

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Residential Mortgage
Originator Application of Mitchell Jon
Brandriet

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Allan W. Klein commencing at 1:30 p.m. on November 23, 2004, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401-2138.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing conference. The record closed on November 23, 2004, upon Respondent's default.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

The issue in this case is whether or not Respondent's application for a residential mortgage originator license should be denied.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 26, 2003, Respondent applied to the Department for a residential mortgage originator license. On or about June 14, 2004, the Department notified Respondent that it recommended denial of his application for a variety of reasons specified more fully in the Amended Notice of and Order for Hearing, Notice of Prehearing Conference, Order to Show Cause, and Statement of Charges. On June 29, 2004, Respondent requested a hearing regarding his license application. On July 22, 2004, Deputy Commissioner Kevin Murphy issued a Notice of and Order for Hearing, Notice of Prehearing Conference, Order to Show Cause, and Statement of Charges, setting a prehearing conference for August 26, 2004 in Minneapolis. Included in that document was the following provision:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

2. That Notice was sent to Mr. Brandriet at an address on Dawn Way in Inver Grove Heights. That was no longer Mr. Brandriet's current address. The Administrative Law Judge recommended that the matter be rescheduled and that Mr. Brandriet be given notice at his new address which was on 94th Street in Inver Grove Heights.

3. On September 15, 2004, Deputy Commissioner Murphy issued the Amended Notice referred to above, setting a prehearing conference for November 23, 2004 in Minneapolis. That Amended Notice contained the same language covering failure to appear, quoted above, as did the original notice. The Amended Notice was served on Mr. Brandriet at both addresses.

4. Mr. Brandriet did fail to appear on November 23, 2004. He made no request for a continuance, and did not file a Notice of Appearance.

5. The allegations of the Notice of and Order for Hearing and Notice of Prehearing Conference are deemed approved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. § § 45.027, 58.12, and 14.50.

2. Respondent was given timely and proper notice of the prehearing conference in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Pursuant to Minn. Rule pt. 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference. Therefore, the allegations and issues set out in the Notice of and Order for Hearing may be taken as true or deemed proved.

5. Based upon the facts set out in the Notice of and Order for Hearing and Notice of Prehearing Conference, Respondent has failed to show cause why his application for a residential originator license should not be denied.

6. An Order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That Respondent's application for a residential mortgage originator license be DENIED.

Dated this 2nd day of December 2004.

S/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge