

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

In the Matter of the Real Estate Closing
Agent License and Notary Public
Commission of Donald Leverage Walthall

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on January 11, 2011. The Respondent, Donald Leverage Walthall, was granted the opportunity to submit a brief regarding the effect of his conviction on his Notary Public Commission. Respondent's deadline for that post hearing submission was January 18, 2011. No post hearing submission was received. The hearing record in this matter closed on January 18, 2011, when the period for filing a submission lapsed.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Donald Leverage Walthall (Respondent) appeared on his own behalf by videoconference.

STATEMENT OF ISSUES

1. Did the Respondent violate standards of licensure by engaging in a fraudulent, coercive, deceptive, or dishonest act or practice, demonstrating financial untrustworthiness, and being criminally convicted of a felony involving moral turpitude as set out under Minn. Stat. § 58.12?

2. Did the Respondent violate standards applicable to Notaries Public by his criminal conviction of nine felonies involving moral turpitude as set out under Minn. Stat. § 359.12?

3. If so, is the Respondent properly subject to discipline by the Commissioner?

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

FINDINGS OF FACT

1. On December 22, 2004, the Department issued the Respondent a Real Estate Closer license. That license expired on June 30, 2008. Also, effective

December 22, 2004, the State granted Respondent a commission of Notary Public, which expired on February 1, 2009.¹

2. Respondent owned and operated Universal Mortgage, Inc. (UMI), which had been licensed as a mortgage originator from January 10, 2003 through October 31, 2007. Respondent, individually, was not required to be licensed as a mortgage originator due to his employment by UMI as a branch owner. While not individually licensed, Respondent was still subject to all other provisions of Minn. Stat. ch. 58.²

3. Between June 2005 and November 2005, Respondent purchased eight residential real estate properties. In each transaction, Respondent purchased the property for an amount higher than the true market value of the property. Respondent then received a “kickback” from the seller in each transaction.³ Respondent obtained loans to make these purchases by fraudulently misstating his financial condition. The fraudulent loans resulted in the theft of money equal to the amount of the respective loans. In total, the loans for the eight fraudulent purchases equaled \$1,357,000.⁴ Respondent received a kickback ranging from \$22,500 to \$44,000 on each purchase from the seller out of the loan proceeds.⁵ Shortly after each purchase, Respondent resold the properties at a further inflated price to a “straw borrower” (also known as a “straw buyer”) as part of a mortgage fraud scheme (a practice known as “flipping”).⁶

4. On December 6, 2007, the Respondent was charged in Hennepin County District Court with one count of Felony Racketeering and 24 counts of Felony Theft by Swindle.⁷ Count 1 of the complaint alleged that the Respondent, while associated with UMI, conspired with another and:

...intentionally conducted or participated in the affairs of the enterprise by participating in a pattern of criminal activity, namely, theft by swindle; and intentionally participated in a pattern of criminal activity and knowingly invested any proceeds derived from the conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.⁸

5. On August 19, 2008, the Respondent entered a plea of guilty to the Racketeering charge. The remaining Theft by Swindle counts were dismissed.⁹

¹ M. Boyer Aff., Senior Investigator, Dept. of Commerce (Boyer Aff.), at 1.

² *Id.*, at 2. See, Minn. Stat. §§ 58.04, subd. 1(b)(1) and 58.05, subd. 1.

³ Kaisershot Aff., Ex. A., at 1-7.

⁴ *Id.*, at 6.

⁵ *Id.*, at 5.

⁶ Boyer Aff., at 2; Kaisershot Aff., Ex. A at 7.

⁷ Kaisershot Aff., Hennepin County Criminal Complaint No. 27-CR-07-127154, Ex. A., at 5.

⁸ Kaisershot Aff., Ex. A., at 1-7.

⁹ Kaisershot Aff., Petition to Enter Plea of Guilty, executed by the Respondent on August 19, 2008, Ex. A., at 20-23.

6. On January 15, 2008, the Respondent was charged with eight counts of Felony Theft by Swindle.¹⁰ Each count reflected a mortgage lending transaction that the Respondent was involved in, where the Respondent made false statements to a lender to obtain a mortgage loan.¹¹

7. On July 16, 2008, the Respondent was tried before Hennepin County District Court Judge Mark Wernick on eight counts of Theft by Swindle over \$35,000. Respondent was convicted of all eight counts. Judge Wernick found that the Respondent received a payment, described as a “kickback,” ranging from \$12,500 to \$40,000 as part of each transaction.¹² In his Verdict and Memorandum, Judge Wernick identified the Respondent as being the buyer and loan officer on eight residential property transactions resulting in Respondent’s nine felony convictions.¹³

8. On November 3, 2008, the Respondent was sentenced on all nine convictions, specifically, eight convictions of Theft by Swindle and one conviction for Racketeering. The Respondent was committed to the Commissioner of Corrections for 74 months.¹⁴

9. On July 27, 2007, Ollie Cartlidge purchased a residential property located in Buffalo, MN. On October 11, 2007, Community Pride Bank (CPB) advanced \$89,000 to Cartlidge in exchange for a promissory note and a second mortgage based on loan application materials prepared and submitted by the Respondent. The Cartlidge application materials contained false and misleading statements, including that Cartlidge intended to occupy the property as his residence, overstating his income, and omitting some of his liabilities. Cartlidge defaulted on the second mortgage. Upon that default, CPB sued Cartlidge and the Respondent, among others, in district court. On May 22, 2009, the Wright County District Court entered a \$93,834 judgment against Cartlidge and the Respondent, jointly and severally, finding specifically that the Respondent participated in defrauding CPB.¹⁵ There is no evidence in this record indicating that Respondent has satisfied the civil monetary judgment.

10. The Department seeks to impose administrative discipline on the Respondent for violations of statute and rule, “including debarment ... or the imposition of civil penalties.”¹⁶ On May 20, 2010, the Department filed a Notice and Order for Prehearing Conference setting this matter on before the ALJ.

¹⁰ *Id.*, Second Hennepin County Criminal Complaint No. 27-CR-08-2435, Ex. A, at 41-48. Four of the eight counts were identical to the counts that were dismissed in the first criminal complaint of December 6, 2007.

¹¹ *Kaisershot Aff.*, Findings of Fact, Conclusion of Law, Verdict, and Memorandum of District Court, Ex. A, at 34.

¹² *Id.*, Findings of Fact, Conclusion of Law, Verdict, and Memorandum of District Court, Ex. A, at 34.

¹³ *Id.*, Ex. A., at 4-17.

¹⁴ *Id.*, Hennepin County Register of Actions, Ex. A, at 3.

¹⁵ *Boyer Aff.*, at 19; Ex. 59.

¹⁶ Notice and Order for Prehearing Conference at 1.

11. On September 7, 2010, the Department moved for summary disposition, asserting that there were no genuine issues of material fact and sanctions should be imposed on Respondent as a matter of law.

12. On October 8, 2010, the ALJ issued the Order Granting Partial Summary Disposition (Summary Disposition Order) in this matter. The Summary Disposition Order found there were no genuine issues of material fact that remained for hearing on the contentions advanced by the Department regarding Respondent's criminal convictions and misconduct, as set out in the foregoing Findings. The ALJ did not issue a Recommendation at that time, since the Respondent had the right to present evidence regarding the propriety of any particular sanction to be imposed by the Department.¹⁷

13. In order to address the remaining issues, a hearing was scheduled. Several continuances were granted to accommodate scheduling conflicts. The hearing was held on November 30, 2010, with the Respondent participating by videoconference.¹⁸ Respondent did not present affirmative evidence at the hearing. Respondent requested additional time to consider the potential impact of his participation. Over the objection of the department, the ALJ held the record open until January 18, 2011, for further submission by the Respondent. No further submission was received by the ALJ.

Based upon the foregoing 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; 45.027, subds. 6 and 7; 58.12; 58.13; and 82.82, subd. 1.

2. The Respondent received due, proper, and timely notice of the charges against him. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

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

4. The Department has the burden to prove by a preponderance of the evidence that the Respondent violated applicable statutes, rules, and uniform standards as alleged in its Notice and Order for Prehearing Conference.¹⁹

¹⁷ *ITMO the Disciplinary Hearing Relating to Michael Alan Kveene*, License No. 10639, OAH Docket No. 12-2402-10724-2 (ALJ Order Granting Partial Summary Disposition issued November 1, 1996) (relying on *ITMO the Matter of the Teaching License of Falgren*, 545 N.W.2d 901, 905-06 (Minn. 1996)).

¹⁸ See Fourth Scheduling Order (issued November 8, 2010).

¹⁹ Minn. R. 1400.7300, subp. 5.

5. The Commissioner may sanction a licensee or person acting under authority of a licensee where that person has violated any law, rule, or order related to the duties and responsibilities entrusted to the Commissioner, or has engaged in an act or practice which demonstrates that the person is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority of Minn. Stat. ch. 58.²⁰

6. Pursuant to Minn. Stat. § 58.12, subd. 1(b)(2), a person acting as a mortgage originator is subject to discipline upon: (i) violating of any provision of Minn. Stat. ch. 58, (iv) engaging in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business; (v) engaging in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence; and (vi) having been convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude.

7. Respondent was acting as a mortgage originator while engaging in the conduct for which he was convicted for racketeering and felony theft and while engaging in the mortgage activities leading to the civil judgment involving the Cartlidge transaction.

8. Pursuant to Minn. Stat. § 359.12, "Every notary ... who has pleaded guilty, ... or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, is subject to the penalties imposed pursuant to section 45.027."

9. Respondent's conviction of racketeering and felony theft involves moral turpitude and constitutes a violation of Minn. Stat. §§ 58.12, subd. 1(b)(2)(vi) and 359.12.²¹

10. The Department has shown by a preponderance of the evidence that Respondent's conduct in the Cartlidge transaction constitutes violations of Minn. Stat. ch. 58, fraudulent and dishonest practice, demonstrations of untrustworthiness in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(i), (iv) and (v).

11. An Order imposing discipline on Respondent is in the public interest.

12. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is incorporated by reference in these Conclusions.

²⁰ Minn. Stat. § 45.027, subd. 7(a)(2) and (4).

²¹ Moral turpitude is not defined in either statute, but Black's Law Dictionary, pp. 1008-09 (6th ed. 1990) (citations omitted), defines the term as follows: The act of baseness, vileness, or depravity in private and social duties which man owes his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man. Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Commerce impose appropriate discipline against the Respondent, Donald Leverne Walthall.

Dated: February 8, 2011

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

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.²² 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 Emmanuel Munson-Regala, 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.

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 (2004). 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

²² Unless otherwise noted, all references to Minnesota Statutes are to the 2006 edition and all references to Minnesota Rules are to the 2005 edition.

The factual issues underlying the imposition of sanctions against the Licensee were determined in the Summary Disposition Order, issued October 8, 2010. The hearing held in this matter was an opportunity for the Respondent to submit any evidence tending to mitigate the seriousness of the demonstrated violations for the purpose of evaluating the appropriate penalty.

Respondent declined to provide any evidence at the hearing, contending that to do so would constitute some form of admission against self-interest. Given the absence of any mitigating evidence in the record, the ALJ recommends that sanctions be imposed under both the mortgage origination and Notary Commission statutes. The degree of discipline to be imposed is within the broad discretion of the Commissioner.

M.J.C.