

**BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA**



STATE OF OKLAHOMA,)
ex rel. DEPARTMENT OF)
CONSUMER CREDIT,)
)
Petitioner)
)
v.)
)
DUANE ALLEN KUCHARCZYK,)
)
Respondent)

Case No. 19-0109-DIS

FINAL AGENCY ORDER

This matter was heard on the 5th day of September, 2019, at approximately 9:44 a.m., after allowing additional time for the named respondent or his representative(s) to attend, the above numbered and entitled cause (scheduled for 9:30 a.m.) came on for hearing at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112.

The State of Oklahoma *ex rel.* Oklahoma Department of Consumer Credit (“Petitioner”), was represented by Petitioner’s Chief Enforcement Counsel, John T. Coyne, and Respondent, Duane Allen Kucharczyk, whose mailing address of record is 300 Pat Mell Road, #10A, Marietta, GA 30060 (“Respondent”), did not appear in person or through an attorney, after such Respondent having been mailed a copy of the Notice and Order of Hearing filed by the Department herein on July 22, 2019 (the “Notice of Hearing”), in Case No. 19-0109-DIS, pursuant to the requirements of Article II of the Administrative Procedures Act (the “APA”), 75 O.S. §§ 308a-323, by first class U.S. Mail certified with return receipt requested to Respondent,

at the address given to Petitioner by Respondent at 300 Pat Mell Road, #10A, Marietta, GA 30060, and was delivered to Respondent by a representative of the U.S. Postal Service as verified through the certified return receipt signed by Respondent Duane Kucharczyk on July 30, 2019, on behalf of Respondent himself which has been filed herein.

Petitioner's Chief Enforcement Counsel, John T. Coyne, indicated that he had not heard from or spoken to Respondent about his appearance at the hearing in person or through an attorney. Mr. Coyne indicated that he wished to secure, in the absence of Respondent who had an opportunity for a hearing and for whom he had good service, a judgment by default pursuant to 75 O.S. § 309(E). Further, Mr. Coyne indicated that Petitioner's recommendation in this matter is that Respondent pay a civil penalty of One Thousand Dollars (\$1,000.00) that was inclusive of all license renewal late fees, and that Respondent pay for all of the costs of the hearing.

Accordingly, the Independent Hearing Examiner announced from the bench that his recommendation in this matter to Petitioner's Administrator would be that Respondent pay a civil penalty of One Thousand Dollars (\$1,000.00) that was inclusive of all license renewal late fees, and as Respondent through his default is not the prevailing party in this matter, that Respondent pay for all of the costs of the hearing (being those costs of the Independent Hearing Examiner incurred in this matter as authorized in 59 O.S. § 2095.17(D)).

After reviewing the administrative record of this individual proceeding, reviewing the evidence presented at the September 5, 2019 hearing, and reviewing the Proposed Order filed by Independent Hearing Examiner, Bryan Neal, the Administrator of Consumer Credit issues the following findings, conclusions and orders.

JURISDICTION AND AUTHORITY

The Administrator of Consumer Credit (the “Administrator”) has administrative authority to administer, interpret and enforce the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, 59 O.S. §§ 2095 *et seq.*, 59 O.S. § 2095.1(2).

Penalties

1. In order to ensure the effective supervision and enforcement of the SAFE Act, the Administrator may, after notice and hearing pursuant to Article II of the Administrative Procedures Act, 75 O.S. §§ 308a *et seq.*, impose any or any combination of the following penalties for violations of the SAFE Act:

(a) deny, suspend, revoke, censure, place on probation or decline to renew a license issued pursuant to the SAFE Act for a violation of the SAFE Act, any rules promulgated pursuant to the SAFE Act and any order of the Administrator issued pursuant to the SAFE Act;

(b) deny, suspend, revoke, censure, place on probation or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of the SAFE Act or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(c) order restitution against entities or individuals subject to the SAFE Act for violations of the SAFE Act or

(d) issue orders or directives under the SAFE Act as follows:

(i) order or direct entities or individuals subject to the SAFE Act to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(ii) order or direct entities or individuals subject to the SAFE Act to cease

any harmful activities or violations of the SAFE Act, including immediate temporary orders to cease and desist;

(iii) enter immediate temporary orders to cease business under a license issued pursuant to the authority of the SAFE Act if the Administrator determines that such license was erroneously granted or the licensee is currently in violation of the SAFE Act;

(iv) order or direct such other affirmative action as the Administrator deems necessary, or

(v) impose a civil penalty of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each violation of the SAFE Act against a licensee or any other entity or individual subject to the SAFE Act, not to exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction. 59 O.S. § 2095.17.

FINDINGS OF FACT

The Administrator of Consumer Credit finds that the following facts were proven through the Respondent's default by clear and convincing evidence:

1. The proceedings in this matter were conducted in accordance with the provisions of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, 59 O.S. §§ 2095 *et seq.* and Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323.

2. Respondent failed to appear in person or through an attorney at the hearing on September 5, 2019, at the scheduled time of 9:30 a.m. or later that same morning when his case was heard at approximately 9:44 a.m., Respondent having received notice of the hearing in this matter set for September 5, 2019, at 9:30 a.m., by first class U.S. Mail, certified with return

receipt requested through mail-delivery of a copy of the original Notice of Hearing filed in this matter on July 22, 2019, served upon Respondent as verified through the certified return receipt filed herein signed by Respondent Duane Kucharczyk himself, on July 30, 2019, at the address given to Petitioner by Respondent at 300 Pat Mell Road, #10A, Marietta, GA 30060, by a representative of the U.S. Postal Service.

3. The licensing system of record for mortgage brokers and mortgage loan originators in the State of Oklahoma is NMLS.

4. Respondent is licensed as a mortgage loan originator in the State of Oklahoma pursuant to the SAFE Act with the following licensing information indicated by NMLS:

(a) Oklahoma license number MLO08716;

(b) NMLS unique identifier number/company ID 142150;

(c) Mailing address of record at 300 Pat Mell Road, #10A, Marietta, GA 30060.

5. Respondent's license renewal fee was not paid to Petitioner on or before December 1, 2018.

6. Respondent requested a renewal of his license on December 19, 2018.

7. Respondent failed to pay the sum of \$180.00 in late license renewal fees.

CONCLUSIONS OF LAW

The Administrator of Consumer Credit concludes as follows:

1. Respondent has violated 59 O.S. § 2095.6(K)(2) for failure to pay the late renewal fee as prescribed by rule of the Commission on Consumer Credit.

2. Respondent has violated the Oklahoma Administrative Code 160:5-1-2(8)(D) for failure to pay the late fee assessed per day after December 1, 2018.

3. Respondent has violated 59 O.S. § 2095.18(8) for failure to comply with the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, or rules promulgated under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act or failure to comply with any other state or federal law, including any rules thereunder, applicable to any business authorized or conducted under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, by failing to pay the license renewal fee for licensure.

ORDER

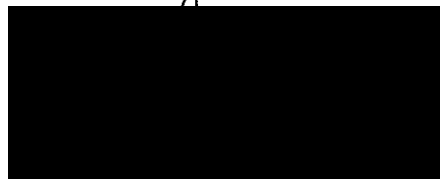
Based upon the findings of fact and conclusions of law in this individual proceeding and based in part upon the recommendation of the Independent Hearing Examiner, the Administrator of Consumer Credit issues the following orders:

Respondent is hereby found to be a licensed as a mortgage loan originator in the State of Oklahoma pursuant to the SAFE Act with the following licensing information indicated by NMLS: (a) Oklahoma license number MLO08716; (b) NMLS unique identifier number/company ID 142150; (c) mailing address of record at 300 Pat Mell Road, #10A, Marietta, GA 30060, that has violated 59 O.S. § 2095.6 and §2095.18(8) for failure to comply with the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, or rules promulgated under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act or failure to comply with any other state or federal law, including any rules thereunder, applicable to any business authorized or conducted under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, by failing to pay the license renewal late fee for licensure.

1. Respondent shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) as authorized in 59 O.S. § 2095.17, that is inclusive of all license renewal late fees.

2. As Respondent is not the prevailing party in this matter, Respondent shall be assessed \$174.25 in hearing costs incurred in this matter as authorized in 59 O.S. § 2095.17(D) for a total amount due of \$1,174.25.

So ordered this 1st day of October, 2019.



Scott Leshner
Administrator of Consumer Credit
State of Oklahoma