

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

MARLENE CARIDE, COMMISSIONER)	
NEW JERSEY DEPARTMENT OF BANKING)	
AND INSURANCE,)	ORDER DISMISSING APPEAL
)	
Petitioner,)	
)	OAL DKT. NO.: 02283-20
v.)	
)	AGENCY DKT. NO.: 19-020055
MBA MORTGAGE SERVICES, INC.)	
)	
Respondent.)	

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”), pursuant to the authority of N.J.S.A. 52:14B-1 to -31, N.J.S.A. 17:1-15, the New Jersey Residential Mortgage Lending Act, N.J.A.C. 17:11C-51 to -89, and all powers expressed or implied therein, for the purpose of reviewing the December 24, 2020 Initial Decision (“Initial Decision”) of Administrative Law Judge Kathleen M. Calemmo (“ALJ”). In the Initial Decision, the ALJ granted the Department of Banking and Insurance’s (“Department”) Motion to Dismiss the Appeal and concluded that the June 7, 2019 Notice of Violation and Conditional Order No. AR19-N010134 (“Order No. AR19-N010134”) issued by the Department should become effective as a final agency decision.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This is an appeal by MBA Mortgage Services Inc.’s (“MBA Mortgage”), a residential mortgage lender licensed by the Department, of Order No. AR19-N010134. Order No. AR19-N010134, issued on June 7, 2019, alleged that MBA Mortgage failed to file its 2018 Annual Report pursuant to N.J.A.C. 3:1-7.6(a). Initial Decision at 2.

Order No. AR19-N010134 ordered that:

1. Pursuant to N.J.A.C. 3:1-7.8(c) and (d), the license issued to MBA MORTGAGE SERVICES INC. shall be suspended, effective 30 days following the date of this Order, until such time as the 2018 annual report is filed and the \$2,000 administrative fine has been paid for, or, if the report is not filed and the fine is not paid, until such time as the term of the licensee’s license as a residential mortgage lender expired; and

2. Upon suspension, any pending license renewal application shall be stayed and not granted by the Department until such time as the annual report filing violation is cured, the full penalty has been paid, and the license has been reinstated by the Department;

...

On or about July 12, 2019, Michael P. Betley (“Betley”), President of MBA Mortgage, requested a hearing on Order No. AR19-N010134.¹ Ibid. The appeal was transmitted to the Office of Administrative Law (“OAL”) where it was filed on February 13, 2020, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Ibid.

After the request was granted and the matter transmitted to the OAL, MBA Mortgage failed to appear at three scheduled pre-hearing conference calls, scheduled for March 31, 2020, May 6, 2020, and June 17, 2020. Initial Decision at 3. MBA Mortgage’s mailing address and the email address for Betley were confirmed by the ALJ’s assistant on June 22, 2020. Ibid. Moreover, Deputy Attorney General Garen Gazaryan received a confirmation from Betley of his receipt of the notice for the May 6, 2020 scheduled conference call. Ibid. All correspondence directed to MBA Mortgage were ignored and unanswered. Initial Decision at 3.

After scheduling the matter for a preemptory hearing on October 7, 2020, the ALJ permitted the Department to file a dispositive motion including a motion to dismiss and implement Order No. AR19-N010134, which was filed on September 24, 2020. Ibid. According to the Certification of Service, MBA Mortgage was served by regular and certified mail on September 23, 2020, at its business address. Ibid. On September 23, 2020, MBA Mortgage was also served by email to Betley’s email address. Ibid.

¹ Betley’s letter requesting a hearing is dated July 1, 2019, but it was received on July 12, 2019.

After allowing appropriate time for a response but receiving no communication or submission from MBA Mortgage, the ALJ closed the record on October 20, 2020. Initial Decision at 2.

On December 24, 2020, the ALJ issued the Initial Decision, granting the Department's Motion to Dismiss, dismissing MBA Mortgage's hearing request.

On January 7, 2021, the Department filed a letter proposing no exceptions to the Initial Decision and requesting the Commissioner adopt the Initial Decision in its entirety. MBA Mortgage did not file Exceptions to the Initial Decision.

The record does not indicate whether MBA Mortgage filed its 2018 Annual Report.

LEGAL ANALYSIS

In the Initial Decision, the ALJ noted that courts generally presume receipt of service by ordinary mail on the third business day after mailing. R. 1:6-3(c). The caselaw has established a presumption that mail properly addressed, stamped and posted was received by the party to whom it was addressed. SSI Medical Services, Inc. v. State of New Jersey, Dept. of Human Services, 146 N.J. 614, 621 (1996). Here, the ALJ found that Order No. AR19-N010134 was properly addressed and received as acknowledged by Betley in his request for a hearing. Initial Decision at 4. Further, Betley confirmed his email address and receipt of correspondence from the OAL. Ibid. MBA Mortgage's receipt of the notices sent during the proceedings can be presumed by law under these circumstances.

In the Initial Decision, the ALJ concluded that MBA Mortgage's failure to participate in the OAL proceedings has rendered its appeal meaningless. Initial Decision at 5. Further, the ALJ concluded that as a matter of undisputed fact and law the Order Number AR19-N010134, dated June 7, 2019, shall become effective upon return of this matter to the Department. Ibid.

N.J.A.C. 1:1-14.4(a) states that, “If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).” N.J.A.C. 1:1-3.3(b), states that, “A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case.” Here, all correspondence directed to MBA Mortgage were ignored and unanswered. Initial Decision at 3. Because MBA Mortgage failed to participate in the proceedings of this case, it was appropriate for the ALJ to return this matter to the transmitting agency. The Department has not received any correspondence from MBA Mortgage since the Initial Decision was mailed to the parties on January 8, 2021. It is appropriate that the Order Number AR19-N010134, shall become effective as if no appeal had been filed.

CONCLUSIONS

For the reasons set forth above and based upon the ALJ's findings of fact, together with the lack of opposition by MBA Mortgage, I hereby ADOPT the ALJ's Initial Decision except as modified herein.

THEREFORE, IT IS on this 21 day of May, 2021 ORDERED that the appeal of MBA Mortgage is dismissed and Order Number AR19-N010134, dated June 7, 2019, shall become effective immediately.



Marlene Caride
Commissioner

MM MBA Mortgage Services, Inc. FO/Final Orders-Banking