

Terms Completed

ORDER SUMMARY – Case Number: C-07-056

Name(s): Steffan Craig Burris

Order Number: C-07-056-08-FO01

Effective Date: 2/21/08

License Number: 32647

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: None

Not Apply Until: n/a

Not Eligible Until: n/a

Prohibition/Ban Until: 8/30/12

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments:



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

STEFFAN CRAIG BURRIS,

Appellant.

**OAH DOCKET NO. 2007-DFI-0004
DFI NO. C-07-056-07-SC01**

**FINAL DECISION AND ORDER
REVERSING INITIAL ORDER OF
ADMINISTRATIVE LAW JUDGE,
GRANTING SUMMARY JUDGMENT
IN FAVOR OF DEPARTMENT, AND
PROHIBITING APPELLANT FROM
PARTICIPATING IN THE AFFAIRS
OF A MORTGAGE BROKER.**

THIS MATTER having come before SCOTT JARVIS, Director of the Washington State Department of Financial Institutions (hereinafter, "Department"), sitting as Presiding Officer, on the Department's Petition for Review (hereinafter, "Department's Petition"), dated October 5, 2007, from the Initial Order on Summary Judgment and Disposing of Matter, dated September 18, 2007 (hereinafter, "Initial Order") of Administrative Law Judge Cindy L. Burdue of the Office of Administrative Hearings (hereinafter, "ALJ"); and the Presiding Officer having fully considered the entire record on review, including, without limitation, all pleadings, testimony and recorded oral and written argument before the ALJ, together with the Initial Order, and the Department's Petition (hereinafter, "Record on Review");

NOW, THEREFORE, the Presiding Officer issues the following Final Decision and Order:

1.0 CONSIDERATION

1.1 Reversal of Initial Order. The Presiding Officer has reviewed the Record on Review, including the Initial Order and Department's Petition, and finds that the ALJ committed error and that there is good cause to enter a Final Decision and Order modifying certain Findings of

Fact and Conclusions of Law of the ALJ as set forth below and reversing the ALJ's Initial Order.

1.2 No Response to the Department's Petition by Appellant. The Presiding Officer notes with particularity the following:

1.2.1 The attorney of record for Appellant, STEFFAN CRAIG BURRIS, in the proceedings before the ALJ was John Jarrett, 925 Trosper Road S.W., Tumwater, WA 98512-6937;

1.2.2 By Declaration of Service dated October 5, 2007, Mr. Jarrett was served with a copy of the Department's Petition as required under the Administrative Procedures Act, Chapter 34.05 RCW; and

1.2.3 Neither Appellant, nor his attorney of record, John Jarrett, has filed any response to Department's Petition.

1.3 Exceptions to and Modifications of Initial Order. The Presiding Officer makes the following *exceptional findings and modifications* to the Initial Order:

1.3.1 **Exception to and Modification of Finding of Fact No. 1.** Finding of Fact No. 1, as articulated by the ALJ, improperly supports the conclusion that ordinary persons would not feel the need to be as precise in their answers because they are providing the Division a broad release that may permit the Division to get the actual details and information on its own. The Presiding Officer notes also that a similar conclusion was reached by the ALJ in Conclusions of Law Nos. 23 and 24. By referring to the actual language on the Uniform Individual Mortgage License/Registration and Consent Form (hereinafter, "Form"), the Form makes it clear to an ordinary and reasonable applicant that precise information is absolutely required. Indeed, the applicant swears or affirms that his or her answer (including attachments) are true and complete to the best of his or her knowledge, that he or she understand that he or she is subject to administrative, civil or criminal penalties if he or she gives false or misleading answers, and that he or she promises to file accurate supplementary information on a timely basis. This is supported by the uncontroverted Declaration of Fatima Batie, Ex. B, ¶2, Items

1 B, C, and F thereof. Accordingly, the Presiding Officer hereby modifies Finding of Fact No. 1
2 of the Initial Order to read, as follows:
3

4 1. On November 30, 2006, Appellant submitted an application for a loan
5 originator license under Platinum Financial Services, a licensed mortgage broker
6 in Washington. Appellant's application was completed and submitted to the
7 Department of Financial Institutions ("Department") via the internet. Appellant
8 also submitted a Uniform Individual Mortgage License/Registration and Consent
9 form that date. (Decl. Batie, Exs. A & B, pg. 1) In that document, the Appellant
10 swore and affirmed that:

11 [I] have executed this form before a Notary Public, of my own free will
12 and:

13 (A) I have read and understand the terms and instructions of this form;

14 (B) My answers (including attachments) are true and complete to the best
15 of my knowledge;

16 (C) I understand that I am subject to administrative, civil or criminal
17 penalties if I give false or misleading answers;

18 (D) I authorize all my current and former employers, law enforcement
19 agencies, and any other person to furnish to any jurisdiction; or any agent
20 acting on its behalf, any information they have, including without
21 limitation my creditworthiness, character, ability, business activities,
22 educational background, general reputation, history of my employment
23 and, in the case of former employers, complete reasons for my
24 termination;

25 (E) I have read and understand applicable federal and state law, and will
26 be in compliance at all times;

27 (F) I promise to keep the information contained in this form current and
28 to file supplementary information on a timely basis.

29 (Decl. Batie, Ex. B, pg. 1.)
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31 1.3.2 **Exception to and Modification of Finding of Fact No. 3.** An ordinary
32 applicant would have believed that he or she was required to provide complete and accurate
33 information, given the instruction on the Form to provide complete details of all events.
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Therefore, the Presiding Officer hereby modifies Finding of Fact No. 3 to read, as follows:

3. On the Criminal Disclosure portion of the application, the instructions
provided: "If the answer to any of the following is "YES", provide complete
details of all events or proceedings. (Decl. Batie, Ex. A, pg. 5) Appellant was
asked in the application if he had been "convicted of or plead (sic) guilty or nolo
contendere . . . to a felony . . ." Appellant answered, "In October 1999 in the
State of Washington." (Decl. Batie, Ex. A, pg. 5) Appellant gave the same exact
answer to the question whether he had "Been charged with a felony?" (Decl.
Batie, Ex. A, pg. 5)

1 1.3.3 **Exception to and Modification of Conclusion of Law No. 22.** A reasonable
2 applicant would verify the actual date of his or her criminal conviction when instructed to
3 provide complete details. Given the requirements of the Form to provide accurate and
4 complete information, the ALJ's Conclusion of Law No. 22 was in error. Therefore, the
5 Presiding Officer hereby modifies the Initial Order's Conclusion of Law No. 22 to read, as
6 follows:
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10 22. Thus, I next turn to whether Appellant negligently provided a false
11 statement. The statement (conviction date) was "false" because wrong, incorrect,
12 or mistaken. The common definition of "negligent" is not acting with the degree
13 of care with which an ordinary, reasonable person would act under the
14 circumstances. Here Appellant was filling out a form for a license which would
15 determine whether he would be allowed to work in his chosen field. One could
16 scarcely find a more important document. Ordinary, reasonable persons, in filling
17 out such an application, would take great care. Here, Appellant did not exercise
18 great care, or even reasonable care, when he provided the "false" conviction date.
19 This is demonstrated by the fact that, while he admitted that the criminal
proceedings in the years 1999/2000 had merged in his mind as one event, he did
not review the actual Judgment and Sentence to provide accurate information on
his application. See Finding of Fact No. 8.

20 1.3.4 **Exception to and Modification of Conclusion of Law No. 23.** Under the
21 language of the Form, the release of information for purposes of conducting an investigation
22 does not vitiate the obligation to provide complete and accurate information. Having viewed
23 the release language along with the other items that are part of the acknowledgment on the
24 Form, the Presiding Officer is of the view that a reasonable person could not conclude that the
25 Department was somehow not going to rely on the applicant's answer. Indeed, the Presiding
26 Officer is of the view that a reasonable person would try to be as precise as possible out of
27 concern that an investigation would discover false information that could lead to
28 administrative, civil or criminal penalties. In this regard, the Presiding Officer must conclude
29 that the ALJ's Conclusion of Law No. 23 is also in error. Therefore, the Presiding Officer
30 hereby modifies the Initial Order's Conclusion of Law No. 23, as follows:
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32 23. However, given that the Department informs the applicants that they must
33 also, concurrent with that application, sign a form where the applicant swears or
34 affirms that their answers (including attachments) are true and complete to the
best of their knowledge, that they understand they are subject to administrative,

civil or criminal penalties if they give false or misleading answers, that they promise to file accurate supplementary information on a timely basis, and that they authorize the release of information to permit the Department to conduct its own investigation of the applicant's background, it is safe to say that ordinary persons, taking a high level of due care, would feel the need to be precise in their answers on the application. Conclusion of Law No. 24

1.3.5 **Exception to and Modification of Conclusion of Law No. 24.** Based upon the exceptions and modifications made above, and the reasoning therefore, the Presiding Officer hereby modifies the Initial Order's Conclusion of Law No. 24, as follows:

24. Thus, given the circumstances described, I conclude that Appellant's false answer was "negligently" given. Under the circumstances, an ordinary, reasonable person would not estimate the date of the conviction or charges. The Department included wording to ensure that the applicants understand, and swear or acknowledge, that they must provide accurate information.

1.3.6 **Exception to and Modification of Conclusion of Law No. 25.** Based upon the exceptions and modifications made above, and the reasoning therefore, the Presiding Officer hereby modifies the Initial Order's Conclusion of Law No. 25, as follows:

25. As a matter of law, given the facts presented, which must be viewed in the light most favorable to the Appellant (the non-moving party), the Department properly prohibited Appellant from participating in the conduct of the affairs of a mortgage broker under RCW 19.146.0201(8) and/or RCW 19.146.220(5)(a). The Department is entitled to summary judgment on the issue whether it can prohibit Appellant from working in the industry.

1.3.7 **Department Entitled to Summary Judgment.** The Department was entitled to summary judgment as a matter of law and a confirmation of its decision denying Appellant a license. The language of the Initial Order's Findings of Fact and Conclusions of Law is therefore confirmed, subject, however, to the exceptions and modifications made above to Findings of Fact Nos. 1 and 3, and Conclusions of Law Nos. 22, 23, 24 and 25.

2.0 FINAL DECISION AND ORDER

For all of the reasons set forth above, **IT IS HEREBY ORDERED THAT:**

2.1 The Findings of Fact and Conclusions of Law as set forth in the Initial Order are confirmed, except, however, as set forth above in Paragraph 1.3 of this Final Decision and

1 Order. The Initial Order of the ALJ is hereby reversed. The Department's motion for
2 summary judgment is hereby GRANTED.

3 2.2 Pursuant to RCW 19.146.220(5)(a) and RCW 19.146.0201(8), the Appellant,
4 STEFFAN CRAIG BURRIS, the denial of Appellant STEFFAN CRAIG BURRIS loan
5 originator license application is hereby confirmed, Appellant STEFFAN CRAIG BURRIS is
6 hereby prohibited from participation in the affairs of a mortgage broker for five years, through
7 and including August 30, 2012.
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10 DATED: February 21, 2008

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14 SCOTT JARVIS
15 Director & Presiding Officer
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RECEIVED

SEP 20 2007

STATE OF WASHINGTON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

DEPT. OF FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

RECEIVED

SEP 20 2007

CONSUMER SERVICES DIVISION
DEPT. OF FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

In The Matter Of:

Steffan Craig Burris.

Appellant.

Docket No. 2007-DFI-0004

INITIAL ORDER ON SUMMARY
JUDGMENT AND DISPOSING OF
MATTER

Telephonic Summary Judgment Hearing:

On September 5, 2007, Administrative Law Judge Cindy L. Burdue held a telephonic hearing on the motion of the Department of Financial Institutions ("Department") for an Order of Summary Judgment in the above-entitled matter, from Tacoma, Washington.

Appearances by Telephone:

The Department, represented by Charles Clark, Assistant Attorney General; and the Appellant, Steffan Craig Burris ("Appellant"), represented by Attorney at Law, John Jarrett.

Material Considered:

1. Motion for Summary Judgment of the Department of Financial Institutions
2. Declaration of Fatima Batie, with Exhibits A through C
3. Declaration of Stephen Burris
4. Declaration of Gordon Bragazzi
5. Declaration of Jerry Korum
6. Declaration of Todd Huber
7. Responsive Memorandum of Appellant to Motion
8. Oral argument of both counsel
9. Statement of Charges and Notice of Intention to Enter an Order to Deny License Application

Findings of Fact:

1. On November 30, 2006, Appellant submitted an application for a loan originator license under Platinum Financial Services, a licensed mortgage broker in Washington. Appellant's application was completed and submitted to the Department of Financial Institutions ("Department") via the internet. Appellant also submitted a Uniform Individual Mortgage License/Registration and Consent form that date. (Decl. Batie, Exs. A & B, pg. 1) That document is a broad release of information authorization signed by Appellant, for the Department to obtain any and all records related to Appellant's background that the Department determined appropriate.
2. The Department subsequently conducted an investigation under RCW 19.146.310. (Decl. Batie, pg. 2, ¶5) The Department learned that on August 29, 2000, Appellant entered a plea of "guilty" to an "Embezzlement of Funds by a Bank Employee" charge in Federal Court, a felony. (Decl. Batie, Ex. C, pg. 4-9) A conviction was entered that day, August 29, 2000. (Decl. Batie, Ex. C. 70-75)
3. Appellant was asked in the application if he had been "convicted of or plead (sic) guilty or nolo contendere . . . to a felony. . . ." Appellant answered, "In October 1999 in the State of Washington." (Decl. Batie, Ex. A, pg. 5) Appellant gave the same exact answer to the question whether he had "Been charged with a felony?" (Decl. Batie, Ex. A, pg. 5)
4. The Department denied Appellant's license based on the felony conviction, for seven years from August 30, 2000, pursuant to RCW 19.146.310(1)(d) and WAC 208-660-350(2). The Department also denied the license for the reason Appellant lacked the "character and fitness" to be granted the license, under RCW 19.146.310(1)(f) and (1)(g).
5. The Department further prohibited Appellant from participating in the industry for five years, until 2012, under RCW 19.146.220(5) and/or RCW 19.146.0201(8), for making false statements that , if known, would have allowed the Director to deny the original license; and/or, for negligently making false statements to the Department in an investigation, respectively.
6. Appellant filed a timely appeal of the license denial and prohibition from the industry penalty.
7. Appellant maintains he did not purposely, or with intent to hide the truth, answer the question about the date of his conviction incorrectly. He understood that the Department would conduct a full investigation and would find the precise details it needed that way. (Decl. Burris, pg. 1, 2) This belief was based on the fact that Appellant was required to sign the release of information form for the Department to

obtain a broad array of documents and information about him in connection with evaluating his application. (Decl. Burris, pg. 1)

8. Appellant did not review the actual Judgment and Sentence or Conviction before filling out the application, nor did he review the charging documents. (Decl. Burris, pg. 2) His stated reason for not doing so is that he has "long-since attempted to put those events and the paperwork surrounding those events behind me." (Decl. Burris, pg. 2) The date provided was the date when the investigation began and charges were brought against Appellant, or as he put it, ". . .the criminal proceeding . . . in the year 1999/2000 has certainly merged in my mind as one event, the inception of which was October, 1999, not the ultimate event of that . . .process, which was the actual Judgment and Sentence date." (Decl. Burris, pg. 2)

9. I find no evidence that Appellant intentionally lied about the date of his conviction in an effort to defraud the Department. He reasonably believed a full investigation would occur, based on the requirement that he sign a release for all documents related to him to be provided to the Department.

CONCLUSIONS OF LAW:

Jurisdiction:

1. Pursuant to 34.05 RCW (the Administrative Procedure Act), 34.12 RCW, and WAC 208-660-350, the Statement of Charges issued under RCW 19.146 is appealable to an administrative law judge. The decision of the administrative law judge is an initial order, subject to review by the Department pursuant to RCW 34.05.464 and WAC 10-08-211. Appeal rights are described at the end of this order.

Summary Judgment Standard:

2. Summary judgment may be granted if the written record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as matter of law. WAC 10-08-135. The evidence presented, and all reasonable inferences from the facts, must be viewed in the light most favorable to the nonmoving party. *Herron v. King Broadcasting*, 112 Wn.2d 762, 776 P.2d 98 (1989). Where reasonable minds could reach but one conclusion from the admissible facts and evidence, summary judgment should be granted. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

3. The initial burden of showing the absence of material fact rests with the moving party. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Only if the moving party meets this initial showing will the inquiry shift to the non-moving party. *Herron v. King Broadcasting*, 112 Wn.2d 762, 776 P.2d 98 (1989).

In that case, the non-moving party must "counter with specific factual allegations revealing a genuine issue of fact. . ." *Int. Union of Bricklayers, etc. v. Jaska*, 752 F.2d 1401, 1405 (9th Cir. 1985).

ISSUE ONE:

Whether the Department's denial of Appellant's license as a loan originator was proper under the facts and law?

4. Under RCW 19.146.310(1)(d), a felony conviction *of any kind* is a ban to being licensed for seven years from the date of conviction. The parties are in agreement that Appellant's license was properly denied in March, 2007, based on the November 30, 2006, application, because of Appellant's felony conviction which occurred on or about August 30, 2000. The expiration date for Appellant's conviction as an automatic ban to his licensure was on or about August 30, 2007, so at the time of the denial, the seven year period had yet to expire.

5. The Department had two other bases for denying Appellant's license, besides the felony conviction. Because the felony conviction was an absolute bar to licensure at the time the application was denied, I need not reach any decision as to whether the license could have *also* been denied based on the other two factors upon which the Department relied for that denial.¹ The Department may choose to deny the license again for these same reasons when and if Appellant re-applies. Nonetheless, the issue is not squarely before me today, since the denial due to the conviction alone clearly mandates the Department's denial of the license in March, 2007.

6. There are no disputed issues of fact as to the conviction and its date, and as a matter of law, summary judgment is appropriate on the issue of the denial of Appellant's license due to the felony conviction within seven years of the date of that application. Summary judgment is therefore granted to the Department on that issue.

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The other reasons for the denial of the application were that Appellant's character is not such as would inspire the faith or trust of the public in his honesty and fair dealing. RCW 19.146.310(1)(g) and WAC 208-660-350(2)(a). The Department relies primarily on the fact of Appellant's conviction for embezzlement as the evidence of his poor character for honesty and fair dealing. Also, the fact that Appellant answered falsely the questions on the application related to the date of his criminal conviction led the Department to deny the license, based on poor character for honesty and fair dealing. RCW 19.146.310(1)(f), WAC 208-660-500(3).

ISSUE TWO:

Does the law require or authorize the Department to prohibit Appellant from participation in the affairs of a licensed mortgage broker until 2012, based on his stating the wrong date for his felony conviction on the application?

7. In its "Statement of Charges and Notice of Intention to Enter An Order to Deny License Application," the Department relies upon RCW 19.146.220(5) as its authority to prohibit Appellant from participation in the affairs of a mortgage broker until August 30, 2012, and states its basis is twofold: Appellant's ". . . violation of RCW 19.146.0201 (1) through (9) or for false statements or omission of material information on the application that, if known, would have allowed for denial of the application for the original license." (Emphasis added)

8. The law allows the Department to ban a loan originator from working in the business, for an unspecified period of time, for certain behavior. The Department relies on two specific provisions. The first, RCW 19.146.220(5)(b), which states,

"The Director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker . . . any. . . loan originator . . . for: . . . (b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license." ²

9. In prohibiting Appellant from the industry, the Department also relies on RCW 19.146.0201(8), which identifies one of the listed behaviors which are "prohibited" by those "licensed or required to be licensed." This provision states it is prohibited to,

". . . Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department."

10. I turn first to RCW 19.146.220(5)(b), which allows prohibition from the industry for "False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license." In reading the provision, because there is no comma after "false statements," it appears that the false statements referred to must be of "material information," as are

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RCW 19.146.220 also allows for a loan originator to be prohibited from participation in the affairs of a licensed mortgage broker for violation of various other provisions of 19.146 RCW which are not at issue here.

the omissions referenced. This is the most logical interpretation of this provision because there is no apparent rational basis for differentiating false statements from omissions of relevant information, given the purpose of the law, which is to preserve public confidence by ensuring honesty and fair dealing in the lending and real estate communities. RCW 19.146.005 (January, 2007).

11. The false or incorrect information provided by Appellant here *was* material to the Department's approval or denial of his license, as there is a seven year period wherein the Department *must* deny licenses for felony convictions, and the starting date to measure that seven years is the date of the conviction in relation to the date the application is submitted.

12. Thus, because Appellant provided false information on a material point, the Department asserts that the law allows for his prohibition from the industry under RCW 19.146.220(b)(5).

13. Appellant argues that the cited provision is inapplicable to a party who is not yet licensed but who is seeking a first license, because the law says the prohibition is applied when the information, if known, *would* have allowed the Director to deny the application for the *original* license. That argument is logical, but the statute makes clear that it applies to persons *subject to licensing*, as well as those already licensed. RCW 19.146.220(5)(b).

14. Nonetheless, the plain words of the provision do not make sense when applied to first-time applicants. Here, the false information *was known* to the Department and *did allow* the Department to deny the license prior to any detrimental reliance on the incorrect conviction date provided by Appellant. The use of the words "original license" in the law must mean something, and seem to clearly indicate a license already issued, in the past: the "original license." Use of the words "would have allowed" also indicate a past tense is contemplated, and are not compatible with an interpretation that the provision applies to a discovery of falsity in an application *currently* under scrutiny, in the first instance.

15. Thus, I conclude that RCW 19.146.220(5)(b) is intended to allow a prohibition of working in the industry when false information is belatedly discovered by the Department that would have led it to deny the license already issued to a licensee, had the Department only known of that information when it was in the issuing process for the "original license."

16. Accordingly, as a matter of law, the Department is not entitled to a summary judgment in its favor on the issue of Appellant's prohibition from working in the industry based on RCW 19.146.220(5)(b).

17. I now turn to the second provision under which the Department prohibited Appellant from working in the industry, RCW 19.146.0201(8). This prohibition derives from RCW 19.146.220(5)(a), which states that violation of RCW 19.146.0201(1) through (9) constitutes authority for the prohibition from the industry.

18. RCW 19.146.0201(8) describes as activity prohibited, "Negligently make any false statement or knowingly and willingly make any omission of material fact in . . . connection with any investigation conducted by the department." Here, the false statement was made in "connection with an investigation" by the Department. The provision seems to prohibit negligently made false statements of material fact, while requiring that omissions of material fact must be made "knowingly and willingly." Why a false statement of material fact should be treated differently than an omission of such material fact is not readily apparent.

19. Nonetheless, whether the logic appears or not, the statute is not ambiguous, and does not allow for any "interpretation." The rule of statutory construction is clear: "In judicial interpretation of statutes, the first rule is the 'court should assume that the Legislature means exactly what it says. Plain words do not require construction.'" *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995).

20. Thus, knowing or willing falsity by Appellant is not required. The issue is whether Appellant "negligently" made a false statement of material fact. "False" is not defined in the statute, so the common meaning is to be used. *State ex rel. Graham v. Northshore Sch. Dist. No. 417*, 99 Wn.2d 232, 244, 662 P.2d 38 (1983). Resort to a dictionary to ascertain that definition is permissible. *Delagrave v. Employment Security Dep't.*, 127 Wn.App. 596, 612 (Wa. Ct. Apps. 1995).

21. The dictionary's primary definition of "false" is: "not true; in error; incorrect; mistaken," and does not necessarily include any mal intent. (Webster's New World Dictionary, 2nd College Ed., 1984). Thus, the most commonly used definition of "false" is merely "wrong." There is no indication in RCW 19.146.0201(8) that the false statement must be made with bad intent, or intent to deceive. For whatever reason, the Legislature intended to indicate that ordinary negligence in providing material information to the Department in an investigation would be prohibited and would allow for the Department to ban the person making the false statement from working in the industry.

22. Thus, I next turn to whether Appellant negligently provided a false statement. The statement (conviction date) was "false" because wrong, incorrect, or mistaken. The common definition of "negligent" is not acting with the degree of care with which an ordinary, reasonable person would act under the circumstances. Here, Appellant was filling out a form for a license which would determine whether he would be allowed to

work in his chosen field. One could scarcely find a more important document. Ordinary, reasonable persons, in filling out such an application, would take great care.

23. However, given that the Department informs the applicants that they must also, concurrent with that application, sign a comprehensive release so that the Department can conduct its own investigation of the applicant's background, it is safe to say that ordinary persons, taking a high level of due care, would not feel the need to be as precise in their answers on the application as they would if they knew the Department would rely on the answers as the final word. Here, Appellant's error was to his "benefit" only if the Department were to take the information at face value, which it would not reasonably do, and which applicants are informed the Department will not do.

24. Thus, given the circumstances described, I cannot conclude that Appellant's false answer was "negligently" given. Under the circumstances, an ordinary, reasonable person would likely estimate the date of the conviction or charges and rely on the Department to ensure the precise date. If the Department wants to hold the applicants to a higher standard, it can include in the instructions to the application wording to ensure that the applicants understand they must provide the exact, precise dates for their convictions, and that they may not rely on the Department to find the dates during its investigation. Better, the Department could require that an official copy of the conviction (Judgment and Sentence) be provided by the applicant with the application whenever a conviction has occurred.

25. As a matter of law, given the facts presented, which must be viewed in the light most favorable to the Appellant (the non-moving party), the Department cannot prohibit Appellant from participating in the conduct of the affairs of a mortgage broker under RCW 19.146.0201(8) and/or RCW 19.146.220(5)(b) or (a). The Department is not entitled to summary judgment on the issue whether it can prohibit Appellant from working in the industry.

THEREFORE IT IS HEREBY ORDERED:

The Department's motion for summary judgment on the issue of Appellant's license denial for seven years from date of felony conviction is **GRANTED**.

The Department's motion for summary judgment on the issue of prohibiting Appellant from participation in the affairs of a mortgage broker for five years, to 2012, under RCW 19.46.220(5)(a) or (b) and/or RCW 19.46.0201(8), is **DENIED**. As a matter of law, Appellant may not be prohibited from participating in the affairs of a licensed mortgage broker based on the facts presented and the applicable law.

As this Order fully disposes of the issues presented for hearing, no further hearing date will be set in this matter.

Dated and Issued on September 18, 2007 at Olympia, Washington.


Cindy L. Burdue.

Administrative Law Judge

PO Box 9046

Olympia WA 98504-9046

(360) 753-7328/800-843-7712

Fax: (360) 586-6562

FURTHER APPEAL RIGHTS

Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a *Petition for Review* of this *Initial Decision and Order*.

Any *Petition for Review* shall be filed with the Director of the Department of Financial Institutions within **twenty (20) days** of the date of service of the *Initial Order*. This Order is served on the date of Mailing, September 18, 2007. Therefore, **the deadline to file a *Petition for Review* is October 8, 2007.**

ADDRESS FOR FILING PETITION FOR REVIEW:

Mr. Scott Jarvis, Director
Dept. of Financial Institutions
P.O. Box 41200
Olympia, WA 98504-1200

Copies of any such *Petition for Review* must be served upon all other parties or their representatives at the time the *Petition* is filed with the Director. *Petitions for Review* shall specify the portions of the *Initial Decision and Order* to which exception is taken and shall refer to the evidence of record which is relied upon to support the *Petition*.


Any party may file a reply to a *Petition for Review*. Replies must be filed with the Director within ten (10) days of the date of service of the *Petition* and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed with the Director.

After the time for filing a *Petition for Review* has elapsed, the Director of the Department of Financial Institutions will issue a *Final Decision and Order*. In accordance with RCW 34.05.470 and WAC 10-08-215, any *Petition for Reconsideration* of such *Final Decision and Order* must be filed with the Director of the Department of Financial Institutions

within **ten (10) days** of service of the *Final Decision and Order*. It should be noted that *Petitions for Reconsideration* do not stay the effect of the *Final Decision and Order* pending the outcome of that Petition.

Judicial review of the *Final Decision and Order* is available to a party according to the provisions set out in the Administrative Procedures Act, RCW 34.05.570.

Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. _____ 

Mailed to the following:

Steffan Craig Burris
16818 139th Ave E
Puyallup, WA 98374

John L. Jarrett, Attorney at Law
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Supvr. Invest & Enforcement
Customer Services Div
PO Box 41200
Olympia, WA 98504-1200

cc: Barb Cleveland, Exec. Assist. to Chief,
Office of Administrative Hearings

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

STEFFAN CRAIG BURRIS,

Respondent.

NO. C-07-056-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.310, and based upon the facts available as of the date of this Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (Statement of Charges), the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent Steffan Craig Burris (Respondent Burris) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Platinum Financial Services, a mortgage broker licensed under the Act. The on-line application was received by the Department on or about November 30, 2006.

1.2 Prior Criminal Acts. On August 29, 2000, Respondent Burris was convicted of Embezzlement of Funds by a Bank Employee, a felony pursuant to 18 U.S.C. §656.

1.3 Response to Application Questions. On Respondent Burris's loan originator license application, under the Criminal Disclosure section he stated he had been convicted or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a felony "[i]n October of 1999 in the State of Washington."

¹ RCW 19.146 (Amended 2006; Effective January 1, 2007)

1 Respondent Burris also stated on his application that he had been charged with a felony “[i]n October of 1999 in
2 the State of Washington.” On February 15, 2007, Department personnel performed a routine background check
3 and discovered that on August 29, 2000, Respondent Burris plead guilty to one count of embezzlement of funds
4 by a bank employee classified as a Class B felony by the prosecuting jurisdiction and by the State of
5 Washington. Respondent Campbell was obligated by statute to answer questions on the loan originator
6 application truthfully.

7 **II. GROUNDS FOR ENTRY OF ORDER**

8 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
9 Respondent Burris fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by
10 having been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within
11 seven years of the filing of the present application.

12 **2.2 Requirement to Comply with Chapter or Rules.** Based on the Factual Allegations set forth in
13 Section I above, Respondent Burris is in apparent violation of RCW 19.146.310(f) and WAC 208-660-
14 500(3)(i) for negligently making any false statement or willfully making any omission of material fact in
15 connection with any application or any information filed by a licensee in connection with any application,
16 examination or investigation conducted by the department.

17 **2.3 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
18 forth in Section I above, Respondent Burris fails to meet the requirements of RCW 19.146.310(1)(g) and WAC
19 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the confidence of
20 the community and to warrant a belief that the business will be operated honestly and fairly within the purposes
21 of the Act.

22 **III. AUTHORITY TO IMPOSE SANCTIONS**

23 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the
24 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the
25 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by

1 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application
2 of the denial.

3 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5), the Director may prohibit a
4 loan originator from participation in the conduct of the affairs of a licensed mortgage broker for any violation of
5 RCW 19.146.0201(1) through (9) or for false statements or omission of material information on the application
6 that, if known, would have allowed for denial of the application for the original license.

7 **IV. NOTICE OF INTENTION TO ENTER ORDER**

8 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
9 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
10 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310.
11 Therefore, it is the Directors designee's intention to ORDER that:

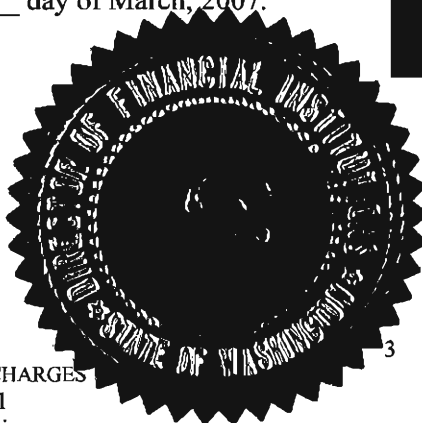
12 **4.1** Respondent Steffan Craig Burris's application for a loan originator license be denied.

13 **4.2** Respondent Steffan Craig Burris be prohibited from participation in the conduct of the affairs of a licensed
14 mortgage broker until August 30, 2012.

15 **V. AUTHORITY AND PROCEDURE**

16 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221,
17 RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The
18 Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the
19 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
20 Statement of Charges.

21 Dated this 21st day of March, 2007.



22 [Redacted Signature]
23 DEBORAH BORTNER
24 Director
25 Division of Consumer Services
Department of Financial Institutions

STATEMENT OF CHARGES
C-07-056-07-SC01
Steffan Craig Burris

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
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1 Presented by:

2 [REDACTED]
3 FATIMA BATIE

4 Financial Legal Examiner Supervisor

5 Approved by:

6 [REDACTED]
7 JAMES R. BRUSSELBACK

8 Enforcement Chief
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STATEMENT OF CHARGES
C-07-056-07-SC01
Steffan Craig Burris