

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-02419-22
AGENCY DOCKET NO. DOBI: 22-022742

WALTER C. KEYSER	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
SUSAN OCHS,	)	FINAL DECISION AND ORDER
ACTING COMMISSIONER,	)	
NEW JERSEY DEPARTMENT OF	)	
BANKING AND INSURANCE,	)	
	)	
Respondent	)	

This matter comes before the Acting Commissioner of Banking and Insurance (“Commissioner”), pursuant to the authority of N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13, the Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 to -89 (“RMLA”), and all powers expressed or implied therein, for the purpose of reviewing the May 14, 2026 Initial Decision (“Initial Decision”) of Administrative Law Judge Robert D. Herman (“ALJ”). In the Initial Decision, the ALJ granted the Department of Banking and Insurance (“Department”)’s motion for Summary Decision and denied Petitioner Walter C. Keyser (“Keyser”)’s appeal of the denial of his application for a mortgage loan originator (“MLO”) license application on the grounds that he was disqualified from licensure due to a conviction for a crime within seven years of the date of his application for an MLO license pursuant to N.J.S.A. 17:11C-57(a)(2)(a)(i). In reaching this

conclusion, the ALJ stated that the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§ 5101-5116 (“SAFE Act”) preempts a separate New Jersey law, N.J.S.A. 45:1-21.5, from precluding the use of a criminal conviction to disqualify an individual from obtaining licensure. Initial Decision at 2.

PROCEDURAL HISTORY

On March 22, 2019, Keyser pled guilty to a violation of N.J.S.A. 2C:40-26b, for operating a motor vehicle while his license was suspended due to a second or greater driving while intoxicated conviction. Initial Decision at 2. On August 7, 2020, Keyser applied to the Department for an MLO license. Ibid. On November 2, 2020, the Department denied Keyser’s application. Id. at 2-3. On January 12, 2021, Keyser filed an appeal of the denial. Id. at 3. This matter was then transferred to the Office of Administrative Law (OAL), where it was filed as a contested case. Ibid.

On September 16, 2022, the Department moved for summary decision, asserting that the federal SAFE Act and the New Jersey RMLA precluded the issuance of the MLO license due to Keyser’s March 22, 2019 conviction. Department’s Sept. 16, 2022 Brief, at 4-6. The Department also asserted that Keyser’s conviction was a felony for RMLA purposes, and thus disqualifying, id. at 6-8, and that N.J.S.A. 45:1-21.5 supported denial of his license application, id. at 8-13.¹ On September 20, 2022, Keyser cross-moved for summary decision, alleging violations of N.J.S.A. 2A:168A-1 *et seq.* (Rehabilitated Convicted Offenders Act) and N.J.S.A. 45:1-21.5. Keyser’s Sept. 20, 2022 Brief, at 4-7. In addition, Keyser asserted that his prior conviction was not a

¹ The Department averred that the law bars the Commissioner from using a past conviction to disqualify a person from licensure, “unless the crime has a direct or substantial relationship to the regulated activity or would endanger the public’s health, safety, or welfare.” Id. at 8. The Department’s brief then examined the statute’s four factor test and argued that the factors “establish that the license denial was appropriate ...,” Id. at 13.

“felony,” but rather, a “‘petty’ offense,” Id. at 7-8. On January 23, 2023, Administrative Law Assignment Judge Edward Delanoy, Jr. (“ALAJ Delanoy”) denied both parties’ motions for summary decision, denying the Department’s motion based on considerations of “fairness,” to allow Keyser the opportunity for a hearing on the N.J.S.A. 45:1-21.5(a) factors, and denying Keyser’s motion because there was “no merit to his legal arguments.” Initial Decision at 3 (quoting ALAJ Delanoy’s January 23, 2023 decision).

Thereafter, this matter was transferred to the ALJ for a hearing and determination. Id. at 4. Prior to hearing, the question of federal preemption was raised and the Department was afforded the opportunity to file a second motion for summary decision, based solely on the preemption question, which was filed on August 17, 2023. Ibid. On December 11, 2023, Keyser submitted his opposition brief, and on December 29, 2023, the Department filed its reply brief, which was followed by oral argument. Ibid. While the decision was pending, two state court cases relating to federal preemption were published in 2024; as a result, the parties were allowed to submit additional briefing and following multiple submissions the record was again closed on July 7, 2025. Ibid.

ALJ’S FINDINGS, ANALYSIS, AND CONCLUSIONS

At issue was whether N.J.S.A. 17:11C-57(a)(2)(a)(i)’s seven-year bar from date of criminal conviction applied to Keyser, disqualifying him from obtaining his MLO license for a minimum of seven years from the date of his conviction, or whether N.J.S.A. 45:1-21.5 applied instead, as Keyser averred. Initial Decision at 2. The ALJ concluded that the general language in N.J.S.A. 45:1-21.5 was preempted by the federal SAFE Act. Id. at 17.

The ALJ’s Initial Decision concluded that 12 U.S.C. § 5104(b) of the federal SAFE Act preempts N.J.S.A. 45:1-21.5. Ibid. The Initial Decision further found that the Department’s denial

of Keyser’s application based on his criminal conviction within seven years of his license application should be upheld. Ibid. In granting the Department’s motion for summary decision and denying Keyser’s appeal, the ALJ concluded that the SAFE Act preempted state law both directly and impliedly. The ALJ found direct preemption based on Congress having directly asserted its authority by issuing a clear mandate that the seven-year bar is an “absolute” requirement. Id. at 15. The ALJ also found indirect preemption from both conflict preemption (an actual, non-hypothetical conflict between federal and state law) and field preemption (as the SAFE Act broadly regulates the particular area at issue). Id. at 16-17. The ALJ determined that the SAFE Act’s seven-year bar acts as a minimum standard that state licensing and registration laws must meet, and accordingly, “a conviction for a fourth-degree or higher indictable offense, no matter the punishment imposed, precluded granting an MLO license.” Id. at 10.

In reaching this determination, the ALJ specifically called attention to the preclusive effect on the granting of an MLO license to applicants convicted of “any crime of the fourth degree or higher punishable by a term of imprisonment of more than one year” Ibid. (quoting N.J.S.A. 17:11C-57a(2)). Likewise, the ALJ also distinguished the instant matter from Botteon v. Borough of Highland Park, 478 N.J. Super. 452, App. Div. 2024) and IMO Reilly, OAL Docket No. CSR 08531-23, 2024 N.J. AGEN LEXIS 669 (July 11, 2024), adopted, 2024 N.J. AGEN LEXIS 557 (Aug. 14, 2024). Id. at 16. In each of those cases, which concerned whether the federal Controlled Substances Act (CSA) preempted the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREMMA), the ALJ noted their holdings that the federal and state laws could coexist without sufficient conflict to find preemption. Ibid. The ALJ noted that in Botteon, the Appellate Division “observed the absence of sufficient conflict for preemption where there appears ‘coexistence of the CSA with state laws allowing and regulating the usage of

medical or recreational marijuana.” Ibid. (quoting 478 N.J. Super. at 467-67). Thus, Highland Park was able to amend its municipal ordinances to allow cannabis retailers under CREMMA, as the Appellate Division held that preemption “requires an actual – rather than hypothetical or speculative – conflict between federal and state law.” Ibid. (quoting 478 N.J. Super. at 464). The ALJ then distinguished Botteon and a similar decision, IMO Reilly, noting they “do not demonstrate direct conflict,” and found that for the matter at bar, the “language at issue in the SAFE Act ... could not be more clear-cut ... as to its intent to regulate an entire field.” Ibid. Unlike in Botteon or IMO Reilly, with respect to Keyser, “[d]ue to the straightforward, precise prohibition involving an applicant with a felony conviction within seven years [in the instant matter] as well as the express intent to regulate a particular area, ... uncertainty may not be found.” Id. at 16-17. Accordingly, the ALJ found that the SAFE Act preempted N.J.S.A. 45:1-21.5. Ibid.²

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), the Department filed a one-page letter stating it had no exceptions on May 26, 2026, while Keyser filed a one-page letter of Exceptions on May 27, 2026 (“Keyser Exceptions”). The Department filed a reply to the Keyser Exceptions on June 1, 2026 (“Department Reply”).

Keyser Exceptions

Keyser, in his Exceptions, raised three arguments: 1) the SAFE Act does not preempt New Jersey from applying a “safe harbor” to an applicant “convicted of a minor ‘felony’ which is unrelated to ... mortgage lending”; 2) recent New Jersey case law supports his position; and 3)

² In so doing, there was no discussion regarding a New Jersey “savings clause,” as neither Keyser nor the Department raised such an argument prior to Keyser’s exceptions to the Initial Decision (see next section below).

New Jersey’s “savings clause,” under the circumstances, requires a hearing on Keyser’s rehabilitation.

First, Keyser took exception to the Initial Decision’s conclusion that “the Federal SAFE Act preempts the New Jersey Legislature from adding a safe harbor for those pursuing New Jersey Mortgage Banking licensure when convicted of a minor ‘felony’ which is unrelated to the profession of bank lending for seven years.” Keyser Exceptions.

Keyser took further exception to the ALJ’s reliance upon Botteon v. Borough of Highland Park, 478 N.J. Super. 452, App. Div. 2024) and IMO Reilly, OAL Docket No. CSR 08531-23, 2024 N.J. AGEN LEXIS 669 (July 11, 2024), adopted, 2024 N.J. AGEN LEXIS 557 (Aug. 14, 2024). Keyser’s exception states that these cases “stand for the opposite proposition for Petitioner’s case and support his position.” Keyser Exceptions.

Finally, Keyser argues that “New Jersey’s savings clause should be invoked to compel a hearing regarding rehabilitation by Petitioner as well as other public policy and constitutional rights which Judge Herman’s interpretation of the SAFE Act seems to conflict with.” Keyser Exceptions.

Department Reply

The Department argues that Keyser’s “conclusory” exceptions should be rejected, because they note only “broad disagreements with the Initial Decision but do not explain how the ALJ erred in applying federal preemption principles,” and are inapposite because they fail to explain how Botteon or IMO Reilly “overcome the SAFE Act’s express licensing requirements.” Department Reply. The Department also argues that Keyser fails to identify “the specific ‘savings clause’ on which he relies or explain how that ‘savings clause’ could override a mandatory federal licensing standard.” Ibid.

DETERMINATION AND ORDER

Having reviewed the Initial Decision and the record herein, I hereby ADOPT the ALJ's Initial Decision as my Final Decision except as modified below.

As noted in the Department Reply, Keyser's exceptions are "conclusory," fail to "explain how the ALJ erred in applying federal preemption principles," do not explain how two 2024 cases support Keyser's position, rather than the Department's, and do not explain what New Jersey "savings clause" is at issue, nor how it operates to undermine the ALJ's legal reasoning. Each of Keyser's exceptions are to conclusions of law, and as such, must set forth "supporting reasons," and must include the authorities relied upon. N.J.A.C. 1:1-18.4(b)(3). Keyser's exceptions each lack any citation to authority and fail to provide supporting reasons that could provide some basis for concluding that, for example, Botteon and IMO Reilly buttress Keyser's view that preemption in the instant case is unwarranted, despite the starkly different fact patterns, as noted above in the ALJ's Findings, Analysis, and Conclusions section.

Further, Keyser's reference to a "savings clause" to compel a hearing to reconsider ALJ Herman's finding that federal law preempts a state law regarding licensing is unconvincing. He provides no citation or analysis related to a purported "savings clause."

Having reviewed the Initial Decision, the Keyser Exceptions and Department Reply submitted thereto, and the record herein, I adopt the ALJ's conclusion that the SAFE Act preempts N.J.S.A. 45:1-21.5, both directly and impliedly, and that N.J.S.A. 17:11C-57(a)(2)(a)(i) bans an MLO license application for an individual with a felony conviction within the preceding seven years (unless the conviction involved "an act of fraud, dishonestly, or a breach of trust, or money laundering," which would necessitate a lifetime ban (N.J.S.A. 17:11C-57a.(1)(a)(ii))).

The Initial Decision contains an appendix with a list of exhibits, which included the Department's certification, September 16, 2022 brief, and August 17, 2023 brief. Initial Decision

at 19. Petitioner Keyser's briefs should also have been included in the appendix's list of exhibits (specifically, Keyser's letter briefs dated Sep. 20, 2022, Dec. 11, 2023, and Mar. 21, 2025), as the Initial Decision refers to these briefs in its Procedural History. Id. at 3-4. Further, for the same reason, Department's Certification of Garen Gazaryan dated Aug. 11, 2023, which supported the Department's August 17, 2023 brief, and the Department's letter brief dated Jan. 31, 2025 should also have been included in the list of exhibits. Ibid.

CONCLUSION

Considering the undisputed evidence, I FIND that summary decision was properly granted to the Department for the reasons stated in the Initial Decision. Accordingly, I hereby ADOPT the ALJ's Initial Decision as the Final Decision, except as modified above.

THEREFORE, IT IS on this 29th day of June, 2026 ORDERED that Walter C. Keyser's August 7, 2020 application for a mortgage loan originator license in the State of New Jersey is DENIED.



Susan Ochs
Acting Commissioner

EGZ-Keyser-FO-Modify (Appeal)/Final Orders – Banking