

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2
3 In the Matter of the Loan Originator License Application
of:

No. 11F-BD011-BNK

4 **EDWARD E. BEDOYA**
1613 W. White Feather Lane
5 Phoenix, AZ 85085

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

6 Petitioner.

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated
9 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
10 Law and Order as follows:

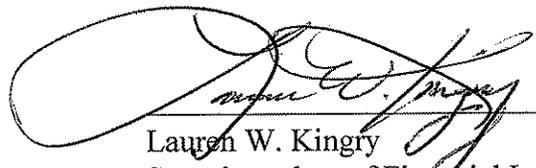
11 **ORDER**

12 **IT IS ORDERED** that the decision to deny Petitioner's application is reversed and the loan
13 originator license be approved and issued.

14 **NOTICE**

15 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final
16 unless Petitioner submits a written motion for rehearing no later than thirty (30) days after service
17 of this decision. The motion for rehearing or review must specify the particular grounds upon
18 which it is based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties
19 to the hearing, including the Attorney General, if the Attorney General is not the party filing the
20 claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to
21 A.R.S. § 41-1092.08(H).

22
23 DATED this 20th day of June, 2011.

24
25 
26 _____
27 Lauren W. Kingry
28 Superintendent of Financial Institutions

1 ORIGINAL filed this 20th day of June, 2011 in the office of:

2
3 Lauren W. Kingry, Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: June Beckwith
6 2910 North 44th Street, Suite 310
7 Phoenix, Arizona 85018

8 COPY mailed same date to:

9 Lewis Kowal, Administrative Law Judge
10 Office of the Administrative Hearings
11 1400 West Washington, Suite 101
12 Phoenix, AZ 85007

13 Craig Raby, Assistant Attorney General
14 Office of the Attorney General
15 1275 West Washington
16 Phoenix, AZ 85007

17 Richard Fergus, Licensing Manager
18 Chris Dunshee, Loan Originator Licensing Manager
19 Arizona Department of Financial Institutions
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

22 Edward E. Bedoya
23 1613 W. White Feather Lane
24 Phoenix, AZ 85085

25 AND COPY MAILED SAME DATE by
26 Certified Mail, Return Receipt Requested, to:

27 Jeff A. Shumway, Esq.
28 Shumway Law Offices, PLC
7729 E. Greenway Road, Suite 500
Scottsdale, AZ 85260
Attorney for Petitioner

By: 

1 name of his brother-in-law without the brother-in-law's knowledge or consent. When
2 the bank confronted him about the loan, Petitioner confessed to the wrongdoing, was
3 convicted of a felony, and placed on probation. Petitioner represented to the
4 Department that he has made restitution.

5 5. Petitioner presented to the Department, which was used as an exhibit for the
6 Department, an Indictment in *United States of America v. Edward E. Bedoya*, United
7 States District Court, District of Arizona, Case No. CR89-266-PHX ("Case No. 89-266-
8 PHX"). The indictment charged Petitioner with one count of embezzlement of
9 \$2,500.00, while employed as a bank officer, in violation of 18 U.S.C. § 656 and
10 charged him with one count of Falsified Loan Application for knowingly and willfully
11 making false statements to the bank to influence the bank in issuing a loan in the name
12 of Petitioner's brother-in-law, when in fact Petitioner knew he was the actual borrower,
13 in violation of 18 U.S.C. § 1014. See Exhibit 5.

14 6. Petitioner also provided the Department with a copy of the Court's Report and
15 Order Termination of Probation Prior to Original Expiration Date that states Petitioner
16 was placed on 5 years probation and upon full compliance was recommended for early
17 discharge by his probation officer. Petitioner was in fact discharged by entry of the
18 Court's Order dated September 14, 1994. See Exhibit 6.

19 7. On September 8, 2010, the Department denied the Application pursuant to
20 A.R.S. §§ 6-991.05(A)(1) and (4) based on Petitioner's felony conviction of
21 embezzlement. See Exhibit 1. Petitioner timely appealed the denial, which brought this
22 matter before the Office of Administrative Hearings, an independent State agency.

23 8. Chris Dunshee ("Mr. Dunshee"), the Department's loan originator licensing
24 manager, testified regarding the procedural history of this matter, and that upon review
25 of the Application and documents submitted by Petitioner, he recommended denial of
26 the Application, based on Petitioner's felony conviction embezzlement, and in part on
27 A.R.S. § 6-991.05(A)(4).

28 9. Mr. Dunshee acknowledged that Petitioner was truthful and honest in his
29 dealings with the Department relating to the Application.
30

1 10. Richard Fergus ("Mr. Fergus"), the Department's Licensing Division Manager,
2 testified that beginning in July 1, 2010, newly enacted laws that provided for the
3 licensing of loan originators became effective.

4 11. Mr. Fergus also testified that he considered the information provided by
5 Petitioner, including what was contained in the above-mentioned court documents, in
6 deciding to deny the Application.

7 12. According to Mr. Fergus, who has been in his current position for about 5 ½
8 years and oversees about 15 types of licenses that fall under the Department's
9 jurisdiction, the Department has never licensed a person who has been convicted of a
10 felony such as embezzlement. Mr. Fergus testified that the crime of embezzlement is a
11 serious crime particularly in relation to the entities and business activities regulated by
12 the Department. According to Mr. Fergus, he would not recommend approval of a
13 license application to a person who either pled guilty to or was convicted of
14 embezzlement for that reason.

15 13. Mr. Fergus testified that he considered: (i) the age of the Petitioner when he
16 committed the criminal activity underlying the felony conviction (he was approximately
17 36 years of age); (ii) that Petitioner was a loan officer in a bank at the time when such
18 activity occurred; and (iii) that Petitioner has not had any subsequent criminal
19 convictions. According to Mr. Fergus, Petitioner's interaction with the Department
20 would not cause him to believe that Petitioner was anything but truthful and honest in
21 dealing with the Department with respect to the Application. Mr. Fergus also testified
22 that he also considered the falsification of loan documents that he believed must have
23 occurred in order to have a loan approved in the name of a person other than Petitioner
24 that resulted in the embezzlement of funds.

25 14. Petitioner testified that he engaged in the criminal activity that led to the felony
26 conviction because he was having financial problems. He testified that he would not
27 succumb to such pressures again and represented that he has savings in place to fall
28 back on when times are difficult, recognizing that the nature of his business goes
29 through peaks and valleys.
30

1 15. Petitioner testified that he has been in the loan originator business for over 20
2 years and has not had any complaints made against him. In support of that testimony,
3 Petitioner presented several character witnesses.

4 16. Matthew McKean ("Mr. McKean"), Senior Regional Vice-President and Regional
5 Manager at Guaranteed Rate, Inc. where Petitioner is employed, testified that he
6 supervises Petitioner, that he has known Petitioner since January 2008, and that
7 Petitioner is an exemplary worker.

8 17. Mr. McKean testified that when he learned of Petitioner's problem obtaining his
9 loan originator license, he contacted upper management at Guaranteed Rate, Inc. and
10 obtained a letter from its Chief Executive Officer ("CEO") in support of Petitioner's
11 appeal. See Exhibit B.

12 18. Mr. McKean testified that he first learned of the nature of the felony conviction at
13 the hearing. Mr. McKean represented that based on his work experience with
14 Petitioner, Mr. McKean does not have a problem supporting Petitioner in his attempt to
15 obtain a loan originator license.

16 19. Mr. McKean testified that as a loan originator with Guaranteed Rate, Inc.,
17 Petitioner would not handle monies. Mr. McKean also testified that Petitioner is a
18 person who is honest, truthful, and of good character.

19 20. John Modrick, Jr. ("Mr. Modrick"), a police officer with the City of Phoenix for 7
20 years, has known Petitioner for about fifteen years. He met Petitioner while working at
21 Mortgage Service of America as a loan originator, and while there, Petitioner had a
22 reputation as being one of the company's top producers.

23 21. Mr. Modrick is a friend of Petitioner. Mr. Modrick testified that based on his work
24 and personal experience with Petitioner, he believes Petitioner to be a person of
25 honesty, truthfulness, and good character.

26 22. Honorable Kathy Sterling-Tate ("Honorable Sterling-Tate"), a Judge Pro Tem in
27 the Criminal Division of the Yuma County Superior Court, testified that she has used
28 Petitioner's services as a loan originator when she and her husband, Jon Tate ("Mr.
29 Tate"), purchased a home in 2004 and then refinanced in 2009. She was aware of the
30

1 denial of Petitioner's application as a loan originator and of a guilty plea to a criminal
2 charge but did not know that the conviction was for embezzlement.

3 23. While Honorable Sterling-Tate first learned of the embezzlement conviction on
4 the morning of the hearing, she indicated that it did not change her opinion of
5 Petitioner. Honorable Sterling-Tate noted that the conviction occurred more than 20
6 years ago and that Petitioner recognizes that his actions were wrong. She is a
7 personal friend of Petitioner and believes him to be a person who is honest, truthful,
8 and of good character.

9 24. Mr. Tate, Deputy City Prosecutor for the City of Yuma, testified that he knows
10 Petitioner from attending high school together, and that they have been friends over the
11 years. He was aware that Petitioner's application for a loan originator license was
12 denied due to a criminal conviction, but he was not aware that it was for embezzlement.

13 25. Mr. Tate testified that he has dealt with Petitioner on a professional basis and
14 used his services. He believes Petitioner to be a person who is honest, truthful, and of
15 good character.

16 26. Gregory Casadeim, Sr. ("Mr. Casadeim"), the husband of a former co-worker of
17 Petitioner, testified that he has known Petitioner for 35 years and was aware of
18 Petitioner's guilty plea of embezzlement. At the time when Petitioner was involved in
19 the embezzlement court proceedings, Petitioner asked him to write a letter to the
20 Judge, which he did.

21 27. Mr. Casadeim testified that he and Petitioner are close friends. Mr. Casadeim
22 believes that Petitioner's conduct underlying the felony conviction was a momentary
23 lapse of judgment and that Petitioner is a person who is honest, truthful, and of good
24 character.

25 28. Petitioner testified that he does not believe he disclosed his criminal conviction
26 to his employers because of the manner in which he was hired. His criminal
27 background was never discussed, nor was he requested to disclose his criminal
28 background.

29 29. Petitioner maintained that he wants to continue to do what he has been doing
30 with an unblemished record over the past 20+ years and that A.R.S. § 6-991.05(4)

1 provides the Superintendent of the Department with discretion to grant a loan originator
2 license to a person who has had a felony conviction.

3 30. Petitioner presented letters from his probation officer and the CEO of
4 Guaranteed Rate, Inc. in support of the appeal. See Exhibits A and B. The letter from
5 the probation officer indicates that Petitioner obtained early release from his probation
6 in the above-mentioned criminal case. The letter from the CEO indicates that Petitioner
7 is a valued employee of Guaranteed Rate, Inc.

8 **CONCLUSIONS OF LAW**

9 1. Petitioner bears the burden of persuasion and the standard of proof on all issues
10 is by a preponderance of the evidence. A.R.S. § 41-1092.07(G)(1) and A.A.C. R2-19-
11 119.

12 2. A "preponderance of the evidence is such proof as convinces the trier of fact that
13 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
14 EVIDENCE, § 5 (1960). "It is evidence which is of greater weight or more convincing than
15 the evidence which is offered in opposition to it; that is, evidence which as a whole
16 shows that the fact sought to be proved is more probable than not." BLACK'S LAW
17 DICTIONARY 1182 (6th ed. 1990).

18 3. The evidence of record established that Petitioner was convicted in a court of
19 competent jurisdiction of the crime of embezzlement, a felony, a crime of breach of trust
20 or dishonesty, and fraud within the meaning of A.R.S. § 6-991.05(A)(4)

21 4. The evidence of record established that at the time when the conduct underlying
22 the above-mentioned convictions occurred, Petitioner was not a person of good
23 character within the meaning of A.R.S. § 6-991.05(A)(1).

24 5. A.R.S. § 13-904(E) provides:

25 A person shall not be disqualified from employment by this
26 state or any of its agencies or political subdivisions, nor shall a
27 person whose civil rights have been restored be disqualified to
28 engage in any occupation for which a license, permit or
29 certificate is required to be issued by this state solely because
30 of a prior conviction for a felony or misdemeanor within or
without this state. A person may be denied employment by this
state or any of its agencies or political subdivisions or a person

1 who has had his civil rights restored may be denied a license,
2 permit or certificate to engage in an occupation by reason of
3 the prior conviction of a felony or misdemeanor if the offense
4 has a reasonable relationship to the functions of the
employment or occupation for which the license, permit or
certificate is sought.

5 6. A.R.S. § 6-991.05 provides the Superintendent with discretion to deny a license
6 to an applicant who is not honest, trustworthy or of good character, convicted of a
7 felony within seven year prior to date of application, or convicted of any crime involving
8 a breach of trust or dishonesty, or fraud, or money laundering that occurred at any
9 time.

10 7. The parties did not cite to any law that provides the Superintendent with the
11 authority to issue a provisional loan originator license. Consequently, without specific
12 authority, the issuance of a provisional license to Petitioner is not an option for the
13 Superintendent to consider with respect to the Application.

14 8. The Department referenced in its legal memoranda A.R.S. § 6-123.01(D) that
15 provides authority for the Superintendent to issue a temporary license before the
16 Department receives the results of a criminal records background check when there is
17 no evidence or reasonable suspicion that the applicant has a criminal history that would
18 constitute cause for denial of the license.¹ Such temporary license is to be effective for
19 no longer than 180 days provided the applicant is registered with the nationwide
20 mortgage licensing system. The above-mentioned statute is not specific to loan
21 originator's license and is a general statute applicable to licenses issued by the
22 Department.

23 9. The Administrative Law Judge concludes that A.R.S. § 6-123.01(D) is not
24 applicable to the instant situation because the issuance of a temporary license
25 pursuant to that statute is available while the Department awaits the results of the
26 criminal records check , whereas in the instant matter, the Department has already
27 received the results of the criminal records check.

28
29 ¹ Parenthetically, the Administrative Law Judge requested the parties brief the issue as to whether a
30 provisional license could be issued and not whether a temporary license may be issued.

1 10. Petitioner argued in his legal memorandum that he can be granted a temporary
2 license pursuant to A.R.S. § 6-991.04(L) because both Petitioner and Guaranteed
3 Rate, Inc. are licensed with the nationwide mortgage licensing system. In its legal
4 memorandum, the Department indicated that there are two classes of loan originator
5 license: registered loan originators, persons whose primary regulator is a federal
6 institution; and state-licensed loan originators. The Department argued that a
7 temporary loan originator license may only be issued to an applicant who is a
8 registered loan originator. According to the Department, the distinction between the
9 classes leads to the conclusion that a temporary license may only be issued to an
10 applicant for a loan originator's license who has the status of being a registered loan
11 originator. A.R.S. § 6-991.01(1) provides that registered loan originators do not have
12 to obtain a state loan originator license.

13 11. The Administrative Law Judge concludes that the plain meaning of A.R.S. § 6-
14 991.04(L) contemplates that a person be registered with the nationwide mortgage
15 licensing system.

16 12. The evidence of record established that Petitioner was convicted of the crime of
17 embezzlement, a felony, in Case No. 89-266-PHX.

18 13. The evidence of record showed that Petitioner engaged in conduct underlying
19 the above-mentioned conviction that constitutes sufficient grounds to cause the
20 Department to question the honesty, trustworthiness, and character of Petitioner.

21 14. The above-mentioned letter of character authored by the CEO of Guaranteed
22 Rate, Inc. is given little weight because he was not present to be questioned by the
23 Department's counsel or by the Administrative Law Judge, and could not be observed
24 by the Judge.

25 15. Although the Department did have sufficient grounds to question the character of
26 Petitioner, the credible evidence of record established that Petitioner's character is
27 currently different from that which existed when he engaged in the conduct that resulted
28 in the conviction that occurred more than 20 years ago.

1 16. Under the particular facts and circumstances presented herein, the
2 Administrative Law Judge concludes that Petitioner has demonstrated that he is
3 rehabilitated.

4 17. Mr. Fergus testified that in reaching the determination to deny the Application,
5 he also considered the falsification of loan documents that were involved in the activity
6 that resulted in the embezzling of funds. Although there was no evidence showing that
7 Petitioner was convicted of falsification of loan documents, it cannot be ignored that
8 Petitioner engaged in an activity that involved falsifying documents to obtain a loan that
9 was not in his own name. The import of Mr. Fergus' testimony is that no matter how
10 long ago the felony conviction was, he would not grant a loan originator application to a
11 person convicted of embezzlement.

12 18. The seriousness of Petitioner's criminal conviction and activities underlying
13 conviction are not overlooked. However, Petitioner established that he has engaged in
14 the business activity that he seeks to be licensed in for over 20 years, not only without
15 incident, but with high productivity and recognition as a model employee. But for the
16 enactment of a law requiring loan originators to be licensed, Petitioner would currently
17 be engaged in the business activity that he has previously engaged in.

18 19. Given the passage of time and his exemplary work history in the same field and
19 in the same position that he wishes to engage in upon licensure, and despite the
20 above-mentioned criminal history of Petitioner and the conduct underlying the
21 conviction, Petitioner has demonstrated that he is presently a person of honesty,
22 truthfulness, and of good moral character.

23 20. The Administrative Law Judge concludes that to apply A.R.S. § 6-991.05(A)(4)
24 in the manner that the Department has would, in effect, constitute a bar for a person
25 convicted of embezzlement from ever being licensed. Had the Arizona Legislature
26 intended a complete bar, the statute could have been written to reflect that result.
27 Instead, the statute provides discretion to the Superintendent. The Administrative Law
28 Judge cannot think of a situation more compelling than the instant one in which the
29 person was convicted of a felony over 20 years ago but has since been rehabilitated
30

1 and been performing the same job that the legislature determined required licensure as
2 of July 1, 2010.

3 21. The Administrative Law Judge concludes from the evidence presented
4 that Petitioner demonstrated that he should be given an opportunity to hold a
5 loan originator's license, and that the Superintendent should exercise discretion
6 favorably to grant the Application. Consequently, there is no need for the
7 Administrative Law Judge to address whether in the instant matter a temporary
8 license should be issued to Petitioner pursuant to A.R.S. § 6-991.04(L).

9 **ORDER**

10 The Department's decision to deny the Application is reversed. The Department
11 shall approve the Application and issue Petitioner a loan originator license.

12
13 *In the event of certification of the Administrative Law Judge Decision by the*
14 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
15 *five days from the date of that certification.*

16 Done this day, June 6, 2011.

17
18 /s/ Lewis D. Kowal
19 Administrative Law Judge

20
21 Transmitted electronically to:

22
23 Lauren Kingry, Superintendent
24 Arizona Department of Financial Institutions
25
26
27
28
29
30