

STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 06:074:MBB

| | | |
|----------------------|---|---------------------------|
| IN RE: |) | |
| |) | |
| KIMBERLY C. TAYLOR |) | DECISION AND ORDER |
| |) | |
| License No. I-112193 |) | |
| _____ |) | |

THIS MATTER came on for hearing and was heard by the undersigned Commissioner of Banks, hereinafter the "Commissioner," on January 10, 2007, upon a Notice of Hearing and Mandatory Pre-Hearing Conference filed October 24, 2006, pursuant to Article 3A of Chapter 150B, Article 19A of Chapter 53 of the General Statutes of North Carolina, and Subchapters 3B and 3M of Title 4 of the North Carolina Administrative Code.

Appearing for the Mortgage Banking Division in the Office of the Commissioner of Banks ("OCOB") was L. McNeil Chestnut, a Special Deputy Attorney General with the North Carolina Department of Justice.

Appearing for Kimberly C. Taylor, hereinafter the "Respondent," was Hart Miles, Attorney at Law, Raleigh, North Carolina.

Witnesses for the Mortgage Banking Division were J. Wayne Love, OCOB Financial Crimes Investigator; Jane Wright, President of Advantage Loans, Inc. ("Advantage Loans"); John Szoka, President of NationsBest Mortgage ("NationsBest"); and Scott Capps, Senior Fraud Investigator for RBC Centura Bank ("Centura"). Respondent did not offer witnesses nor did she testify in the matter.

Based upon the testimony of witnesses, documentary evidence admitted into the record and arguments of counsel, the Commissioner makes the following:

I. Findings of Fact

1. The Notice of Hearing in this matter was served upon the Respondent in apt time for a hearing scheduled for November 21, 2006. By written request of the Respondent, the matter was continued until January 10, 2007.

2. Respondent was issued mortgage loan officer license No. I-112193 on March 7, 2003. This license was renewed under limited terms and conditions by an Order of the Commissioner, dated July 24, 2004, which provided, among other things, that Respondent would have no meritorious complaints filed against her with the OCOB for a period of three years from the date of the order (or until July 24, 2007). The order further provided that the Commissioner reserved the right to re-open the matter for reconsideration.

Mortgage Fraud

3. Respondent was employed as a mortgage loan officer with Advantage Loans, Inc. ("Advantage Loans"), a licensed mortgage broker, from March, 2004, until September, 2005. While in the employ of Advantage Loans, in August, 2005, Respondent falsified a verification of deposit for Carlos J. Rojasnieves making it appear that he was a member of and had a deposit account relationship in good standing with Pentagon Federal Credit Union. Respondent submitted the false verification of deposit as part of the Rojasnieves mortgage loan package and the loan was funded by a mortgage lender.

4. Jane Wright subsequently confirmed that Mr. Rojasnieves was not a member of Pentagon Federal Credit Union, did not have accounts on deposit at this credit union, the account numbers were false, and the signatory on the verification of deposit, Ryan Byrd, was not an employee of Pentagon Federal Credit Union.

5. As a result of the false verification of deposit of Carlos J. Rojasnieves, the mortgage lender required Advantage Loans to repurchase this loan of more than \$123,000 which it held and serviced until Mr. Rojasnieves eventually refinanced the same.

6. Jane Wright confronted the Respondent with the Rojasnieves false verification of deposit. Respondent first

denied that she had falsified this document but subsequently admitted falsifying the Rojasnieves verification of deposit. Respondent, however, misrepresented to Ms. Wright that this was the only instance in which she had falsified loan documents.

7. Respondent was given the option to resign from her position as a mortgage loan officer from Advantage Loans which she chose to do.

8. Despite Respondent's assurances to Jane Wright of Advantage Loans that the Carlos Rojasnieves loan package was the only such loan that contained false documents, following Respondent's resignation from Advantage Loans, Ms. Wright found that in August, 2005, Respondent had falsified two additional verifications of deposit. The first was made to appear that Beverly A. Smith had a deposit relationship in good standing with Centura Bank, and the second was made to appear that Tomeka Todote also had deposit relationships in good standing with Centura Bank. The false verifications of deposit were submitted with mortgage loan application packages to mortgage lenders for both Smith and Todote, and both loans were funded.

9. The account numbers and signatures on the Smith and Todote verifications of deposit were determined to be false.

10. Respondent was employed as a mortgage loan officer by NationBest from early February, 2006, until about September 14, 2006. During the course of her employment at NationsBest,

Respondent falsified verifications of deposit for Pedro Martinez and Natasha Gonzales. The Martinez verification of deposit was made to appear that he had an account relationship in good standing at Centura Bank and was submitted as part of the mortgage loan application package to a lender for Mr. Martinez. The Natasha Gonzales verification of deposit was made to appear that she had a deposit account relationship in good standing with Fort Sill National Bank and was submitted with the mortgage loan application package to a mortgage lender for Ms. Gonzales. Both the Martinez and Gonzales loans were funded by mortgage lenders.

11. When confronted by John Szoka and Jay Love with the Martinez and Gonzales verifications of deposit, Respondent admitted that she had prepared them and that she had cut and pasted the signature of Guyla Wilkinson, an employee of Centura Bank.

12. Both the Martinez and Gonzales loans are currently performing. Due to the fraudulent verifications of deposit for both of these borrowers, if these loans become delinquent or go into default, NationsBest will be required to repurchase both loans, which together currently exceed \$373,000.

13. Respondent was given the opportunity to resign her position as a mortgage loan officer with NationsBest and chose to do so.

Identity Theft and Loan Fraud

14. During the course of her employment with Advantage Loans, Respondent appropriated the financial identity of loan customers Christopher Rusco, Justin Lindgren, and Virginia and Jack Crow.

15. During the course of her employment with NationsBest, Respondent appropriated the financial identity of loan customer Glen Lewis.

16. Respondent took the financial identity of Rusco, Lindgren, Virginia Crow, Jack Crow, and Glen Lewis and used this information, without their knowledge or consent, to fraudulently apply for personal loans at Centura Bank in the names of these former mortgage loan customers in the sum of \$136,200, as follows:

| Borrower | Date | Loan Amount |
|-------------------|---------------|--------------------|
| Christopher Rusco | June 24, 2005 | \$ 13,500 |
| Christopher Rusco | Aug. 11, 2005 | \$ 17,000 |
| Christopher Rusco | Feb. 08, 2006 | \$ 25,000 |
| Justin Lindgren | Aug. 09, 2005 | \$ 5,700 |
| Virginia Crow | Aug. 17, 2005 | \$ 25,000 |
| J.D. (Jack) Crow | Aug. 23, 2005 | \$ 25,000 |
| Glen Lewis | Apr. 13, 2005 | \$ 25,000 |
| Total | | \$136,200 |

17. The proceeds of the second Rusco loan (\$17,000) were applied in part to pay the principal and interest of the first Rusco loan (\$13,500); and the proceeds of the third Rusco loan

(\$25,000) were applied in part to pay the principal and interest on the second Rusco loan (\$17,000).

18. Each of the named borrowers have confirmed to Centura that they had no knowledge of and did not consent to these loans being taken out in their name.

19. In addition to the loans above, Respondent used the financial identity of Raymond C. Jones, a mortgage loan customer of Nationsbest, to secure three personal loans from Centura Bank in the amounts of \$2,500, \$5,000, and \$10,000. The proceeds of the second Raymond Jones loan (\$5,000) were applied in part to pay the principal and interest on the first Raymond Jones loan (\$2,500); and the proceeds of the third Raymond Jones loan (\$10,000) were used in part to pay the proceeds on the second Raymond Jones loan (\$5,000). While it is not entirely clear when Mr. Jones became aware of these loans, it is clear that Centura Bank has suffered a loss on these loans.

20. In order to divert payment information to her attention, Respondent established two different post office boxes, numbers 25223 and 87842, with the United States Postal Service in Fayetteville, North Carolina.

21. Respondent has defaulted in the payments to Centura Bank on these personal loans taken out by Respondent in the names of her former mortgage loan customers identified above, and the

unpaid principal balances have been charged-off the books of Centura Bank. The net loss to Centura Bank is \$93,154.69.

22. When Respondent was confronted with the fraudulent Centura Bank loans by Scott Capps, she admitted to him that she obtained these loans using the identity of former mortgage loan customers.

23. The OCOB expended the sum of \$5,299.39 in investigating and bring this matter to hearing.

Based on the forgoing findings of fact the Commissioner makes the following:

II. Conclusions of Law

1. All of the parties are properly before the Commissioner, and the Commissioner has jurisdiction over the subject matter.

2. Pursuant to G.S. § 53-243.05(i), before the Commissioner may approve a license to a mortgage loan officer, he must find that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant the belief that the business will be operated honestly and fairly. This finding is not static at the time of the application of a mortgage loan officer; it is an on-going obligation that must continuously be met by any licensee under the Mortgage Lending Act.

3. The Mortgage Lending Act, at G.S. § 53-243.11, proscribes certain prohibited activities. Among the prohibited activities are "to misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise," G.S. § 53-243.11(1); and "to engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in conjunction with the brokering or making of, or purchase of or sale of, any mortgage loan." G.S. § 53-243.11(8).

4. Pursuant to the authority of G.S. § 53-243.12(a)(1), the Commissioner may by order, revoke the license of a mortgage loan officer under the Mortgage Lending Act if he finds that the order is in the public interest; and that the licensee has violated any one or more of the disciplinary provisions of G.S. §§ 53-243.12(a)(2)a. through j. The Commissioner may also, pursuant to G.S. § 53-243.12(c), impose a civil money penalty for violations of the Mortgage Lending Act not to exceed \$10,000 for each such violation, and pursuant to G.S. § 53-243.12(d), order a person to cease from prohibited actions.

5. By falsifying the verifications of deposits of Carlos J. Rojasnieves, Beverly A. Smith, Tomeka Todote, Pedro Martinez, and Natasha Gonzales, and submitting those false documents with

the mortgage loan application packages for these borrowers, Respondent misrepresented and concealed the material facts likely to persuade, and did persuade, a mortgage lender to fund the mortgage loans for these persons in violation of the prohibited activities at G.S. § 53-243.11(1); and by so doing, she engaged in transactions, and a practice and course of business that was not in good faith or fair dealing and that constituted a fraud upon the loan applicants and respective mortgage lenders in the making of those mortgage loans, in violation of the prohibited activities at G.S. § 53-243.11(8).

6. By appropriating the identity of her former loan customers Christopher Rusco, Justin Lindgren, Virginia and Jack Crow, and Glen Lewis, and to use those identities to obtain personal loans in their names at Centura Bank, without their knowledge and consent, of more than \$136,000, Respondent engaged in not less than seven (7) fraudulent transactions. While the Centura personal loans obtained in the name of Respondent's former mortgage loan customers, without their knowledge and consent, were not mortgage loan transactions governed themselves under the provision of the Mortgage Lending Act, Respondent's action of appropriating the financial identities of her former mortgage customers constituted a fraud upon her mortgage loan customers connected to her role in brokering a mortgage loan on

their behalf.¹ At a minimum, Respondent's conduct demonstrates a lack of character and general fitness such as would command the confidence of the community and warrant a belief that her business would be operated in a fair and honest manner in violation of G.S. § 53-243-05(i). In addition, her failure to make payments on these personal loans indicates a lack of financial responsibility such that Respondent is unable to command the confidence of the community and warrant a belief that her business would be operated in a fair and honest manner, as required by G.S. § 53-243-05(i).

7. For the foregoing reasons, the Commissioner finds Respondent has breached her on-going obligation of character, financial responsibility and general fitness to engage in a mortgage business and that it is in the public interest to permanently revoke Respondent's mortgage loan officer license and to impose the maximum civil money penalty allowed by law. Therefore, the Commission enters the following:

III. ORDER

IT IS HEREBY ORDERED that:

¹As the parties did not brief the issue of whether or not each of these subsequent fraudulent personal loans represents an individual and separate violation of the Mortgage Lending Act, and such a determination is not necessary to the ultimate outcome of this matter, I make no finding of law on this issue.

(1) The mortgage loan officer license previously granted to Respondent, No. I-112193, be and the same is hereby permanently revoked.

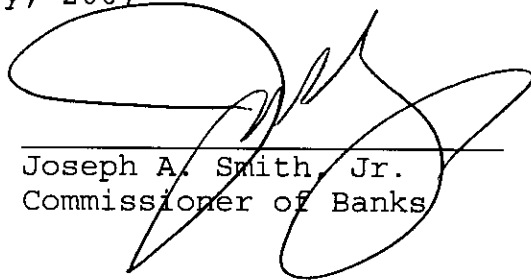
(2) Respondent shall permanently cease and desist from any prohibited activity and she may not hereafter engage in a mortgage business in any capacity including, but not limited to, acting as a mortgage loan officer, processing mortgage loan applications, handling personal financial information of mortgage loan customers, or representing a mortgage banker or broker in any capacity in this State.

(3) Respondent is hereby assessed a civil money penalty of \$10,000 each, or a total of \$50,000, for falsifying the verifications of deposit of Carlos J. Rojasnieves, Beverly A. Smith, Tomeka Todote, Pedro Martinez, and Natasha A. Gonzales. The civil money penalty assessed under this section of the Order is due and payable to the State of North Carolina Civil Penalty Forfeiture Fund not later than thirty (30) days from the date of this Order and sent to the attention of David C. Worth, Counsel to the Mortgage Division in the OCOB, 4309 Mail Service Center, Raleigh, North Carolina, 27699-4309. Failure to pay the civil money penalty imposed herein in a timely fashion will result in civil action against the Respondent to collect the same.

(4) Respondent shall pay the OCOB the sum of \$5,299.39 for reimbursement of the cost to investigate and bring this matter to

hearing. Reimbursement shall be due and payable to the North Carolina Department of Commerce/Banking Commission not later than thirty (30) days from the date of this Order and sent to the attention of David C. Worth, Counsel to the Mortgage Division in the OCOB, 4309 Mail Service Center, Raleigh, North Carolina, 27699-4309. Failure to pay the reimbursement ordered herein in a timely fashion will result in civil action against the Respondent to collect the same.

Entered this 22nd day January, 2007



Joseph A. Smith, Jr.
Commissioner of Banks

CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Decision and Order by placing a copy of the same in the United States Post Office at Raleigh, North Carolina, certified mail, return receipt requested, postage prepaid and addressed to:

**Hart Miles
Attorney at Law
PO Box 631
Raleigh, NC 27602**

This the 23rd day of January, 2007.



L. McNeil Chestnut
Special Deputy Attorney General