

DIVISION OF REAL ESTATE
DEPARTMENT OF COMMERCE
P.O. BOX 146711
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6747

BEFORE THE DIVISION OF REAL ESTATE OF
THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of the Application of **LAURIE
HO** to Act as a Mortgage Loan Originator

POST-REVOCAION FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
ON APPEAL

Case No. MGFP-10-239

Case # 49655

This matter came before the Utah Residential Mortgage Regulatory Commission (Commission) and the Director of the Division of Real Estate (Director) for hearing on July 7, 2010. Laurie Ho (Applicant) appeared telephonically and was represented by attorney Kenneth J. Block, who also testified briefly in his capacity as principal lending manager for Home Loan Center, the mortgage entity with which Applicant is employed. The Director, pursuant to a grant of authority from the Commission and on its behalf, now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

On November 3, 2009, Applicant submitted to the Commission and Division an application to become licensed in Utah as a mortgage loan originator. In her application, she was asked the following question:

Have you EVER been convicted of or pled guilty or no contest to, or entered a plea in abeyance or diversion agreement to, a felony or misdemeanor in any jurisdiction? **Consult court records to determine the nature of any offenses, including traffic**

offenses which may be felonies or misdemeanors. (Emphasis in the original.)

Applicant answered "no" to this question. She failed to disclose that, on September 21, 2004, she pleaded guilty to a charge of driving when privilege suspended or revoked (DUI).

The Division issued Applicant a conditional mortgage loan originator license based on the answers she provided on the application. Upon completion of the criminal background check, the Division learned that Applicant had not accurately disclosed her September 21, 2004 guilty plea. The Division therefore revoked the conditional license pursuant to Utah's automatic revocation statute, Utah Code Ann. § 61-2c-202(4)(d)(ii) (2009). The order of revocation was sent to Applicant on May 19, 2010.

Subsection (v)(B) of the automatic revocation statute provides that the revocation may be reversed if Applicant shows that she had a reasonable good faith belief at the time of application that she had no criminal history to disclose. Applicant appealed the Division's order of revocation under this statutory provision.

At the hearing, Applicant asserted she had a reasonable good faith belief at the time of application that she did not need to disclose her misdemeanor. Applicant testified as follows. At the time she completed her Utah application, she had previously responded to disclosure questions on the MU4 form that she completed to register in the Nationwide Mortgage Licensing System (NMLS) database. In so doing, she formed the belief that all states would ask for disclosure of essentially the same type of criminal history as that addressed on the MU4 form, which requires disclosure of misdemeanors only if the charges are related to financial crimes. Because Applicant could truthfully answer "no" to such a question, she assumed that she could answer "no" to all criminal history disclosure questions presented on any application in any state.

In addition, Applicant testified that she was under a great deal of pressure to complete applications in several states. Therefore, when she completed her Utah application, she went through it very quickly and did not read the questions carefully. She acknowledged that, if she had read the questions carefully, she would have understood that she was required to disclose her September 21, 2004 guilty plea to the misdemeanor charge of driving when privilege suspended or revoked (DUI).

CONCLUSIONS OF LAW

On review, the Commission and Director conclude that Applicant did not have a reasonable good faith belief at the time of application that she had "no criminal history to be disclosed," which is the language of Section 61-2c-202(4)(d)(v)(B) (2009). In applying this section, the Commission has consistently required an applicant to show that, when she answered the disclosure questions, she believed she had no criminal record at all. Applicant has made no such argument. In fact, she testified that she knew her criminal record existed and that she would have answered the question differently if she had read it carefully. Therefore, while Applicant's testimony does relate to her mindset at the time she submitted her application, it provides no basis on which to conclude that she believed she had no criminal record.

Applicant appears to argue that the statutory language should be interpreted to allow reinstatement of her license if she shows that she held a reasonable good faith belief that she was not required to disclose her criminal history, even though she knew it existed. The Commission and Director have never interpreted the statute in this manner and now find that such an interpretation is contrary to the intent of the law. Utah Code Ann. § 61-2c-202(4)(d)(ii) states that a conditional license is revoked if an applicant "fails to accurately disclose a criminal history." This language is clear. It does not indicate that disclosure is required only if the

criminal history involves certain charges or only if it would disqualify an applicant under the SAFE Act. Rather, it states that all criminal history is to be disclosed, and no interpretation to the contrary is reasonable.

In addition, the Commission and Director find that it was not reasonable for Applicant to assume that the Utah disclosure questions were identical to the MU4 disclosure questions, even if she held that belief in good faith. The Division was not using the NMLS licensing database in 2009; therefore, Applicant did not submit her application materials to the Division through that database. Until such time as the Division began making use of the NMLS database, applicants were required to respond to the licensing questionnaire as it was presented, and were governed thereafter by the automatic revocation statute. Because the Division had not adopted the MU4 form at the time Applicant submitted her application, it did not trump the Utah disclosure form. The Commission and Director take note that each state adopted its own schedule for transitioning its licensing process onto the national system, and they acknowledge that these circumstances might have caused Applicant some confusion. However, this possibility of confusion does not excuse Applicant from her responsibility to exercise care and pay attention to detail. Rather, a reasonable person in these circumstances would have taken special care to ensure that the materials she attested to and submitted were accurate and truthful.

Finally, the application form contains a highlighted warning as follows: *****WARNING: Failure to accurately answer ALL questions may result in the loss or restriction of your license.**" Similar warnings are included in the prelicensing courses and at the testing centers. Given these precautions, it was not reasonable for Applicant to make assumptions about Utah's specific disclosure requirements and to rush through her application without reading the questions carefully.

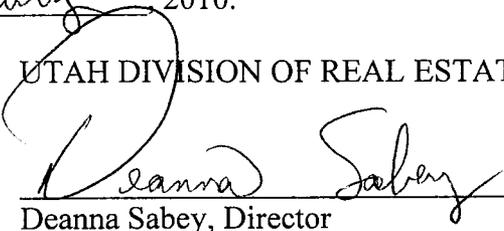
ORDER

Based on the above findings, Applicant's appeal to reverse the license revocation is denied.

This order shall be effective on the signature date below.

DATED this 5th day of July, 2010.

UTAH DIVISION OF REAL ESTATE


Deanna Sabey, Director

Notice of Right to Administrative Review

Review of this order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this order. Any such request must comply with the requirements of Utah Code Ann. § 63G-4-301 and R151-46b-12 of the departmental rules.

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of July, 2010, a true and correct copy of the foregoing document was sent first class mail, postage prepaid, to the following:

Laurie Ho
9262 Jack Rd.
Garden Grove, CA 92841

Kenneth J. Block
Home Loan Center
163 Technology Drive
Irvine, CA 92618


Renda Christensen



INFORMATION ABOUT AGENCY REVIEW

Department of Commerce
160 East 300 South, Box 146701
Salt Lake City, UT 84114-6701

If you have been denied a license, received disciplinary action on your license, lost a citation hearing, or have otherwise been adversely impacted by a decision from one of the Divisions at the Department of Commerce, please be aware that you may request agency review of that decision by the Department's Executive Director. Upon review, the Executive Director could uphold, reverse, or modify the Division's decision, or might return the case to the Division for further consideration.

If you choose to file a request for agency review, please keep in mind all of the following:

- **Written Request and Due date:** Your request for agency review ("Request") must be received **no later than 30 days** from the date of the Division order that you wish reviewed. The Request must be in writing and must be addressed to the Executive Director, Utah Department of Commerce, at the above address;
- **Copy of Order:** You must include with your Request a copy of the letter or order you wish reviewed;
- **Transcript of Hearing:** If a hearing was held in your case, and you are challenging the order on the grounds that the evidence presented at the hearing did not support the order, you must, at your expense, order a transcript of the hearing and file it with the Department. You must also file with the Department your certification verifying that you have ordered a transcript of the proceeding and stating the date by which you expect to file the transcript with this Department. (You may use the form titled "Certification Regarding Transcript," accessed at: <http://www.commerce.utah.gov/CertificationRegardingTranscript.pdf>) For instructions on how to order a transcript, you may contact the hearing officer or administrative law judge who conducted the hearing. However if the hearing involved a DOPL Citation, contact Kim Lesh at 530-6628; if the hearing was before the Division of Real Estate, contact Renda Christensen at 530-6747;
- **Memorandum in Support of Your Request:** You may file a memorandum to support your Request. If you are required to file a transcript of the hearing with the Department, your memorandum must be filed no later than fifteen (15) days after the filing of the transcript. Otherwise, your memorandum must be filed at the time you file your Request;
- **Reply Memorandum:** If the Division files a response, you may file a final reply memorandum no later than five (5) days after service of any response from the Division;
- **Basis for Request:** In order to succeed on agency review, you must be able to show that you were substantially prejudiced as a result of any of the grounds identified in Utah Code Ann. § 63G-4-403; and
- **Copies to Division:** You must provide the Division copies of all documents that you file with the Department.

Please note that you should not rely on this letter alone for instructions regarding agency review proceedings. The Utah Administrative Procedures Act (UAPA), Utah Code Ann. Sections 63G-4 *et seq.*, and the Department's UAPA Rules, Utah Admin. Code R151-46b *et seq.*, generally govern requests for agency review. You may access these laws and rules at your local library or on the Department of Commerce web site:
<http://www.commerce.utah.gov/agencyrev.html>.

If you have any questions about how to proceed, you are encouraged to seek legal advice from an attorney. You may contact Masuda Medcalf, Administrative Law Judge, at (801) 530-7663, with any technical or procedural questions, but the merits of the case cannot be discussed.

Revision Date: May 1, 2008