

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Application of  
James L. Wasieleski for Prior Consent  
to Engage in Mortgage Origination  
Activities

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Richard C. Luis on April 11, 2008. The hearing record closed at the conclusion of the hearing.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department).

The Respondent, James Wasieleski, appeared on his own behalf without counsel.

**STATEMENT OF ISSUE**

Should Respondent's application for prior consent to engage in mortgage originator activities pursuant to Minn. Stat. § 58.125, subds. 2 and 4, be denied?

Based on the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Respondent is a 28-year-old man who attended high school in the Twin Cities Metro area. He received a high school diploma from St. Paul Area Learning Center.<sup>1</sup>

2. On March 3, 1999, while still attending high school, Respondent, age 18 at the time, was charged with First Degree Aggravated Robbery (a felony) in connection with an incident in the parking lot of the Express Deli and Billiards in Oakdale.<sup>2</sup> The Complaint alleged that Respondent and two friends approached another vehicle parked in the Express Deli parking lot and robbed the three individuals in that vehicle. All the individuals involved were intoxicated.<sup>3</sup> During the robbery, Respondent threatened the driver of the other car, ordered that person to surrender his money, and punched that victim in the face at least

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<sup>1</sup> Testimony of James Wasieleski (Respondent).

<sup>2</sup> Ex. 1 (Complaint).

<sup>3</sup> Ex. 1 (Sentencing Letter of Explanation, dated September 21, 2007).

once. According to the Complaint, Respondent and his two friends robbed the victims of approximately \$1000 in cash, a cell phone, a jacket, and a lighter.<sup>4</sup>

3. Later that night, Respondent and his friends were apprehended by police and the stolen items were recovered. Both of Respondent's friends were carrying knives at the time of their arrest, and all three of the offenders had large amounts of cash, totaling nearly \$900.<sup>5</sup>

4. On October 12, 1999, Respondent accepted a plea agreement and pled guilty to the felony of aiding and abetting aggravated robbery.<sup>6</sup>

5. On February 16, 2000, the Washington County District Court sentenced Respondent to 44 months in prison and a \$50 fine.<sup>7</sup> Respondent ultimately served 21 months at MCF – Moose Lake. While incarcerated, Respondent earned college credit at Lake Superior College, Pine Technical College, and Riverland Community College.<sup>8</sup> Respondent did not engage in any disciplinary misconduct during his incarceration at Moose Lake.

6. On December 17, 2001, Respondent was transferred to Midwest Challenge, a Christian work release program, for a period of eight months.<sup>9</sup> While there, he worked full-time and became a member of a local St. Paul church.<sup>10</sup> Respondent completed the work release portion of his sentence July 22, 2002.<sup>11</sup>

7. From 2002-2003, Respondent attended Century College and maintained full-time employment.<sup>12</sup> In July 2003, Respondent began working as a loan officer for his friend Chad Dearey at Dearey Mortgage, doing business as City West Capital. Mr. Dearey was aware of Respondent's guilty plea to the aggravated robbery charge.<sup>13</sup> The two subsequent management officers of the company also knew of Respondent's criminal history and continued to employ him.

8. Effective January 1, 2006, Minn. Stat. § 58.125 was adopted. The statute prohibits individuals who have been convicted of, or pled guilty to, a criminal offense involving dishonesty from being employed by a licensed mortgage originator in the capacity of a residential mortgage originator, except with the prior written consent of the Commissioner of Commerce.<sup>14</sup>

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<sup>4</sup> Ex. 1 (Complaint).

<sup>5</sup> Ex. 1 (Complaint).

<sup>6</sup> Ex. 1 (Letter from Thomas Drobac to the Anoka County Chief Public Defender, dated August 20, 2001).

<sup>7</sup> Ex. 1 (Felony Sentencing/Revocation Order, dated February 16, 2000).

<sup>8</sup> Ex. 1 (Sentencing Letter of Explanation, dated September 21, 2007).

<sup>9</sup> Ex. 1 (Conditions of Release, dated November 30, 2001).

<sup>10</sup> Ex. 1 (Sentencing Letter of Explanation, dated September 21, 2007).

<sup>11</sup> Ex. 1 (Conditions of Release, dated July 9, 2002).

<sup>12</sup> Ex. 1 (Sentencing Letter of Explanation, dated September 21, 2007).

<sup>13</sup> Ex. 5.

<sup>14</sup> Laws of Minnesota 2005, chapter 118, section 8.

9. Respondent did not become aware of the new requirements of Minn. Stat. § 58.125 until September 2007, while he was attending a Mortgage Ethics class.<sup>15</sup> Respondent brought the statute to the attention of his employer, who left it to Respondent to figure out if the statute applied to him as a loan officer at Dearey Mortgage/City West Capital. Respondent quit his job at Dearey Mortgage/City West Capital because he believed he was working in violation of Minn. Stat. § 58.125.<sup>16</sup>

10. Respondent immediately began to prepare his application for prior consent to engage in mortgage origination activities. He also engaged in discussions with two other mortgage companies about coming to work for them as a loan officer.<sup>17</sup>

11. On September 24 and 27, 2007, respectively, Mortgage & Investment Consultants, Inc. and Summit Mortgage Corporation submitted applications on behalf of Respondent for prior written consent of the Commissioner to engage in mortgage origination activities.<sup>18</sup> Both applications disclosed Respondent's aggravated robbery conviction and included a Sentencing Letter of Explanation, in which Respondent discussed his conviction, the circumstances surrounding it, and the attempts he had since made to rehabilitate himself. The applications also included a certificate of successful completion of the Residential Recovery Program at Midwest Challenge; Respondent's conditions of release forms dated July 9, 2002, and November 30, 2001; two letters, both dated August 20, 2001, from the Department of Corrections involving Respondent's participation in the Work Release program; Respondent's MCF-Moose Lake Annual Review dated March 30, 2001; Respondent's Felony Sentencing/Revocation Order dated February 17, 2000; and the Complaint describing the aggravated robbery charge filed March 9, 1999.<sup>19</sup>

12. The Department also requested and reviewed Respondent's W-2 forms covering his employment at Dearey Mortgage/City West Capital.<sup>20</sup> On January 8, 2008, Respondent met with Department employees Kevin Murphy and Robin Brown to discuss Respondent's employment history and the aggravated robbery complaint. There was no discussion about Respondent's character or his behavior since being incarcerated.<sup>21</sup>

13. After reviewing the materials submitted by Respondent, the Department determined that Respondent's felony conviction for aiding and abetting aggravated robbery sufficiently demonstrated that Respondent should not be granted prior consent to engage in mortgage origination activities.<sup>22</sup>

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<sup>15</sup> Ex. 5. Testimony of Respondent, Darren Lindquist, and Alicia Ford-Fant.

<sup>16</sup> Dearey Mortgage/City West Capital went out of business sometime in 2007. Ex. 5.

<sup>17</sup> Testimony of Respondent.

<sup>18</sup> Exs. 1, 2, and 3.

<sup>19</sup> Exs. 1 and 2.

<sup>20</sup> Ex. 4. Testimony of Robin Brown.

<sup>21</sup> Testimony of Robin Brown and Respondent.

<sup>22</sup> Testimony of Robin Brown.

Shortly after the January 8, 2008 meeting, Ms. Brown called Respondent with the Department's decision.<sup>23</sup>

14. On March 14, 2008, the Department served Respondent by mail with the Order Denying Prior Consent to Engage in Mortgage Origination Activities, including a Statement of Charges and Order for Hearing.

15. Respondent is currently enrolled at Bethel University studying business management. He is scheduled to graduate in May 2009.<sup>24</sup> Respondent is still active with his church and has maintained strong friendships with his former co-workers and church members. Respondent has contributed positively in the community since he was released from prison.

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

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 58.125 (2006).

2. The Department has complied with all relevant procedural requirements.

3. Minn. Stat. § 58.125, subd. 2, states:

Except with the prior written consent of the commissioner under subdivision 4, an individual, who has been convicted of a criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to or entered into a pretrial diversion or similar program in connection with a prosecution for such offense, may not serve as a residential mortgage originator or be employed in that capacity by a person licensed as a mortgage originator.<sup>25</sup>

4. According to Minn. Stat. § 58.125, subd. 1, dishonesty includes "wrongfully taking property belonging to another in violation of any criminal statute."

5. Respondent's felony guilty plea to aiding and abetting aggravated robbery establishes that Respondent engaged in dishonesty as defined by Minn. Stat. § 58.125, subd. 1.

6. Respondent was employed as a mortgage originator, without prior consent of the Commissioner, in violation of Minn. Stat. § 58.125, subd. 2, from January 1, 2006, until September 2007.

7. The factors to be considered by the Commissioner when reviewing an application are: "(1) the specific nature of the offense and the circumstances

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<sup>23</sup> Ex. 5.

<sup>24</sup> Exs. 1 and 5. Testimony of Respondent.

<sup>25</sup> Minn. Stat. § 58.125, subd. 2 (2006).

surrounding the offense; (2) evidence of rehabilitation; (3) the age of the person at the time of conviction; and (4) whether or not restitution has been made."<sup>26</sup>

8. Respondent's crime involved the violent taking of a significant amount of money, in which Respondent played a primary role. His crime relates to his employment as a loan officer in that it involves handling the money of other people. While Respondent argues that he is a completely changed person of good moral character and presented two of his former co-workers as character witnesses, the level of dishonesty involved in the felony he committed outweighs the evidence of rehabilitation presented in support of granting consent to engage in mortgage origination activities.

9. An Order denying prior consent to engage in mortgage origination activities would be in the public interest, within the meaning of Minn. Stat. § 45.027, subd. 7 (a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner of Commerce deny Respondent's application for prior consent to engage in mortgage origination activities.

Dated this 12th day of May, 2008.

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Digitally recorded; no transcript.

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) 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 Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

<sup>26</sup> Minn. Stat. § 58.125, subd. 4(a) (2006).

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 (2006). 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.

### **MEMORANDUM**

Respondent contends that the incident resulting in his felony conviction was a single mistake in the life of an otherwise bright and well-mannered teenager. He asserts that he became depressed and went through a difficult period in high school after discovering his father dead of a heart attack.<sup>27</sup> Respondent claims he fell in with the wrong crowd and made a terrible mistake when he participated in the robbery.

Residential mortgage originators are responsible for handling large financial transactions on behalf of the public, and the Department properly requires that applicants demonstrate a history of honesty and integrity in dealing with the property of others in order to work in this area. Although the Respondent has done well since he pled guilty in 1999, his criminal conviction is serious and involved a violent offense reflecting dishonesty and the theft of money. Respondent's criminal offense relates directly to the occupation Mr. Wasieleski seeks consent to pursue. Although Respondent may have performed honestly and competently in that occupation for several years, the Administrative Law Judge is not persuaded that the withholding of consent now is improper, nor is it an abuse of the Commissioner's discretionary authority under the statute.<sup>28</sup>

**R. C. L.**

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<sup>27</sup> Exs. 1 and 5.

<sup>28</sup> It is noted that one of the grounds stated for denying consent initially, according to the Statement of Charges in the Order under appeal, was that Respondent had engaged in prior mortgage origination activities without the consent of the Commissioner. The record establishes clearly that Respondent and his supervisors were unaware of the law imposing a requirement for consent to engage in employment as a mortgage originator, and that Respondent, to his credit, ceased that employment upon learning of the requirement. As a result, the charge that Respondent engaged illegally in prior mortgage origination activity without the consent of the Commissioner has been discounted by the Administrative Law Judge in weighing the evidence.