

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

Case No. 21-0669PL

TOSHIA PARRISH, F/K/A TOSHIA GLOVER,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on September 16, 2021, via Zoom, before Garnett W. Chisenhall, a duly designated Administrative Law Judge of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Joaquin Alvarez, Esquire
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Tallahassee, Florida 32399

For Respondent: H. Richard Bisbee, Esquire
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STATEMENT OF THE ISSUES

Whether the loan originator license issued to Respondent should be:
(a) annulled because it was issued by mistake; or (b) revoked because Respondent failed to disclose adverse credit history and a prior name under which she had held a mortgage broker license that had been revoked.

A separate issue concerns whether Respondent should be fined; and if so, how much.¹

PRELIMINARY STATEMENT

The Office of Financial Regulation (“OFR”) issued an Administrative Complaint on January 4, 2021, alleging that Toshia Parrish’s loan originator licensure application failed to disclose that she was previously known as Toshia Glover. The Administrative Complaint further alleged that Toshia Glover had previously held a mortgage broker license that had been revoked by OFR. Accordingly, OFR stated that it intended to: (a) annul Ms. Parrish’s newly-issued loan originator license because it had been issued by mistake;² or (b) revoke that license and impose a \$3,500 administrative fine because her loan originator licensure application had contained a material misstatement and/or omission.³

Ms. Parrish responded to the Administrative Complaint by requesting a formal administrative hearing and making the following assertions:

At all times material hereto and for the reasons more particularly described hereafter, [Ms. Parrish] at the time she applied on September 6, 2020 for her Loan Originator’s license was unaware that the OFR had previously revoked [her] mortgage broker license # MB0822297. The first time [Ms. Parrish] became aware of the existence of [that] Final Order was after service of the pending complaint. [Ms. Parrish] was unaware of the Final Order

¹ Unless stated otherwise, all statutory references shall be to the 2020 version of the Florida Statutes. See *McClosky v. Dep’t of Fin. Serv.*, 115 So. 3d 441 (Fla. 5th DCA 2013)(stating that a proceeding is governed by the law in effect at the time of the commission of the acts alleged to constitute a violation of law).

² Section 494.00312(5), Florida Statutes, provides that a person who had a loan originator license or its equivalent revoked is ineligible to be licensed as a loan originator.

³ Section 494.0025(5), provides that it is illegal to knowingly and willfully make any false or fraudulent statement or representation. Section 494.00255(1)(u), subjects a loan originator to discipline for failure to comply with any provision within chapter 494.

because the OFR failed to perfect proper personal or constructive service of the administrative complaint upon [her] prior to entering the Final Order.

OFR did not properly and lawfully revoke [Ms. Parrish]'s mortgage broker's license ## MB0822297, insofar as the OFR failed to properly obtain personal jurisdiction by personally serving [her] with a complaint prior to the entry of a final order. Consequently, any final order the OFR issued was and remains fatally defective and void *ab initio*.

Alternatively, [Ms. Parrish] further asserts that in the event OFR intends to rely upon constructive service as a condition precedent to service by publication of the complaint upon [Ms. Parrish], the OFR's attempt at constructive service was legally defective because the OFR investigator/agent failed to properly conduct a reasonable and thorough "diligent search and inquiry"; consequently, any final order based upon such defective service was and remains fatally defective and void *ab initio*.

* * *

[Ms. Parrish]'s omission of her former name was not intentional but simple human error. The omission was not material because [she] provided her social security number by which the OFR could have easily obtained the inadvertently omitted information. In addition, the omission was not material because the purported "final order" identifying [her] by the name "Toshia Glover" was and remains legally defective and void *ab initio* . . .

OFR referred this matter to DOAH on February 18, 2021, and the undersigned issued a Notice of Hearing on March 1, 2021, scheduling a final hearing for April 27 and 28, 2021.

In a related matter, OFR issued a “Notice of Intent to Deny Application for Mortgage Broker License” to Assertive Mortgage LLC, (“Assertive Mortgage”). In support thereof, OFR alleged that Assertive Mortgage’s application for licensure as a mortgage broker listed Ms. Parrish, Assertive Mortgage’s sole owner and officer, as the qualified principal loan originator and as a control person. However, Assertive Mortgage’s application failed to disclose that OFR had revoked Ms. Parrish’s mortgage broker license when she was known as Toshia Glover. After Assertive Mortgage petitioned for a formal administrative hearing, OFR referred that matter to DOAH on February 18, 2021, and it was assigned DOAH Case No. 21-0670.

Ms. Parrish filed a “Stipulated Motion to Continue Final Hearing” on April 12, 2021, requesting that the final hearing be continued for at least 60 days. After receiving the parties’ mutual dates of availability, the undersigned rescheduled the final hearing for July 29 and 30, 2021.

On June 25, 2021, OFR filed a Motion in Limine seeking to foreclose Ms. Parrish from collaterally attacking an April 22, 2009, Final Order that revoked her mortgage broker license. OFR also filed on June 25, 2021, a Motion for Leave to Amend its Administrative Complaint. In support thereof, OFR stated that it had “discovered further material misstatements on the loan originator license application, which would constitute a separate violation of law.” Specifically, OFR sought to add an allegation that Ms. Parrish had failed to disclose an outstanding income tax lien when she filed her most recent loan originator license application.

A telephonic conference was convened on July 7, 2021, and the undersigned explained that administrative finality⁴ barred a collateral attack

⁴ The doctrine of administrative finality provides that “[t]here must be a terminal point in every proceeding both administrative and judicial, at which the parties and the public may

on the April 22, 2009, Final Order. Nonetheless, the Motion in Limine was denied without prejudice.

The undersigned issued another Order on July 7, 2021, granting OFR's Motion for Leave to Amend its Administrative Complaint. As a result, three counts were at issue in DOAH Case No. 21-0669: (1) whether Ms. Parrish failed to disclose on her application that she had previously been known as Toshia Glover; (2) whether Ms. Parrish failed to disclose the existence of an unsatisfied tax lien against her; and (3) whether Ms. Parrish was issued a loan originator license despite the fact that she had previously held a mortgage broker license that had been revoked. Because an additional count was now at issue, the Order specified that either party could request a continuance of the July 29 and 30, 2021, final hearing.

On July 15, 2021, OFR filed a motion seeking to continue the final hearing, and the undersigned issued an Order rescheduling the final hearing for September 16 and 17, 2021.

The final hearing was convened as scheduled and completed on September 16, 2021. At the outset of the final hearing, the undersigned considered four motions. The first was a "Renewed Motion in Limine," filed by OFR on September 14, 2021, seeking to foreclose Ms. Parrish from challenging the validity of the April 22, 2009, Final Order that revoked her mortgage broker license. In the course of granting the Renewed Motion in Limine, the undersigned reiterated comments made during the July 7, 2021, telephone conference that administrative finality barred the undersigned from considering any matters that had been addressed by the April 22, 2009, Final Order. However, the undersigned also ruled that Ms. Parrish could

rely on a decision as being final and dispositive of the rights and issues involved therein." *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679, 681 (Fla. 1979).

proffer the testimony and/or evidence at issue. The undersigned also considered a “Second Motion in Limine” filed by OFR on September 14, 2021, seeking to preclude any testimony from Ms. Parrish that she did not intend to omit or misstate any material information when she completed the application at issue in this proceeding. The undersigned denied the Second Motion in Limine. The undersigned granted OFR’s motion to take official recognition of chapter 494 and Florida Administrative Code Chapter 69B-40. Finally, the undersigned denied Ms. Parrish’s Motion to Stay the final hearing until OFR ruled on a Petition she had filed with OFR requesting that OFR vacate the April 22, 2009, Final Order.

OFR presented testimony from Bill Morin and the following exhibits were accepted into evidence as OFR Exhibits 1 through 5 and 7 through 15: (1) A Default Final Order rendered by OFR on April 22, 2009, that revoked Toshia Glover’s mortgage broker license and imposed a \$7,000 fine for which Ms. Glover and A+ Loans were jointly and severally liable; (2) a blank, hard copy of the Nationwide Multi-State Licensing System’s (“NMLS”) loan originator application designated thereon as “NMLS INDIVIDUAL FORM MU4 EFFECTIVE 4/16/2012” and adopted by Florida Administrative Code Rule 69V-40.002;⁵ (3) a filing guide produced by NMLS to assist applicants with completing their application for licensure as a loan originator; (4) the loan originator licensure application filed with OFR by Toshia Parrish on September 6, 2020; (5) a document from the State of Georgia’s Department of Revenue indicating that, as of June 7, 2018, there was an outstanding lien of \$488,438.77 against Ms. Glover;⁶ (7) an amended/updated version of

⁵ Ms. Parrish applied to OFR for licensure as a loan originator on September 6, 2020. The version of rule 69V-40.002 in effect at that time adopted “NMLS Individual Form (Form MU4), Version 8.9, dated and effective April 16, 2012.”

⁶ The document marked for identification by the undersigned as OFR Exhibit 6 was not accepted into evidence during the final hearing due to concerns regarding its authenticity. The undersigned gave OFR two weeks following the conclusion of the final hearing to file a

Ms. Parrish’s loan originator licensure application filed with OFR on April 29, 2021; (8) a document delineating past application filings by Ms. Parrish; (9) an application filed by Mr. Parrish with the Florida Department of Business and Professional Regulation for licensure as a real estate broker; (10) a blank, hard copy of the NMLS form used by companies seeking licensure as a mortgage brokerage entitled “NMLS COMPANY FORM MU1, EFFECTIVE 03/31/2014” and adopted by Florida Administrative Code Rule 69V-40.002;⁷ (11) a filing guide produced by NMLS to assist applicants with completing their company application for licensure; (12) an application for licensure submitted by Assertive Mortgage on September 19, 2020; (13) an application for licensure submitted by Assertive Mortgage on April 29, 2021; (14) Assertive Mortgage’s organizational chart; and (15) a document delineating past application filings by Assertive Mortgage.⁸

Ms. Parrish testified on her own behalf and Respondent’s Exhibits 1 through 5 and 8 were accepted into evidence. Ms. Parrish was allowed to proffer testimony regarding her assertion that she was unaware of OFR’s April 22, 2009, Final Order when she filed the application at issue in this proceeding. Ms. Parrish was also allowed to proffer Respondent’s Exhibits 10 through 14.

certified copy. On October 6, 2021, OFR filed a notice stating that it was withdrawing OFR Exhibit 6 from consideration. As a result, OFR Exhibit 6 was not accepted into evidence, and the undersigned disregarded any testimony based on that document.

⁷ Assertive Mortgage applied to OFR for licensure as a mortgage broker on September 19, 2020. The version of rule 69V-40.002 in effect at that time adopted “NMLS Company Form (Form MU1), Version 10.0 dated and effective March 31, 2014.”

⁸ Because the cases are closely related, the undersigned heard the instant case and DOAH Case No. 21-0670 simultaneously. In order to minimize the number of exhibits, the two sets of exhibits that OFR filed for Case Nos. 21-0699 and 21-0670 were consolidated into a single set of exhibits. Ms. Parrish filed one set of exhibits that was used for both cases.

The two-volume final hearing Transcript⁹ was filed on September 24, 2021, and both parties filed timely proposed recommended orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, the entire record of this proceeding, and matters subject to official recognition, the following Findings of Fact are made:

1. OFR is the state agency responsible for regulating mortgage brokering, mortgage lending, and loan origination.

2. Toshia Glover became a Florida-licensed mortgage broker in 1999, and she became licensed in Florida and Georgia as a mortgage loan originator in 2000. At some point after 2003, she obtained a Florida real estate broker's license. In 2006, Ms. Glover became a Georgia-licensed mortgage broker.¹⁰

3. Ms. Glover operated a mortgage broker company called A+ Loans from 2005 until September of 2008. The economic downturn that occurred in 2008 decimated her real estate and loan origination businesses and forced her to discontinue operations.

4. Ms. Glover moved to Georgia from Florida during the fourth quarter of 2008, and sustained herself by doing odd jobs. Ms. Glover estimates that she earned less than \$10,000 in 2009.

⁹ Pages 9 and 10 of the Transcript erroneously attribute comments by Respondent's counsel to counsel for Petitioner.

¹⁰ Prior to 2010, OFR issued mortgage broker licenses to individuals and businesses. Since 2010, OFR has issued loan originator licenses to individuals and mortgage broker licenses to businesses. Therefore, the individual mortgage broker license is the historical equivalent of the current loan originator license. Section 494.001(18), defines a "loan originator" 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 noninstitutional investor for compensation or gain."

5. In February of 2009, OFR unsuccessfully attempted to personally serve an Administrative Complaint on Toshia Glover alleging that A+ Loans and Ms. Glover, as the principal broker of A+ Loans,¹¹ received improper compensation of \$1,530 and \$600. Those allegations amounted to violations of sections 494.0038(1)(a) and (1)(b)1. Florida Statutes (2005 and 2006), and rule 69V-40.008(1). In March and April of 2009, OFR published notice of the Administrative Complaint in the Sun-Sentinel daily newspaper.

6. After Ms. Glover and A+ Loans did not respond to the Administrative Complaint, OFR issued a “Default Final Order and Notice of Rights” (“the Default Final Order”) on April 22, 2009, immediately revoking Ms. Glover’s mortgage broker license and imposing a \$7,000 administrative fine for which Ms. Glover and A+ Loans were jointly and severally liable. Ms. Glover and A+ Loans were also required to refund a total of \$2,130 to one or more borrowers.

7. Ms. Glover married her current husband on December 12, 2012, and has not used her maiden name since. She will hereinafter be referred to as Ms. Parrish.

8. On June 7, 2018, a lien was recorded in the Superior Court for Cobb County, Georgia, indicating that Ms. Parrish owed \$209,510.00 in delinquent taxes to the Georgia Department of Revenue. After accounting for interest, penalties, and a collection fee, the lien totaled \$488,438.77.¹²

9. On September 6, 2020, Ms. Parrish applied to be licensed in Florida as a loan originator. The version of rule 69V-40.002(1)(a)4. in effect on September 6, 2020, adopted “NMLS Individual Form (Form MU4),

¹¹ Section 494.0035, Florida Statutes (2005 and 2006), required that each mortgage brokerage business have a principal broker with full control over that business.

¹² The document memorializing the lien was not a certified copy. However, the undersigned determined that it was sufficiently reliable to be accepted into evidence. *See* § 120.569(2)(g), Fla. Stat. (providing that “[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida.”). Moreover, the Order of Pre-Hearing Instructions directed the parties to note any objections to exhibits in the Joint Pre-Hearing Stipulation, and Ms. Parrish did not raise an authenticity objection to this document.

Version 8.9, dated and effective April 16, 2012” (“the MU4”). The MU4 “is the universal form used by individuals required to submit biographical and other information to a state agency through NMLS as part of a license application.” The MU4 required applicants to disclose identifying information such as their first and last names, social security number, and date of birth. It also had a section entitled “Other Names,” with the following instruction: “Other than your legal name, list all name(s) you are using or have used since the age of 18. Examples include nicknames, aliases, and names used before or after marriage.”¹³

10. The MU4 also required an applicant to disclose whether “you have any unsatisfied judgments or liens against you” and whether any state or federal regulatory agency has “entered an order against you in connection with a financial services-related activity.”¹⁴

11. Ms. Parrish did not read the instructions for the MU4 form.¹⁵ As a result, she failed to disclose her maiden name in the “Other Names” section of her MU4 form. Nor did she disclose the lien for unpaid taxes or the Default Final Order.

¹³ As for why knowledge of an applicant’s other names is important, Bill Morin, the Chief of OFR’s Bureau of Registration, testified that “[t]he importance of that is . . . it allows [OFR] to do a complete and comprehensive review of the applicant’s history. If not all of the names are disclosed, [OFR] may not be able to fully vet the applicant.”

¹⁴ An applicant’s credit history is material information in a loan originator application. Rule 69V-40.0113 indicates that OFR must evaluate the circumstances pertaining to any adverse credit history.

¹⁵ Ms. Parrish argues in her Proposed Recommended Order that the online application she filled out lacked any instructions indicating she was required to provide her maiden name. However, her testimony did not indicate that instructions were not available to her. Instead, her testimony indicated that she chose to not read them. When counsel for OFR asked Ms. Parrish if she looked at the instructions when she was filling out her application, Ms. Parrish responded by stating the following: “The instruction guide, no. No. I went straight to the application because the – when I first signed up for NMLS, when I established an NMLS I.D., the website is user friendly. So, I felt no need to have to go look through an instruction guide to fill out an application because I – I’ve done it a million times. I kind of know how to fill out an application.”

12. Ms. Parrish’s MU4 form had a section entitled “Attestation,” which stated that:

I Toshia Parrish (1844160), (Applicant) on this date Sunday, September 6, 2020 swear (or affirm) that I executed this application on my own behalf, that I am attesting to and submitting this application, and that I agree to and represent the following:

(1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law . . .

13. The Attestation section also contained the following statement: “If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.”

14. OFR granted Ms. Parrish’s application on September 23, 2020.

15. Ms. Parrish did not intend to hide the fact that she had been previously licensed in Florida as a loan originator.¹⁶ At the time she submitted her application to OFR, Ms. Parrish was unaware of the Georgia Department of Revenue’s lien. However, all of the aforementioned information was material to OFR’s consideration of the application at issue.

16. After Ms. Parrish learned of the lien, she contacted the Georgia Department of Revenue and was told that there had been a mistake. On July 12, 2021, the lien was released.

¹⁶ Ms. Parrish included a September 6, 2020, credit report with her application to OFR that indicated her name was “Toshia Reshee Glover.” Also, Ms. Parrish communicated via telephone and e-mail with the OFR examiner responsible for evaluating her application, and notified the examiner of her prior licensure in Florida as a loan originator.

17. In light of the fact that the Default Final Order revoked Ms. Parrish's mortgage broker license, OFR erred when it issued her a new one on September 23, 2020.

CONCLUSIONS OF LAW

18. Pursuant to section 120.57(1), Florida Statutes, DOAH has jurisdiction over the parties and subject matter of this proceeding.

19. A proceeding, such as this one, to impose discipline upon a licensee, is penal in nature. *State ex rel. Vining v. Fla. Real Estate Comm'n.*, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, OFR must prove the charges against Ms. Parrish by clear and convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 933-34 (Fla. 1996)(citing *Ferris v. Turlington*, 510 So. 2d 292, 294-95 (Fla. 1987)); *Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Med.*, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

20. Regarding the standard of proof, the court in *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), stated that:

clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id.

21. The Florida Supreme Court later adopted the *Slomowitz* Court's description of clear and convincing evidence. *See In re Davey*, 645 So. 2d 398, 404 (Fla. 1994). The First District Court of Appeal has also followed the *Slomowitz* test, adding the interpretive comment that

"[a]lthough this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

22. Penal statutes must be construed in terms of their literal meaning and words used by the Legislature may not be expanded to broaden the application of such statutes. Thus, the provisions of law upon which this disciplinary action has been brought must be strictly construed, with any ambiguity in favor of the one against whom the penalty would be imposed. *Elmariah v. Dep't of Prof'l Reg., Bd. of Med.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *see also Griffis v. Fish & Wildlife Conserv. Comm'n*, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Whitaker v. Dep't of Ins. & Treas.*, 680 So. 2d 528, 531 (Fla. 1st DCA 1996); *Dyer v. Dep't of Ins. & Treas.*, 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

23. With regard to the instant case, Count I of OFR's Amended Administrative Complaint alleges that Ms. Parrish violated section 494.00255(1)(s), by failing to disclose on her September 2020 loan originator application that she was previously known as "Toshia Glover." The 2020 version of section 494.00255(1)(s) provided that loan originators could be disciplined based on "[a] material misstatement or omission of fact on an initial or renewal license application."

24. OFR established by clear and convincing evidence that Ms. Parrish failed to disclose her maiden name on the loan originator application she filed with OFR on September 6, 2020.

25. Ms. Parrish argues that the aforementioned misstatement or omission should not be considered a violation of section 494.00255(1)(s) because she had no intent to misstate or omit the information at issue. In other words, she was unaware that the loan originator licensure application required her to disclose her maiden name. In support thereof, she notes that the attestation section on the application at issue contained the following

statement: “If the Applicant has *knowingly* made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.” (emphasis added)

26. Despite the aforementioned statement on the application, there is nothing in chapter 494 or the rules promulgated thereunder that creates a standard of “knowing intent” for false statements made on applications. Furthermore, Ms. Parrish’s argument that she had no intent to misstate or omit information ignores her conscious and knowing decision to disregard the very specific instructions regarding disclosure of prior names.

27. The issue of whether a lack of intent can excuse a material misstatement or omission of fact on a licensure application has been addressed in a past case involving OFR. The petitioner in *Winton v. Office of Financial Regulation*, Case No. 05-4070 (Fla. DOAH Mar. 16, 2006; Fla. OFR Apr. 12, 2006), was alleged to have violated section 494.0041(2)(c), Florida Statutes (2005), which authorized OFR to deny an application for licensure as a mortgage broker based on “[a] material misstatement of fact on an initial of renewal application.” Even though he had pled *nolo contendere* and was adjudicated guilty of one count of lewd and lascivious conduct on October 21, 1997, the *Winton* petitioner had responded “no” to a question on an application for mortgage broker licensure asking if the applicant has “pleaded *nolo contendere*, been convicted, or found guilty, regardless of adjudication, of a crime involving fraud, dishonest dealing, or any other act of moral turpitude.”

28. Administrative Law Judge T. Kent Wetherell, II, concluded that it was irrelevant whether the *Winton* petitioner had intended to respond incorrectly:

43. Petitioner materially misstated his criminal history on his license application by answering “no” to Question No. 5. His intent regarding the misstatement is immaterial for purposes of

Section 494.0041(2)(c), Florida Statutes, because, as explained in regard to a similar statute,

It is impossible for the Department to know what each applicant knows or believes at the time of application for licensure. The inclusion of the phrase "material misstatement" allows the Department to avoid having to make impossible determinations of what was and was not known to the applicant. If the applicant misstates his or her criminal background, even unknowingly, he or she is held liable for that misstatement.

Department of Insurance v. Koniz, Case No. 01-4271PL, 2002 Fla. Div. Adm. Hear. LEXIS 684, at *8 (DOAH Apr. 23, 2002; DOI May 17, 2002) (construing Section 626.611(2), Florida Statutes, which is similar to Section 494.0041(2)(c), Florida Statutes).

44. Thus, even though the evidence establishes that Petitioner's failure to affirmatively answer Question No. 5 was based upon his misunderstanding of the scope of the question, rather than an intent to deceive the Office by concealing his criminal history, Petitioner's negative answer to Question No. 5 provides the Office an additional basis to deny his license application. § 494.0041(2)(c), Fla. Stat.

29. Count II of OFR's Amended Administrative Complaint alleges that Ms. Parrish violated section 494.00255(1)(s) by failing to disclose that she had an unsatisfied income tax lien from the Georgia Department of Revenue totaling \$488,439.00 in the name of Toshia Glover. OFR proved by clear and convincing evidence that Ms. Parrish neglected to disclose the aforementioned lien. While the evidence also demonstrated that the lien was erroneously entered and that Ms. Parrish was unaware of the lien when she filed her loan originator application with OFR on September 6, 2021, it

nonetheless was in existence and effective on the date that she filed her application. A lack of knowledge and/or intent is not an affirmative defense in this context. *See Winton*.

30. Count III of OFR's Amended Administrative Complaint alleges that sections 494.00312(5) and (6), require that OFR annul the loan originator license issued to Ms. Parrish in 2020 because OFR had revoked her mortgage broker license in 2009.

31. The 2020 versions of sections 494.00312(5) and (6) provide that:

(5) The office may not issue a license to an applicant who has had a loan originator license or its equivalent revoked in any jurisdiction.

(6) A loan originator license shall be annulled pursuant to s. 120.60 if it was issued by the office by mistake. A license must be reinstated if the applicant demonstrates that the requirements for obtaining the license under this chapter have been satisfied.

32. Ms. Parrish argues that there was no Florida-issued mortgage broker license for the Default Final Order to revoke because she had allowed all of her mortgage broker licenses to expire by September 1, 2008. However, that argument is a collateral attack on the Default Final Order that is barred by administrative finality. *See Austin Tupler Trucking*, 377 So. 2d at 681. Accordingly, OFR proved by clear and convincing evidence that it had revoked Ms. Parrish's mortgage broker license in 2009 and that OFR made a mistake by issuing a loan originator license to Ms. Parrish on September 23, 2020.

33. With regard to an appropriate penalty, section 494.00312(6) requires that OFR annul the loan originator license issued to Ms. Parrish on September 23, 2020. Therefore, there is no need to assess whether that license should be revoked. Because OFR stated in its Proposed Recommended Order that it is also seeking to impose a \$3,500 administrative fine, the

undersigned must refer to rule 69V-40.111, OFR's disciplinary guidelines rule.

34. Rule 69V-40.111(5) provides that \$1,000 to \$3,500 is the range for an "A" level fine but does not elaborate further. Subsection (3) states that a penalty can be mitigated by "case-specific circumstances." In the instant case, Ms. Parrish had no specific intent to hide her prior licensure as a loan originator from OFR. Nor was Ms. Parrish aware of the lien when she filed her application on September 6, 2020. While a lack of specific intent does not excuse the violations at issue in the instant case, it does counsel against imposing any administrative fine.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Office of Financial Regulation issue a Final Order annulling the loan originator license issued to Toshia Parrish, F/K/A Toshia Glover, on September 23, 2020.

DONE AND ENTERED this 3rd day of December, 2021, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of December, 2021.

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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.