 6, 2016. The final hearing initially was set for June 16, 2016, but, pursuant to Petitioner's unopposed motion, was continued to July 27, 2016.

The final hearing in this proceeding was convened on July 27, 2016, as scheduled. However, due to technical issues with video teleconferencing capabilities between the Tallahassee office of DOAH and other video teleconferencing sites around the state, including the Lauderdale Lakes site, the hearing was not

able to be conducted on July 27, 2016. The hearing was continued and rescheduled to October 13, 2016.

The final hearing was held on October 13, 2016. Petitioner presented the testimony of Chris Bagnall, and Petitioner's Exhibits A through W were admitted into evidence without objection. Respondent presented the testimony of Richard Ruble and Jason Booth, and Respondent's Exhibits 1 through 3 were admitted into evidence without objection. The undersigned took official recognition of chapter 494 and Florida Administrative Code Chapter 69V-40.

The one-volume Transcript of the final hearing was filed on October 28, 2016, and the parties were given until November 7, 2016, to file their proposed recommended orders; however, pursuant to Petitioner's request for an extension of time, the deadline was extended to November 17, 2016. The parties timely filed their Proposed Recommended Orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner, Richard Ruble, holds a loan originator license, National Mortgage Licensing System Identification Number 209981 ("LO License"), which was issued by Respondent, Office of Financial Regulation, and is the subject of this proceeding.

2. Respondent is the state agency charged with administering and enforcing chapter 494, including part II of that statute, which regulates loan originators.

Background and Evidence Adduced at the Final Hearing

3. Petitioner has held his LO License since approximately 2004. As required by section 494.00312(7), Florida Statutes, loan originator licenses must be annually renewed.^{2/}

4. In 2005 and 2006, Petitioner earned a substantial income from his business as a loan originator for real estate mortgage loans. As a result, he incurred a substantial federal income tax liability.

5. When the real estate market took a dramatic downturn starting in 2007, Petitioner's income also dramatically dropped. He suffered significant loss of income starting in 2007. As a consequence, he has been unable to pay his federal income taxes since 2006.

6. As a result of Petitioner's federal income tax liability for the years of 2005 and 2006, on February 12, 2013, the Internal Revenue Service ("IRS") recorded a Notice of Federal Tax Lien ("Tax Lien") against Petitioner's real property located at 3801 South Ocean Drive, Unit 6Z, Hollywood, Florida,^{3/} and in Leon County, Florida.

7. As a consequence of the creation of the Tax Lien, information constituting "adverse credit history information,"

as defined in Florida Administrative Code Rule 69-40.0113(2), has been included in his credit report.

8. The inclusion of adverse credit history in Petitioner's credit report prompted Respondent to contact Petitioner sometime after February 12, 2013, and before June 8, 2013, and request him to provide specified information about release or payment of the Tax Lien by a June 8, 2013, deadline.

9. Petitioner, through his counsel, contacted Respondent by correspondence dated June 7, 2013, explaining the circumstances under which the Tax Lien had been created and stating that Petitioner would provide the requested information, and notifying Respondent that Petitioner's accountant would need additional time beyond the June 8, 2013, deadline to gather and provide the requested information.

10. On July 30, 2013, Respondent proposed to deny renewal of Petitioner's LO on the basis of the Tax Lien.

11. On August 13, 2013, Petitioner provided to Respondent the requested additional information explaining the circumstances under which the Tax Lien was created.

12. On August 15, 2013, Respondent withdrew its notice of denial of renewal of Petitioner's LO License; this withdrawal document expressly stated: *"Please consider the Notice of Denial previously issued as withdrawn and of no force and*

effect." Respondent renewed Petitioner's LO, effective August 15, 2013.

13. On December 30, 2013, Petitioner applied to renew his LO license for the year 2014.

14. On June 30, 2014, Respondent issued a notice of denial of renewal of Petitioner's LO.

15. Petitioner timely requested a hearing challenging the proposed denial of the renewal of his LO License. However, before the final hearing in that proceeding, the parties settled the matter by executing a Settlement Stipulation, a condition of which was that Petitioner provide, by December 31, 2014, all information required by Respondent to complete review of the renewal application for his LO.

16. To comply with this condition, on December 22, 2014, Petitioner submitted Respondent's^{4/} Response Pursuant to Settlement Stipulation ("Response"), consisting of an explanation of his adverse credit history due to the Tax Lien and two lines of credit he had taken out to cover his business and personal expenses after the 2007 economic downturn and his consequent loss of income. The Response was supported by extensive documentation consisting of Petitioner's personal and business federal income tax returns; correspondence from Petitioner's counsel to Respondent addressing the Tax Lien and the status of Petitioner's efforts to resolve the Tax Lien

matter with the IRS; and correspondence from the IRS dated September 8, 2014, stating that due to information Petitioner had provided, it (the IRS) had refunded some taxes paid and applied them to Petitioner's 2005 tax liability, which had, in part, given rise to the Tax Lien.

17. On December 24, 2014, a Final Order incorporating the Settlement Stipulation was issued, and the file was closed on December 29, 2014.

18. On December 31, 2014, Petitioner filed, and Respondent deemed received, Petitioner's application to renew his LO License for the year 2015.

19. Sometime before October 19, 2015—over nine months later—Respondent informed Petitioner that the information that he had provided was not substantively adequate to support renewal of his LO License for 2015.

20. Thereafter, on October 19 and December 14, 2015, Petitioner, through his counsel, submitted information consisting of copies of his income tax returns filed with the IRS for years 2005 through 2010, as well as copies of his 2011, 2012, and 2013 income tax returns that were filed with the IRS by his accountant, Chris Bagnall. The last three years of tax returns (for years 2011, 2012, and 2013) were offered by Petitioner as evidence that he was working diligently with the

IRS to become current with respect to his filed income tax returns.

21. On December 28, 2015, Petitioner applied to renew his LO License for the year 2016.

22. On February 15, 2016, Respondent issued a Notice of Intent to Deny Renewal Application for Loan Originator License Pursuant to Chapter 494, Florida Statutes (hereafter, "Notice of Intent to Deny"), proposing to deny Petitioner's application to renew his LO License for the years 2014, 2015, and 2016.^{5/}

23. The Notice of Intent to Deny cited three grounds, two of which remain pertinent to this proceeding: (1) Petitioner failed to demonstrate that he possessed the general fitness and responsibility necessary to command the confidence of the community and warrant a determination that he, as the applicant, would operate honestly, fairly, and efficiently, as required by section 494.00312(4)(b) and rule 69V-40.113; and (2) a background check revealed that Petitioner's credit history contained adverse credit history information—specifically, that the IRS holds an outstanding federal income tax lien on property owned by Petitioner. At the final hearing, Respondent expressly abandoned the third ground for its proposed denial—specifically, that Petitioner had failed to provide certain information as required under the terms of a final order of

settlement (discussed in greater detail below); accordingly, that ground is no longer at issue in this proceeding.^{6/}

24. At the final hearing, Petitioner presented the testimony of his accountant, Chris Bagnall, who was retained in 2013 to assist Petitioner in preparing and submitting his overdue tax returns for years 2005 through 2015, and negotiating a plan for paying his past due income taxes for these years.

25. Bagnall explained that it is the IRS's preference to have the taxpayer make payments toward the outstanding liability, and then to issue refunds if the taxpayer has overpaid. Alternatively, if the taxpayer is not able to make payments toward resolving the outstanding tax liability, the IRS will negotiate payment plans applying the carryback rules, which allow income gains and losses to be "netted out" for purposes of determining overall tax liability. Under this approach, the IRS will not negotiate payment plans until all past due tax returns have been filed. In the meantime, interest and penalties continue to accrue on the outstanding income tax liability.

26. Bagnall testified, credibly, that after the real estate market crash in 2008, Petitioner did not have the money to pay the income tax he owed, and he used what little money he did have to try to keep his business afloat. Because Petitioner was not in a position to make a payment toward his tax liability due to his drastically diminished income, and due to not having

timely filed income tax returns for several years, he was not in a position to negotiate a plan with the IRS to pay the income taxes he owes. In the meantime, interest and penalties on Petitioner's past due taxes continued to accrue. As of the date of the final hearing, Petitioner's total liability was approximately \$366,000, a significant portion of which was attributable to penalties and interest accruing on the outstanding tax liability.^{7/}

27. Bagnall testified that since Petitioner retained him in 2013, he has been preparing and filing Petitioner's past due income tax returns in batches, as Petitioner has been able to garner the funds to pay for Bagnall's accounting services. As of the date of the final hearing, Bagnall recently had filed Petitioner's income tax return for 2014, and he testified, credibly, that he would be filing Petitioner's 2015 income tax return within a few days after the final hearing. Once Petitioner's 2015 return was filed, he would be current regarding the filing status of his income tax returns, so finally would be in a position to negotiate with the IRS to develop a plan to pay off his tax liability, with the ultimate aim of dissolving the Tax Lien.

28. Petitioner acknowledged that as of the date of the final hearing, he had not voluntarily made any payments toward addressing his income tax liability. Additionally, Petitioner's

tax returns show gambling losses of \$8,782 in 2011, \$2,100 in 2012, and \$18,546 in 2013.

29. However, as discussed above, the evidence shows that Petitioner, through Bagnall, is taking a comprehensive approach to resolving his income tax liability based in part on the use of the carryback rules to net out his overall tax liability. The evidence does not show that it would have been feasible for Petitioner to have made individual payments toward his outstanding tax liability until all of his returns had been filed and he was in a position to negotiate a repayment plan.

30. Respondent elicited testimony from Petitioner that in the application for renewal of his LO License filed in December 2013 for the year 2014, he had failed to disclose the existence of the Tax Lien until Respondent brought to his attention that they were aware of the existence of the Tax Lien. Respondent also elicited testimony that until brought to his attention by Respondent, Petitioner had failed to disclose, in his LO License renewal application filed in December 2015 for the year 2016, that he had filed for personal bankruptcy in September 2015. Respondent elicited this testimony to establish that Petitioner exhibited a pattern of being untruthful and incomplete in his responses to the application questions, and, thus, lacks the character to warrant a determination that he would operate honestly, fairly, and efficiently, as required by

rule 69V-40.0113(3) (b), for purposes of entitlement to renewal of his LO License.^{8/}

31. However, the evidence does not clearly and convincingly show that Petitioner intended to be untruthful in his application responses or to hide the existence of the Tax Lien or his personal bankruptcy from Respondent. It is as plausible that Petitioner omitted this information in error. With respect to the Tax Lien, the evidence shows that Petitioner had previously disclosed the creation of the Tax Lien to Respondent in correspondence dated June 13, 2013, and had, at that time, provided an explanation regarding the events leading to its creation. It would simply be nonsensical for Petitioner to intentionally falsely deny the existence of the Tax Lien on his application when he had previously submitted that very information to Respondent. Similarly, with respect to disclosure of his personal bankruptcy, Petitioner credibly testified that the matter had been a topic of discussion with Respondent's staff for a period of months. Although Petitioner amended his 2016 LO License renewal application only shortly before the final hearing to correctly reflect that he had filed a personal bankruptcy petition within the past 10 years, the credible evidence indicates that Petitioner believed that Respondent was aware of his personal bankruptcy through previous discussions with Respondent's staff, so would have had no

motivation to intentionally provide false information regarding that matter on his renewal application.

32. No evidence was presented at the hearing showing that Petitioner has ever engaged, in the course of conducting his mortgage loan originator business, in any fraudulent, dishonest, or other conduct harmful to the consuming public.

Findings of Ultimate Fact

33. The undersigned found Petitioner to be credible and forthright in his explanation of the creation and status of the Tax Lien, his personal bankruptcy, the filing of his tax returns, and his ongoing efforts to resolve his adverse credit history issues that have affected renewal of his LO License.^{9/}

34. As discussed in detail above, Petitioner's adverse credit history information is, at least in some significant measure, a result of circumstances largely beyond Petitioner's control. When the real estate market collapsed in 2008, Petitioner suffered an immediate, dramatic drop in income; at that point, he incurred the large tax liabilities with which he has been burdened ever since.

35. As discussed above, due to Petitioner's lack of income during and after the real estate market crash, it took some time for him to obtain the accounting services he needed in order to file his overdue tax returns—an essential step in negotiating a tax payment plan with the IRS. Although Petitioner's efforts to

resolve the Tax Lien with the IRS have taken some time, Petitioner finally is, or soon will be, in a position to negotiate a payment plan with the IRS to pay his tax liability and, ultimately, resolve the Tax Lien.

36. Before now, Petitioner has not been in a position to comprehensively and systematically pay down his tax liability pursuant to a negotiated plan. Thus, at this juncture, Petitioner's lack of voluntary payments toward resolving his Tax Lien and his gambling losses have not been determined a basis for finding that Petitioner lacks the character, general fitness, and financial responsibility to entitle him to renewal of his LO License.^{10/}

37. The persuasive evidence shows that Petitioner is making steady progress toward getting himself in the position, through bringing himself current in his income tax returns filings, to negotiate a payment plan with the IRS in order to comprehensively and systematically pay down his tax liability with the aim of dissolving the Tax Lien.

38. For these reasons, the undersigned finds that Petitioner has shown that he possesses the character, general fitness, and financial responsibility to warrant a determination that he will operate honestly, fairly, and efficiently such that his LO License should be renewed for the year 2016.

CONCLUSIONS OF LAW

39. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding. §§ 120.569, 120.57(1), Fla. Stat.

40. In this proceeding, Respondent proposes to deny renewal of Petitioner's LO License. This action is penal in nature because nonrenewal of a business license is tantamount to imposing a penalty on the licensee. Wilson v. Pest Control Com., 199 So. 2d 777 (Fla. 4th DCA 1967) (noting that a license to conduct business, once issued, has the quality of property). Accordingly, Respondent bears the burden to prove Petitioner's lack of entitlement to renewal of his license by clear and convincing evidence. Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998); Dubin v. Dep't of Bus. Reg., 262 So. 2d 273 (Fla. 1st DCA 1972).

41. Section 494.00312 requires individuals who act as loan originators to be licensed pursuant to the requirements of that section.

42. Section 494.001(17) defines a "loan originator," in pertinent part, as:

an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a non

[]institutional investor for compensation or gain.

43. Section 494.00312 establishes specific requirements that must be met for licensure. Section 494.00312(4) states in pertinent part:

(4) The office shall issue a loan originator license to each person who is not otherwise ineligible and who meets the requirements of this section. However, it is a ground for denial of licensure if the applicant:

* * *

(b) Has failed to demonstrate the character, general fitness, and financial responsibility necessary to command the confidence of the community and warrant a determination that the applicant will operate honestly, fairly, and efficiently.

* * *

2. For purposes of evaluating adverse information found in an applicant's credit report, the information must be considered within the totality of the circumstances.

44. Section 494.00313, governing renewal of loan originator licenses, states in pertinent part: "(2) [t]he office may not renew a loan originator license unless the loan originator continues to meet the minimum requirements for initial licensure pursuant to s. 494.00312 and adopted rule."

45. Respondent has adopted rule 69V-40.0113 to interpret and implement sections 494.00312 and 494.00313. That rule provides in relevant part:

(1) Definitions. As used in this rule, the term:

(a) "Adverse credit history information" means the following:

1. Personal bankruptcy within the previous year.
2. Bankruptcy within the previous year of any organization based on events that occurred while the relevant person was a control person.
3. Outstanding tax lien or other governmental lien.
4. Outstanding judgment based upon grounds of fraud, embezzlement, misrepresentation, or deceit.
5. Open collection account or charged-off account that remains unpaid, except accounts related solely to unpaid medical expenses.
6. Foreclosure on personally owned property within the last 5 years.

* * *

(2) Adverse Credit History Information. If a relevant person's credit report or responses to the license application contains adverse credit history information, the Office will notify the applicant in writing of the specific items constituting adverse credit history information. The notification will also inform the applicant of the:

(a) Opportunity to explain the circumstances surrounding the specific items and provide any other relevant information that the applicant wishes the Office to consider surrounding the specific items;

(b) Documents that the Office requires in order to complete its review of the specific

items. The requested documents provided by the applicant must be legible. Documents that are typically requested by the Office include, but are not limited to:

1. Copies of satisfaction of judgment.
2. Copies of satisfaction of outstanding tax liens or other governmental liens.
3. Copies of court documents that reflect the substance of the matter and how the matter was resolved or adjudicated.
4. Copies of account statements or letters from the creditors explaining the current status of accounts. For security purposes, the relevant person may redact all but the last four (4) digits of the account number prior to submitting the document to the Office.
5. Copies of tax returns, pay stubs, or other documentation of income. If the documents requested above cannot be obtained, the relevant person shall submit evidence of that fact in order for the license application to be deemed complete. Evidence that documents cannot be obtained shall consist of a written statement from the agency's or creditor's records custodian that is written on the agency's or creditor's letterhead; indicates that the agency or the creditor does not have any record of such matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and provide a statement as to why the record cannot be produced; and is signed by the agency's or creditor's records custodian.

(3) Procedure for Reviewing Adverse Credit History Information.

(a) When deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender, the Office must make a determination

regarding whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In making this determination, the Office will consider the following information:

1. The relevant person's entire credit history as reflected in the credit report.
2. The information provided by the relevant person under subsection (2).
3. The responses contained in the license application.
4. The previous licensing history with the Office including whether the relevant person was named in any regulatory action by the Office.
5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.
6. The time and context of the information available and any pattern of behavior the information may demonstrate.

(b) Based on the totality of the circumstances as developed under paragraph (a), the Office will make a determination as to whether the relevant person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the Office's determination that the relevant person will operate honestly, fairly, and efficiently. In considering the totality of the circumstances, the fact that an applicant has been a debtor in a bankruptcy or been the control person of a bankrupt organization shall not be the sole basis of the Office's determination to deny the issuance of a license.

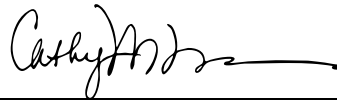
46. For the reasons discussed above, it is concluded that Petitioner has shown that he possesses the character, general fitness, and financial responsibility to warrant a determination that he will operate honestly, fairly, and efficiently, such that he is entitled to renewal of his LO License for the year 2016.

47. Accordingly, Respondent failed to meet its burden to demonstrate, by clear and convincing evidence, that Petitioner does not meet the requirements for renewal of his LO License as set forth in section 494.00312(4) and rule 69V-40.0113(3)(b).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent issue a final order approving renewal of Petitioner's loan originator license for the year 2016.

DONE AND ENTERED this 27th day of January, 2017, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of January, 2017

ENDNOTES

^{1/} All references are to the 2016 version of Florida Statutes unless otherwise stated.

^{2/} Section 494.00312(7) states, in pertinent part, that "[i]f a person holding an active loan originator license has applied to renew the license on or before December 31, the loan originator license remains active until the renewal application is approved or denied."

^{3/} On August 19, 2016, the IRS issued a Conditional Commitment to Discharge Certain Property from Tax Lien, approving issuance of a certificate of discharge for the Tax Lien with respect to the real property located at 3801 South Ocean Drive, Hollywood, Florida, contingent upon the provision of specified documentation, which subsequently was provided.

^{4/} Ruble, the Petitioner in this proceeding, was the Respondent in that case, Respondent's Administrative Proceeding Docket No. 55981.

^{5/} At the final hearing, it was clarified that only the denial of Petitioner's renewal of his LO License for the year 2016 remained at issue.

^{6/} This issue was addressed in paragraphs 14 and 24 of the February 15, 2016, Notice of Intent to Deny.

^{7/} The amount of the Tax Lien recorded in February 2013 was \$366,078.66.

^{8/} Respondent did not tender for admission, and the undersigned did not admit into evidence, a copy of Petitioner's application for renewal of his LO License for the year 2014. This document was not disclosed as an exhibit as required in the Order of Pre-hearing Instructions issued on April 18, 2016.

^{9/} Respondent asserts in its Proposed Recommended Order that: "[f]actors affecting the Office's decision to deny the renewal of Mr. Ruble's license included the amount of the tax lien (over \$360,000); no evidence of a payment arrangement; and no evidence

that Mr. Ruble made any effort, since its inception, to pay down the tax lien." While those factors may have constituted the basis for Respondent's proposed action to deny renewal of Petitioner's license, this is a de novo proceeding, "the purpose of which is to formulate agency action, not review action taken earlier and preliminarily." Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 785 (Fla. 1st DCA 1981). At the final hearing, Petitioner presented competent, credible, persuasive evidence that he has made, and continues to make, progress toward negotiating a payment plan to pay down his income tax liability, with the ultimate goal of dissolving the Tax Lien.

^{10/} However, it is noted that once Petitioner has negotiated a payment plan with the IRS, subsequent failure on his part to make payments toward reducing his tax liability or incurring gambling losses should be considered strong evidence of lack of character, general fitness, and financial responsibility. The point is, until now, circumstances largely not of Petitioner's making have impeded his resolution of his tax liability. Once he is in a position to begin repaying his tax liability according to a payment plan, his failure to do so—particularly if it is shown that he has chosen to spend money on gambling rather than satisfying his tax debt—would constitute strong evidence that he lacks the character, general fitness, and financial responsibility to entitle him to subsequent renewal of his LO License.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.