

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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DIVISION OF FINANCIAL
INSTITUTIONS
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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

Dustin J. Montrie

CASE NO. 04-0056-LOR

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JAMES N. TURNER**

Issued August 17, 2005

1. FINDINGS OF FACT

A. BACKGROUND

This matter first came before Hearing Officer Terrence O'Donnell, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (the "O.R.C."). Said hearing was held 3:15 PM on March 7, 2005, at 77 South High Street, Room 1918, Columbus Ohio. Following the hearing it was determined that as result of another client relationship held by the law firm of Bricker & Eckler, with which Mr. O'Donnell is employed as an Associate Attorney, Mr. O'Donnell had been placed in a situation involving a potential conflict of interest. As a result, James N. Turner, Chief Legal Counsel for the Ohio Department of Commerce, an attorney licensed to practice law in Ohio assumed the responsibility to serve as Hearing Officer for the purpose of preparing a Report and Recommendation based on the evidence with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (the "R.C.").

The hearing was held at the request of Respondent Dustin J. Montrie, of Toledo, Ohio (the "Respondent") to consider the Division's Notice of its Intent to Revoke Mr. Montrie's Loan Officer License and Notice of Opportunity for a Hearing (the "NOH"). The NOH alleges that the Respondent failed to complete at least six (6) hours of continuing education on or before March 31, 2003 for the 2002 calendar year and is thereby subject to revocation of his license as a mortgage loan officer. The Division

appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Timothy C. Loughry. Respondent requested a hearing but did not appear. The Respondent did submit a written statement of his position to the Division. (Ex. "C").

At the hearing, State's Exhibits "A" through "E" were admitted into the record (Transcript (the "T"). p. 18).

B. JURSDICTION

The Division issued the NOH to Respondent on April 1, 2004 (Ex. "B"). Respondent timely requested a hearing by documents dated April 20, 2004, that the Division received on April 20, 2004. (Ex. "C"). The Division scheduled a hearing for May 10, 2004 by letter dated May 5, 2004, as required by Chapter 119, O.R.C. (Ex. "C" and "D"). By letter dated February 11, 2005 the Division continued the original date of the hearing March 7, 2005 (Ex. "E"), on which date the hearing went forward notwithstanding that the Respondent failed to appear. (T., pp. 4). During the hearing, the Division did not produce a certificate of delivery of certified mail for the notice of the re-scheduled hearing, instead relying on an inference that delivery had been effected for the letter included as Ex. "E" (T., pp. 16-17).

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. A statutory requirement became effective on May 2, 2002, which mandated that mortgage loan officers become licensed. (Senate Bill 76, 2001). Part of that regulatory scheme is the requirement that each licensee must complete at least six (6) hours of continuing education in a course or program of study approved by the Superintendent of Financial Institutions during each calendar year. See: R.C. Section 1322.052.
2. The Division is the state agency responsible for the licensing and regulation loan of mortgage officers pursuant to O.R.C. Chapter 1322. (Ex. "B")
3. Respondent is an individual who has conducted business in Ohio as a mortgage loan officer, license number 8310 issued December 23, 2002 and expiring on April 30, 2004. (Ex. "C")
4. In implementing the educational requirement set forth in R.C. Section 1322.052 at the start of regulation under R.C. Ch. 1322., the Division allowed individuals licensed in 2002 to complete their continuing education requirements for the first year on or before March 31, 2003 rather than on or before December 31, 2002. (T., pp. 9).
5. The Respondent did not complete his continuing education requirement for calendar year 2002 on or before March 31, 2003. (T., pp. 9-10, 12-15, Ex. "C").

6. In response to the NOH, the Respondent provided a written statement of his position indicating that he had been informed by his employer and by Hondros College, a continuing education provider, that the deadline for completing the education requirement for calendar year 2002 was April 30, 2003 together with a certificate of completion of six (6) hours of continuing education by Hondros College on April 28, 2003.
7. The evidence set forth in the exhibits demonstrates that the Division was aware of two different addresses for the Respondent, only one of which was used to communicate the new hearing date of March 7, 2005. The Division did not produce a Return Receipt for Certified Mailing, for the February 11, 2005 letter (Ex. "E") informing the Respondent of the new hearing date. The Division relied on an inference based on agency records and the lack of any mailing returned by the U.S. Postal Department on the basis of a failure of delivery to conclude that the mailing to an address that had in the past been effective was sufficient. (T., pp. 16-17, Ex. "B").

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division complied with the jurisdictional requirements of R.C.Ch.119.
2. An agency is under no duty to discover whether someone subject to adjudication has moved so that notice can be mailed to their present address. The duty rests upon the person subject to the adjudication to notify the agency of their new address, and if they fail to do so, it is enough that the notice was sent to the last known address. See: *McCoy V. Bureau of Unemployment Compensation* (1947), 81 Ohio App. 158 and *Blanchard v. Bureau of Unemployment Compensation* (1968), 14 Ohio Misc. 181.

B. CONTINUING EDUCATION COMPLIANCE

1. The Division has made a *prima facie* demonstration that the Respondent failed to complete the six (6) hours of continuing education required for calendar year 2002 on or before March 31, 2003.
2. R.C. Section 1322.10(A)(1)(a) states that if Respondent has violated or failed to comply with any provision of R.C. Sections 1322.01 to 1322.12, including the education requirement set forth at R.C. Section 1322.052, the Superintendent of Financial


Institutions may suspend, revoke, or refuse to renew a certificate of registration or license.

III. RECOMMENDATION

The Division has proven the Respondent failed to complete his Continuing Education requirement for calendar year 2002 on or before March 31, 2003. The Respondent submitted written evidence showing that he completed six hours of continuing education at the Hondros College on or about April 28, 2003 (Ex. "C") together with hearsay statement that he had been informed by unidentified persons at Hondros College and at his place of employment to the effect that the deadline for 2002 continuing education was April 30, 2003. This statement, being hearsay, is not accorded substantial weight. The evidence set forth in the exhibits also demonstrates that the Division was aware of two different addresses for the Respondent, only one of which was used to communicate the new hearing date of March 7, 2005. The Division did not produce proof, in the form of a Return Receipt for Certified Mailing, for the February 11, 2005 letter (Ex. "E") informing the Respondent of the new hearing date. Instead, the Division relied on an inference based on agency records in using the last known effective delivery address.

The recommendation to the Superintendent of Financial Institutions is to **suspend the license previously issued to the Respondent for a period commensurate with the severity of the offense.**

Respectfully submitted,



James N. Turner
Hearing Officer
August 3, 2005