

DAVID V. NIELSEN
ATTORNEY AT LAW
2537 W. State St, Suite 220
Post Office Box 1192
Boise, Idaho 83701

**LEGAL
EXPERIENCE**

David V. Nielsen, Attorney at law, Boise, Idaho (October 2002- present)

Bowen & Bailey, Boise, Idaho (October 1999-September 2002)

Evans Keane LLP, Boise, Idaho (January 1997-September 1999)

Quane, Smith, Howard & Hall, Boise, Idaho (October 1989-December 1996)

Idaho Court of Appeals (September 1987 to September 1989)
Law Clerk for Roger Swanstrom, Judge

Idaho Supreme Court (February 1987 to July 1987)
Law Clerk for Stephen Bistline, Justice

**PRACTICE
EMPHASIS**

Civil litigation, Workman's Compensation, Commercial Transactions,
Entity Formation, Estate Planning/Probate.

Hearing Officer- Idaho Department of Insurance 2010 to present;
- Idaho Department of Finance 2017 to present.

Member Idaho and Oregon State Bar Associations.

Admitted to Practice before the United States Supreme Court, Ninth
Circuit, Federal District and State Courts of Idaho and Oregon.

EDUCATION

University of Idaho College of Law
Moscow, Idaho
Juris Doctor (1986)

Michigan State University
East Lansing, Michigan
B.A. in Philosophy (1983)

DAVID V. NIELSEN
ATTORNEY AT LAW
P.O. Box 1192
BOISE, IDAHO 83701
TELEPHONE: (208) 336-5525
FACSIMILE: (208) 336-8848

March 19, 2020

Attn: Paula Wilson

References:

Robert W. Talbo
Attorney
P. O. Box 856
Boise, ID 83701
208-901-8669

Paul Augustine
Augustine Law Offices, PLLC
P.O. Box 1521
Boise, ID 83701
208-367-9400



March 19, 2020

To Whom It May Concern:

It is my privilege to recommend David Nielsen for the position as hearing officer for the Idaho Department of Environmental Quality.

It has been my pleasure to be associated with David, both professionally and personally, for over 25 years. David and I have worked together in both a large insurance defense law firm and in a smaller general practice setting. He is a wonderful colleague and very conscientious about his work as an advocate. David is always been well prepared for the task at hand, whether it be a deposition, hearing or trial. He is very detailed oriented, has exceptional writing skills, and is capable of identifying nuances of the law overlooked by others. These attributes make him well suited for the role as a hearing officer.

Due to his extensive experience as an attorney and current role as an administrative hearing officer with other agencies, David is clearly qualified to review, interpret, and adhere to your agency's laws, policies, and procedures and to conduct fair and efficient administrative hearings and drafted concise and well-reasoned decisions.

I highly recommend David to the IDEQ. I believe he will exceed your expectations should you choose to offer him the position. I would be happy to speak with you further regarding his qualifications or answer any questions you may have. Please feel free to contact me.

Very truly yours,


Michael E. Kelly
mek@ktslawoffice.com

MEK/ts

COPY

DAVID V. NIELSEN, ISB NO. 3607
P. O. Box 1192
Boise, Idaho 83701
Telephone: (208) 336-5525
Facsimile: (208) 336-8848

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO

In re Mortgage Loan Originator
License Application of:

BRENT PETERSON,
NMLS ID No. 156879,

Applicant

Docket No. 2019-16-04

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND PRELIMINARY ORDER**

This matter came before the hearing officer on an evidentiary hearing on April 24, 2019, at 9:00 a.m.. Brian Nicholas, Deputy Attorney General appeared on behalf of the Department of Finance. Brent Peterson appeared representing himself. Mr. Peterson by agreement of the parties appeared telephonically.

FINDINGS OF FACT

1. Mr. Peterson filed a 2018 application for a Mortgage Loan Originator License (Form MU4) with the Department of Finance (hereinafter the Department). Exhibit 1; Hearing Transcript Pg 9, Lines 10-13; Pg 10, Ln 2-6. (hereinafter Hrg Tr Pg/Ln).
2. In Section 6 of the application the applicant is to provide responses to a series of questions regarding the applicant's background and current status. These questions concern the applicant's financial status, history, criminal record and litigation activity. Exhibit 1.

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER

3. The Department as part of the application process and review of an applicant conducted a background investigation and review of public records concerning Mr. Peterson. Hrg Tr Pg 11, Ln 23-25; Pg 12, Ln 1-5.
4. This check revealed the existence of outstanding tax liens filed against Mr. Peterson. Exhibit 2; Hrg Tr Pg 12, Ln 8-17; Pg 13, Ln 14-23.
5. Follow up contact with the Utah State Tax Commission confirmed the filing of two tax liens and their status as current and unsatisfied. Exhibits 3 and 4; Hrg Tr Pg 14, Ln 1-25; Pg 15, Ln 1-25.
6. The Department in the investigation also obtained copies of the filing record for these liens and corresponding judgments with the Third District Court for the State of Utah. Exhibits 5 and 6; Hrg Tr Pg 16, Ln 11-24; Pg 17, Ln 9-16.
7. In the license application Disclosure question (D) asks: “Do you have any unsatisfied judgments or liens against you?” Exhibit 1; Hrg Tr Pg 11, Ln 17-20.
8. On his application, Mr. Peterson in response to Disclosure question (D), answered “No”. Exhibit 1; Hrg Tr Pg 11, Ln 18-22.
9. Mr. Peterson had received notification of the filing of the tax liens. Hrg Tr Pg 23, Ln 14-17.
10. The liens remained outstanding as of the time of the application and hearing in this matter. Hrg Tr Pg 24, Ln 18-25.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code §26-31-306(1)(d) the Director shall not issue a mortgage loan originator license unless the Director first makes, among other requirements, a finding that the applicant has demonstrated:

financial responsibility, character and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this part.

2. As found in the language of Idaho Code §26-31-313(b), the Director may decline to issue a license when an applicant withholds information or makes a material misstatement of fact in an application. Idaho Code §26-31-313(b).

3. Further:

A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following: (i) A current outstanding judgment, except a judgment issued solely as a result of medical expenses (ii) A current outstanding tax lien or other government lien or filing; (iii) A foreclosure within the past three (3) years; or (iv) A pattern of delinquent accounts within the past three (3) years.

Idaho Code §26-31-306(1)(d).

4. The information requested in the application disclosure section generates data pertinent to the applicant's financial responsibility, character and fitness for licensing.

5. The Department asserts that the existence of the liens and judgments, and the failure to disclose, represent withholding information and a material misstatement on an application. The Department also focuses upon the Notices (Exhibits 3 and 4) sent to Mr. Peterson to establish his awareness of the information concerning the liens.

6. Mr. Peterson at the hearing claimed that he was unaware of the lien status when he filed his application. He did, however, acknowledge that he had received the Notices from the State of Utah regarding the outstanding amounts due, but claims he was not

aware that the debts had become formal liens or judgments.

6. This dispute raises the issue as to the necessity of establishing a showing of intent or knowledge on the part of an applicant in order for the Department to find that an applicant withheld information or made a material misstatement. That is, whether mere inadvertence will suffice, or is showing of scienter or knowledge necessary. See, e.g. *Brown v. Iowa Beef Processors*, 107 Idaho 558, 691 P. 2d 1173 (Idaho 1984); *Wroble v. Bonners Ferry Ranger Station*, 97 Idaho 900, 556 P. 2d 859 (Idaho 1976).

7. This evidence in this matter, does not, however, illustrate a situation where a claimed lack of understanding or ignorance of the true nature of a pending claim somehow equates with an inadvertent omission or insufficient knowledge to accurately fill out the required disclosure information requested in the Mortgage Loan Originator License application (Form MU4).

8. It is noteworthy that the notices sent to Mr. Peterson (Exhibits 3 and 4) contain language which reads “Intent to Lien” rather than simply “Lien” or similarly “Statement of Lien” or the equivalent. They were nonetheless, sent to Mr. Peterson in July and September of 2018 and clearly indicate the consequence of the failure to pay the outstanding obligations by a date certain, namely the filing of a lien.

9. Further, the Court records (Exhibits 5 and 6) indicate that liens were filed and entered as judgments in September of 2018. This is several months before the subject application made by Mr. Peterson in December of 2018. Mr. Peterson had knowledge of the outstanding obligations and was aware that the State of Utah would pursue a claim and file a lien in the event of a failure to pay. This knowledge was present well before the application for the License was submitted.

10. To assert that the precise nature of the status of the debt, whether formalized as a lien or not, was unknown at the time of the application, is not sufficient to constitute mere inadvertence or lack of knowledge without intent. Instead it illustrates an indifference to a known potential consequence, one stated in an official notice received from the Utah State Tax Commission. Mr. Peterson may have subsequently ignored the notice and the corresponding result, but this itself was not shown to be accidental or without intent.

11. When later asked in the application of the existence of liens or judgments, Mr. Peterson cannot claim ignorance of their exact status as a defense for the lack of accuracy in the responses provided to the disclosure questions. He himself failed to follow up and ascertain the outcome of the notices. Inaction on his part does not constitute a defense to the claim that he omitted and misstated information. At a minimum, in order to answer the question on the application in a truthful and complete manner, he should have ascertained the status of his tax obligations in light of the previous notices he received. Failing to make inquiry and claiming lack of knowledge as a result of that failure, does not satisfy the disclosure requirements. Not in the circumstances of this matter.

12. The filing of the liens is pertinent to the determination by the Department of the character and the fitness of an applicant. An applicant is under a duty to answer questions in a diligent and accurate manner to the best of their knowledge. Inadvertence or unintentional omission may be a sufficient excuse under different facts. Here though, the timeline of events and facts regarding the notification by the State of Utah do not support a conclusion that the omission or misstatement was excusable.

13. The failure to accurately disclose this information constitutes an omission and

misstatement which is material to the necessary information gathered by the Department in consideration of the applicant's qualifications. Not only does this concern character and fitness but also impacts the question of financial responsibility under Idaho Code §26-31-306(1)(d).

14. The evidence establishes that the Director can conclude that Mr. Peterson withheld information and made a material misstatement of fact in his application and the existence of an outstanding lien. This provides grounds to the Director to deny the application pursuant to Idaho Code §26-31-306(1)(h) and (1)(d).

PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Department's Notice of Intent to Issue Order of Denial of Mortgage Loan Originator License Application of Mr. Peterson dated February 20, 2019, should be AFFIRMED.

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Finance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Finance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Finance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Finance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Finance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Finance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Finance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this

case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 10~~th~~ day of May, 2019.

By: David V. Nielsen
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May 2019, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

Brian D. Nicholas Deputy Attorney General State of Idaho Department of Finance P.O. Box 83720 Boise, Idaho 83720-0031	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Brent Peterson 13276 S Wilburton Dr. Draper, UT 84020	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile



David V. Nielsen