

RECEIVED

08 MAY -1 PM 3:07

ARKANSAS SECURITIES DEPT.

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. C-08-012

IN THE MATTER OF:

**ORDER NO.
C-08-012-08-FO01**

**GUARDIAN FINANCIAL
MORTGAGE CORP., LICENSE NO. 40432;
AND;
WESLEY S. SNODGRASS,
LOAN OFFICER LICENSE NO. 15741**

RESPONDENTS

**ORDER REVOKING LICENSES OF GUARDIAN
FINANCIAL MORTGAGE CORP., AND WESLEY S. SNODGRASS AND
ORDER TO CEASE AND DESIST**

On February 4, 2008, the Staff of the Arkansas Securities Department (Staff) filed its Request for Revocation of Licenses and for Temporary Suspension of Licenses Pending Hearing (Request). In its Request, the Staff alleged that Guardian Financial Mortgage Corp. ("Guardian") and Wesley S. Snodgrass ("Snodgrass") willfully submitted applications for licenses to the Arkansas Securities Commissioner ("Commissioner") containing statements that were false with respect to a material fact and that the licenses should be revoked pursuant to Ark. Code Ann., §§ 23-39-514(a)(1) and (a)(2)(A) and (a)(2)(C). In its Request, the Staff sought the revocation of Guardian's mortgage broker license, and the revocation of Snodgrass's Loan Officer license, and the temporary suspension of such licenses pending a hearing on the Request. The Commissioner granted the Staff's request for a temporary suspension of licenses, and entered an Order Suspending Licenses of Guardian Financial Mortgage Corp., and Wesley S. Snodgrass on February 4, 2008 (Suspension Order).

The hearing on the Staff's Request was held on April 28, 2008, pursuant to the Arkansas Fair Mortgage Lending Act, Ark. Code Ann. §§ 23-39-501 through 23-39-518 (FMLA), and the Arkansas Administrative Procedure Act, Ark. Code Ann. §§25-15-201 through 25-15-218 (APA). Appearing for the Staff was Mike Spades, Jr. The Respondents did not appear. Upon consideration of the pleadings, exhibits, and the testimony of the witness, the Commissioner finds:

FINDINGS OF FACT

1. Guardian is licensed with the Arkansas Securities Department (Department) to conduct business as a mortgage broker. Guardian Mortgage was granted its license on August 10, 2007. According to its filings with the Department, Guardian's business address is 3832 Central Avenue, Suite A, in Hot Springs, Arkansas.

2. Snodgrass is the owner and president of Guardian. Snodgrass has been licensed with the Department as a loan officer for Guardian since August 10, 2007.

3. On February 4, 2008, the Staff submitted its Request stating that that it had recently received evidence that Guardian and Snodgrass had submitted false and misleading material information to the Commissioner concerning the criminal background of Snodgrass in connection with applications for the issuance of the Guardian's mortgage broker license and Snodgrass's loan officer licenses.

4. Based upon the representations made by the Staff, the Commissioner entered the Suspension Order temporarily suspending the licenses of Guardian and Snodgrass pending a hearing on the Staff's Request.

5. On February 5, 2008, the Staff mailed copies of the following documents to Snodgrass at the Guardian business address of record on file with the Department:

- (a) The Staff's Request;
- (b) The Commissioner's Suspension Order; and
- (c) The Commissioner's Notice of Hearing on the Staff's Request.

This mailing was subsequently returned to the Staff by the United States Postal Service, marked, "MOVED LEFT NO FORWARDING ADDRESS, UNABLE TO FORWARD, RETURN TO SENDER".

6. On February 22, 2008, the Staff mailed copies of the documents referenced in ¶ 5 of this Order to Snodgrass at his residence address of record on file with the Department. On March 31, 2008, this mailing was returned by the United States Postal Service to the Staff, marked, "NO SUCH NUMBER".

7. On March 10, 2008, the Staff requested a continuance of the hearing in this matter so that an attempt could be made to achieve personal service of the documents referenced in ¶ 5 above on Snodgrass. The request was granted, and the Commissioner entered an Amended Notice of Hearing scheduling this matter for April 28, 2008 (Notice of Hearing).

8. On March 26, 2008, at 1:05 p.m., Deputy Sheriff Jeff Wood of the Johnson County Sheriff's office served a copy of the Amended Notice of Hearing and the documents referenced in ¶ 5 above upon Cynthia Snodgrass at 225 Elberta Street in Lamar, Arkansas. The Deputy Sheriff's declaration and comment reads: "*Wesley Snodgrass is currently living with his mother Cynthia Snodgrass @ 225 Elberta Street, Lamar, Arkansas 72846*". The declaration was signed by "Deputy Jeff Wood JC-10" and "Cynthia Y. Snodgrass."

9. At the April 28, 2008, hearing, the Staff presented substantial evidence to support a finding that the following events occurred:

- (a) On November 28, 2000, Snodgrass entered a guilty plea to a one-count Information filed in the United States District Court for the Eastern District of Arkansas charging him with knowingly, and with the intent to defraud, using unauthorized access devices to obtain goods and services with a value aggregating more than \$1000 in violation of 18 U.S.C. § 1029(a)(2). The guilty plea was entered pursuant to a plea agreement between Snodgrass and the U.S. Attorney's office. The plea agreement contained a stipulation that Snodgrass's conduct had caused a loss of between \$20,000 and \$40,000.
- (b) On March 2, 2002, the Honorable William R. Wilson, U.S. District Judge, sentenced Snodgrass to a period of three months imprisonment in the custody of the U.S. Bureau of Prisons, with a recommendation that the sentence be served in a community confinement center. The offense for which Snodgrass plead guilty and was sentenced is punishable by a term of imprisonment of not more than ten years. 18 U.S.C. § 1029(c)(1)(A)(i).
- (c) On or about July 16, 2007, Guardian Mortgage submitted an application to the Department seeking to acquire a license as a mortgage broker as required by Ark. Code Ann. § 23-39-505(a)(1). The application was signed by Snodgrass in the presence of a notary public on July 13, 2007. The application requires disclosure of certain background information, including any conviction of a crime punishable by one or more years of

imprisonment. In completing this application, Guardian, through Snodgrass, failed to disclose the felony conviction.

- (d) In addition to the mortgage broker application, Snodgrass submitted an application individually for approval to act as a Loan Officer for Guardian pursuant to Ark. Code Ann. § 23-39-505(a)(1). Snodgrass signed the Loan Officer application in the presence of a notary public on July 13, 2007. The Loan Officer application also requires disclosure of certain background information, including any conviction of a crime punishable by one or more years of imprisonment. In completing this application, Snodgrass failed to disclose his felony conviction.
- e) The Staff presented evidence that prior to obtaining the licenses that Guardian and Snodgrass currently hold, Snodgrass had submitted false statements to the Department in connection with other company applications. Between January 21, 2003, and May 5, 2006, Snodgrass had been the owner and managing principal of another mortgage loan company incorporated as TBS Investments, Inc., d/b/a American Residential Mortgage located in Cabot, Arkansas. In two applications submitted to the Department and signed by Snodgrass on April 28, 2005, Snodgrass failed to disclose his felony conviction. Similarly, on October 27, 2006, Snodgrass submitted an application to the Securities Department for authorization to act as a loan officer for American Residential Mortgage, d/b/a Village Mortgage in Hot Springs. Mr. Snodgrass failed to disclose his felony conviction in this application as well.

CONCLUSIONS OF LAW

10. The FMLA requires that each mortgage broker maintain a principal place of business and shall identify the location in which all of the books, records, and files pertaining to mortgage loans to Arkansas borrowers are maintained. Further, mortgage brokers are required to report any change of address of the principal place of business, any branch office, or any location in which the files pertaining to mortgage loan transactions relating to Arkansas borrowers are maintained within thirty days after the change. Ark. Code Ann. § 23-39-509.

11. According to Guardian's and Snodgrass's filings with the Department, their place of business is 3832 Central Avenue, Suite A, in Hot Springs, Arkansas. Neither Guardian nor Snodgrass have reported any change of address to the Department as required by Ark. Code Ann. § 23-39-509.

12. Service of an order or notice of hearing under the FMLA is accomplished by sending notice of the order by first class mail, postage prepaid, to the licensee's address on file with the Commissioner or the last known address. *See, e.g.*, Ark. Code Ann., §§ 23-39-514(c)(3); Ark. Code Ann. § 23-39-514(d)(2)(b) This method of service is in accord with an earlier determination by the Supreme Court of Arkansas. "Service of an order of an administrative agency can be by mail. There is no requirement that such service comply with the law regarding service of a summons." Arkansas Contractors Licensing Board v. F & F Concrete Products, Inc., 297 Ark. 508, 763 S.W.2d 86 (1989). Although service of an administrative order by mail is sufficient, the APA does permit personal service of a decision or order. "Parties shall be served either personally or by mail with a copy of any decision or order". Ark. Code Ann., § 25-15-210(c). Although

the Supreme Court, as noted above, does not require compliance with the law regarding service of a summons in the present matter, it is noted that such service is considered adequate upon an individual in a civil court proceeding when a sheriff or sheriff's deputy in the county where service is to be made leaves a copy of the summons and complaint with a person who is at least fourteen years of age residing therein at the dwelling or usual place of abode of the individual to be served. ARK. R. CIV. P. 4(c)(1), 4(d)(1).

13. The Staff's Request, the Suspension Order, and the Notice of Hearing were properly served upon Guardian and Snodgrass.

14. The FMLA requires all persons acting as a mortgage broker or as a loan officer to obtain a license from the Commissioner. Ark. Code Ann. § 23-39-503(a). To obtain a license, an application must be submitted to the Commissioner. Ark. Code Ann., § 23-39-505(a)(1). The application shall include disclosure of any felony convictions. Ark. Code Ann., § 23-39-505(a)(3)(D)(ii)(c).

15. It is unlawful for any person to make a false or misleading statement in a document filed with the Commissioner. Ark. Code Ann., § 23-39-516(a).

16. The Commissioner may by order revoke a license of a licensee if the Commissioner finds that the order is in the public interest, and; that the person has filed an application that was materially false or misleading at the time it was made, or; that the applicant has been convicted of a felony. Ark. Code Ann. §§ 23-39-514(a)(1) and (a)(2)(A), and (a)(2)(C)(i).

17. Snodgrass was found guilty of a felony that was financial in nature which was punishable by more than one year of imprisonment.

18. Snodgrass failed to disclose the conviction when he completed applications for licenses with the Department on behalf of himself, Guardian, and others. His failures to disclose the conviction rendered the applications materially false and misleading at the time the applications were submitted to the Department.

19. The offense for which Snodgrass was convicted was financial in nature, and rendered him ineligible for the issuance of the licenses sought.

20. The revocation of Guardian's mortgage broker license and the revocation of Snodgrass's loan officer license is in the public interest.

21. Upon finding that any action of a person violates the FMLA, the Commissioner may summarily order the person to cease and desist from the prohibited action. Ark. Code Ann. § 23-59-514(d).

22. When a mortgage broker ceases to do business in Arkansas, it shall provide the Commissioner with the address where all records pertaining to loans made or serviced in Arkansas will be maintained. Ark. Code Ann. § 23-39-509.

ORDER

IT IS ORDERED that the licenses of Guardian Financial Mortgage Corp., Mortgage Broker License No. 40432, and of Wesley S. Snodgrass, Loan Officer License No. 15741, are hereby revoked along with all rights and privileges associated therewith.

IT IS ORDERED that Guardian and Snodgrass are henceforth ordered to cease and desist from further violations of the Arkansas Fair Mortgage Lending Act. Guardian and Snodgrass may contest this cease and desist order by filing with the Commissioner a request for hearing within thirty days from the date this Order is sent to Guardian and Snodgrass in accordance with Ark. Code Ann. § 23-39-514(d)(2)(B).

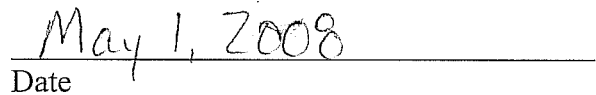
IT IS ORDERED that within thirty days of this Order, Guardian shall notify the Commissioner of the location where all records pertaining to loans made or serviced in Arkansas shall be located.

Guardian and Snodgrass are admonished that further violations of this Order may result in the Staff seeking civil penalties as provided by Ark. Code Ann § 23-39-514(d)(3), or the Commissioner may petition the appropriate court for relief as provided by Ark. Code Ann. § 23-39-514(l).

Guardian and Snodgrass may seek a review of this Order by filing a petition in the Pulaski County Circuit Court within sixty days after the entry of the Order. Ark. Code Ann. § 23-39-515.



A. Heath Abshure
Arkansas Securities Commissioner



Date

Order Prepared by:
Mike Spades, Jr., Staff Attorney
Arkansas Securities Department