

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ASSERTIVE MORTGAGE, LLC,

Petitioner,

vs.

Case No. 21-0670

OFFICE OF FINANCIAL REGULATION,

Respondent.

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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: H. Richard Bisbee, Esquire  
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For Respondent: Joaquin Alvarez, Esquire  
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200 East Gaines Street  
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STATEMENT OF THE ISSUE

Whether Assertive Mortgage LLC’s (“Assertive Mortgage”) application for a mortgage broker license should be granted.<sup>1</sup>

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<sup>1</sup> Unless stated otherwise, all statutory references shall be to the 2020 version of the Florida Statutes. *See generally McClosky v. Dep’t of Fin. Serv.*, 115 So. 3d 441 (Fla. 5th DCA

PRELIMINARY STATEMENT

Via a Notice of Intent to Deny dated December 30, 2020, the Office of Financial Regulation (“OFR”) provided notice that it intended to deny Assertive Mortgage’s application for mortgage broker licensure. In support thereof, OFR alleged that Assertive Mortgage failed to disclose in its application that the loan originator license of its sole owner, Toshia Parrish, had been revoked in 2009. Section 494.00321(5), Florida Statutes, provides, in pertinent part, that OFR “shall deny a license if any of the applicant’s control persons has had a loan originator license, or its equivalent, revoked in any jurisdiction.”

Assertive Mortgage petitioned for a formal administrative hearing and set forth the following factual disputes:

[Assertive Mortgage] disputes that [OFR] lawfully issued an “order, OFR 2009-188, in which Parrish’s (then known as Glover) mortgage broker license MB 0822297 was revoked.” Specifically, [Assertive Mortgage] disputes that the OFR properly and lawfully revoked Parrish’s mortgage broker’s license # MB0822297. If the OFR did issue a complaint and enter a final order, Parrish (and [Assertive Mortgage]) was unaware of the issuance or existence of the complaint or final order only until after service of the pending Notice which is the subject of this Petition. [Assertive Mortgage] further disputes that the OFR properly obtained personal jurisdiction over Parrish to legally enter a Final Order in Case 2009-188 insofar as the OFR failed to personally serve Parrish with a complaint prior to entry of a final order. [Assertive Mortgage] further asserts that to the extent OFR intends to rely upon constructive service as a condition precedent to service of the complaint upon Parrish by publication, such constructive service was defective insofar as the OFR failed to properly

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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).

conduct a reasonable and thorough “diligent search and inquiry.” Any final order relied upon by the OFR in its Notice based upon such defective service was and remains fatally defective; void *ab initio*; and a nullity.

[OFR] infers or assumes—albeit incorrectly—that [Assertive Mortgage] through its control person, Parrish, was under an obligation to disclose an alleged event unknown of at the time by [Assertive Mortgage] (and Parrish). In addition, [Assertive Mortgage] disputes that Parrish “had a prior loan originator license or equivalent license revoked” to the extent this allegation infers or assumes any purported revocation by OFR was, in fact, legally sufficient. Prior to the entry of a final order of revocation and in recognition of a licensee’s “due process” rights, OFR pursuant to §120.60(5), Fla. Stat., was first required to perfect personal jurisdiction over Parrish “by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57.” The OFR, however, failed to perfect proper service of a complaint upon Parrish prior to entry of any alleged final order as §120.60(5), Fla. Stat. required. To the extent OFR may intend to rely, *arguendo*, upon constructive service as a condition precedent to service by publication of the complaint upon Parrish, OFR’s alleged constructive service was legally defective insofar as OFR failed to properly conduct a reasonable and thorough “diligent search and inquiry” or otherwise comply with §120.60(5), Fla. Stat. Consequently, any “final order” based upon defective service was and remains void *ab initio*—in other words, a nullity, i.e. “an act void of legal effect.”

OFR referred this matter to DOAH on February 17, 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 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;<sup>2</sup> 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. That matter was also referred to DOAH, and it was assigned DOAH Case No. 21-0669.<sup>3</sup>

On April 12, 2021, Assertive Mortgage filed a "Stipulated Motion to Continue Final Hearing." In support thereof, Assertive Mortgage asserted that more time was needed for discovery. The undersigned issued an Order on April 13, 2021, granting the aforementioned motion and requiring the parties to provide mutual dates of availability by April 16, 2021. The final hearing was ultimately rescheduled for July 29 and 30, 2021.

OFR filed a Motion for Protective Order on June 30, 2021, seeking to preclude Assertive Mortgage from inquiring about certain OFR documents

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<sup>2</sup> 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.

<sup>3</sup> OFR later amended the Administrative Complaint in DOAH Case No. 21-0669 to additionally allege that OFR had erroneously issued a loan originator license on September 23, 2020, to Ms. Parrish despite the fact that she had previously held a mortgage broker license that had been revoked.

that were utilized in 2009 and 2010. The undersigned issued the following Order on July 7, 2021:

The instant case is before the undersigned based on a “Motion for Protective Order and to Incorporate by Reference the Office’s Motion in Limine Filed in DOAH Case Number 21-0669PL” (“the Motion”), filed by Respondent on June 30, 2021. With regard to the portion of the Motion seeking to incorporate by reference a Motion in Limine, filed in DOAH Case No. 21-0669PL, the undersigned convened a telephonic conference on July 7, 2021, and explained that certain facts appeared to have already been established via certain exhibits being offered by the Office of Financial Regulation. Because the parties appeared to agree with the undersigned’s view of what facts were relevant to a resolution of the instant case and DOAH Case No. 21-0669PL, the portion of the Motion seeking to incorporate by reference a Motion in Limine, filed in DOAH Case No. 21-0669PL, is DENIED without prejudice. As for the portion of the Motion seeking a protective order, the undersigned notes for the record that the deposition topics summarized in paragraph 5 of the Motion are not relevant to the resolution of the instant case.

On July 15, 2021, OFR filed a motion seeking to continue the final hearing for 60 days because the parties needed more time to conduct a deposition. The undersigned issued a notice on July 16, 2021, rescheduling the final hearing for September 16 and 17, 2021.

The final hearing was convened as scheduled and completed on September 16, 2021. Because the cases are closely related, the undersigned heard the instant case and DOAH Case No. 21-0669 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. Assertive Mortgage and Ms. Parrish filed one set of exhibits that was used for both cases.

The undersigned considered multiple motions at the outset of the final hearing. 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 an 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, phone 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 proffer the testimony and/or evidence at issue. The undersigned granted OFR’s motion to take official recognition of chapter 494 of the Florida Statutes and chapter 69V-40 of the Florida Administrative Code. 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;<sup>4</sup> (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

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<sup>4</sup> 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.”

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;<sup>5</sup> (7) an amended/updated version of 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;<sup>6</sup> (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.

Ms. Parrish testified on her own behalf, and Petitioner’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

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<sup>5</sup> 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 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.

<sup>6</sup> 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.”

proceeding. Ms. Parrish was also allowed to proffer Petitioner's Exhibits 10 through 14.

The two-volume final hearing Transcript<sup>7</sup> was filed on October 13, 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.<sup>8</sup>

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.

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.

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<sup>7</sup> Pages 9 and 10 of the Transcript erroneously attribute comments by Petitioner's counsel to counsel for Respondent.

<sup>8</sup> 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), Florida Statutes, 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."



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

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, 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. Ms. Parrish owns Assertive Mortgage. In September of 2020, Ms. Parrish, on behalf of Assertive Mortgage, filed an application with OFR for licensure as a mortgage broker. The application identified Ms. Parrish as Assertive Mortgage’s president and qualifying individual.

9. Ms. Parrish is the owner and president of Assertive Mortgage.

10. OFR determined that Assertive Mortgage’s application could not be granted because the Default Final Order had revoked Ms. Parrish’s mortgage broker license.

## CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes.

12. As the applicant seeking licensure, Assertive Mortgage bears the burden of proving entitlement by a preponderance of the evidence. *See Fla. Dep't of Child. & Fams. v. Davis Family Day Care Home*, 160 So. 3d 854, 856 (Fla. 2015); *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996).

13. However, OFR must prove by a preponderance of the evidence that the Default Final Order revoked Ms. Parrish's mortgage broker license. *See generally Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833-34 (Fla. 1993)(stating that “[h]aving determined that the proceeding before the Commission is a de novo hearing, we now turn to the placement of the burdens in such a proceeding. The general rule is that, apart from statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal.”); § 120.57(1)(j), Fla. Stat. (2021)(providing that “[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.”).

14. Section 494.00321(5) provides that OFR “shall deny a license if any of the applicant's control persons has had a loan originator license, or its equivalent, revoked in any jurisdiction.”

15. Section 494.001(7), defines “control person” to mean:

An individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes, but is not limited to:

(a) A company's executive officers, including the president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and other individuals having similar status or functions.

(b) For a corporation, each shareholder that, directly or indirectly, owns 10 percent or more or that has the power to vote 10 percent or more, of a class of voting securities unless the applicant is a publicly traded company.

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(f) Principal loan originators.

16. As its owner and president, Ms. Parrish is a "control person" for Assertive Mortgage as that term is defined in section 494.001(7).

17. Regardless of whether Assertive Mortgage can demonstrate that it is entitled to licensure, OFR has established by a preponderance of the evidence that the Default Final Order revoked Ms. Parrish's mortgage broker license.

18. Assertive Mortgage has argued that the Default Final Order is invalid because Ms. Parrish was not served with the Administrative Complaint on which the Default Final Order is based. Assertive Mortgage also cites testimony from Ms. Parrish indicating that her mortgage broker license had expired by September 1, 2008. Accordingly, there was no license for the Default Final Order to revoke. However, even if the foregoing assertions are true, the undersigned is precluded from entertaining any collateral challenges to the Default Final Order. *See Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679, 681 (Fla. 1979)(describing how the doctrine of administrative finality provides "that there must be a terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein.").

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 denying Assertive Mortgage, LLC's, application for a mortgage broker license.

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

*Garnett Chisenhall*

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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.