

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-011

APRIL TERM, 2002

	}	APPEALED FROM:
	}	
Eastcoast Home Loans, Inc. and	}	Washington Superior Court
Jim A. Collins	}	
	}	
v.	}	DOCKET NO. 325-6-01 Wncv
	}	
Banking, Insurance, Securities	}	Trial Judge: Alan W. Cheever
and Health Care Authority	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

A mortgage lender, Eastcoast Home Loans, Inc., and its president, Jim Collins, appeal the superior court's decision dismissing as untimely filed their appeal of a cease-and-desist order issued by the Commissioner of the Department of Banking, Insurance, Securities, and Health Care Administration. We affirm.

In February 1999, the Department served a subpoena and a notice of non-renewal upon appellants, indicating that it had asked the Commissioner not to renew their lender's license because they had violated certain provisions of Vermont's licensed lender laws, 8 V.S.A. 2200-2239. In March 1999, the Department filed several administrative charges against appellants. The actions were consolidated, and in February 2001, following a November 2000 hearing, the hearing officer issued proposed findings and conclusions and a proposed decision. After the parties presented oral argument at a hearing in April 2001, the Commissioner adopted the hearing officer's findings, conclusion, and decision. In her May 16, 2001 decision, the Commissioner ordered appellants to "CEASE AND DESIST" from acting as mortgage brokers in Vermont until they could demonstrate full compliance with Vermont's licensed lender laws. Thirty days later, on June 15, 2001, appellants filed a notice of appeal of the Commissioner's decision. The superior court dismissed the appeal as untimely filed, citing 8 V.S.A. 2213, which provides that the Commissioner's "findings and order of suspension, revocation or to cease and desist" must be served on the licensee and may be appealed to the superior court within fifteen days of service.

Here, appellants argue that their appeal of the Commissioner's refusal to renew their license was timely filed under the Administrative Procedure Act (APA). They reason as follows. This case involves the Department's refusal to renew their mortgage lender's license. The provisions of the APA concerning contested cases apply "[w]hen the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing." 3 V.S.A. 814(a). Before the Commissioner suspends, revokes, or refuses to renew a license, or issues a cease-and-desist order, the licensee must be given fifteen days notice and an opportunity to be heard. See 8 V.S.A. 2210(b). Hence, 815 of Title 3 concerning contested cases applies here. Because persons aggrieved by a final decision of the Commissioner have an express right of appeal under 8 V.S.A. 16, review is commenced pursuant to V.R.C.P. 74. See 3 V.S.A. 815(c). Appeals under Rule 74 must be filed "in the manner and within the time provided in Rules 3 and 4 of the Rules of Appellate Procedure." V.R.C.P. 74(b). V.R.A.P. 4 requires that appeals be filed within thirty days. Appellants' appeal was filed within thirty days and thus, appellants conclude, was timely filed.

For the most part, appellants' recitation of the rules is correct. But appellants fail to directly address the principal problem with their analysis - that the specific statute governing appeals from the Commissioner's orders requires such appeals to be filed "within fifteen days of service" of those orders. 8 V.S.A. 2213. This specific statute controls over the general appellate time period set forth in V.R.A.P. 4. See Pearson v. Pearson, 169 Vt. 28, 36 (1999) (in construing conflicting statutes dealing with same subject matter, more specific statute controls over more general one); cf. F.M. Burlington Co. v. Commissioner of Taxes, 134 Vt. 515, 518-19 (1976) (taxpayer's right of appeal is governed by specific tax statute and not general statute or V.R.A.P. 4).

Appellants imply, however, that 2213 does not control because this case involves the Commissioner's refusal to renew their license, and the statute applies only to cease-and-desist orders and orders suspending or revoking licenses. To the extent that appellants make this argument, we find it unpersuasive. In Chapter 73 of Title 8, the Legislature has provided a detailed statutory scheme governing the regulation of licensed lenders. Within that scheme, the Commissioner has been given the authority to deny applications for a lender's license, see 8 V.S.A. 2204(b); to suspend, revoke, or refuse to renew such licenses; and to issue cease-and-desist orders pertaining to the conduct of licensees. See 8 V.S.A. 2210(a). Appellants would have us hold that although the review of orders denying a lender's license is subject to the fifteen-day appeal period set forth in 8 V.S.A. 2205(b), and the review of cease-and-desist orders and orders suspending or revoking a lender's license is subject to the fifteen-day appeal period set forth in 2213, only those orders pertaining to a decision whether to renew a lender's license are governed by the general appeal provisions contained in the APA and V.R.A.P. 4. We decline to do so. The Legislature plainly intended the provisions of Chapter 73 to govern the administration and regulation of lenders' licenses. Thus, we conclude that the fifteen-day review period in 2213 governs orders in proceedings concerning the renewal of licenses.

As a practical matter, the Commissioner's orders in response to an application for license renewal will often be cease-and-desist orders or orders suspending or revoking the license in question. Generally, when a licensee has made timely application for renewal of a license, the license remains in effect until the application is fully determined, and, if denied, until the appeal period has passed. 3 V.S.A. 814(b). It is not surprising that, in response to a renewal request from a licensee charged with violating Department regulations, the Commissioner may well issue a cease-and-desist order or an order suspending or revoking the license. That is the case here, where the order required appellants to cease-and-desist from acting as mortgage lenders until they met with the Department and entered into a stipulation setting forth the terms under which they could continue to hold a license. The order responded not only to appellants' request for license renewal, but also to the various administrative charges brought by the Department as the result of the application for renewal. The cease-and-desist order was not pointless in the context of this case, as appellants contend. Hence, we find no merit to appellants' argument that they were denied their right to due process by the Commissioner's failure to inform them that their application for license renewal had miraculously been transformed into something that could be resolved by a cease-and-desist order not subject to the provisions of the APA.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice