

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. 04-0324-LOD
:
:
Gregory K. Johnson : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 30, 2004

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on May 25, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Gregory K. Johnson (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent failed to comply with R.C. 1322.01 to 1322.12 by failing to complete at least six hours of approved continuing education in calendar year 2002 as required by R.C. 1322.052. Therefore, the Division asserts that Respondent is not eligible for a loan officer license renewal pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322. for the following reasons:

1. The Respondent failed to comply with the continuing education requirement set forth in R.C. 1322.052.
2. Respondent's failure to comply with the continuing education requirement set forth in R.C. 1322.052 shows that Respondent's

character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

Daniel P. Jones, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 13 and Respondent's Exhibit A were admitted into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on April 1, 2004. Respondent's hearing request was received by the Division on April 5, 2004. The Division scheduled the hearing for April 16, 2004 and, on its own motion, continued the hearing to May 25, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time and location of the hearing.

C. Respondent's Loan Officer License Renewal Application.

1. In 2001, the 124th Ohio General Assembly modified the Ohio Mortgage Broker Act to, among other things, add a requirement that each loan officer complete six hours of continuing education every calendar year beginning with calendar year 2002. To fulfill this requirement, the six hours of continuing education must be offered in a course or program of study approved by the Superintendent of Financial Institutions (Superintendent.) Am.Sub.S.B. No. 76.
2. In May or June of 2002, the Respondent attended a course sponsored by the Ohio Association of Mortgage Brokers and Allied Mortgage. (Exhibit A; TR at 9, 34, 35.) The Respondent asserts that the sponsors of the course stated that the course would meet the continuing education requirements for loan officers. (TR at 9.) However, the Superintendent did not approve the course for continuing education. (TR at 10.) Respondent did not receive a certification that he attended this course, did not notify the Division that he attended the course and does not know if the sponsors of the course notified the Division that he took the course. (TR at 35.)
3. The Division extended the deadline for loan officers to complete their 2002 continuing education requirements to March 31, 2003. (TR at 13.)
4. On August 29, 2003, the Division notified the Respondent his loan officer license could not be renewed because its records indicated that he did not fulfill his 2002 continuing education requirement. The Division offered in the

form of a Settlement Agreement to renew his license if he completed six hours of approved continuing education, paid a \$250.00 fine and otherwise agreed to the terms of the Settlement Agreement by September 30, 2003. (Exhibit 2; TR at 16.)

5. The Respondent did not sign or otherwise agree to the terms of the Settlement Agreement. (TR at 28.)
6. On September 16, 2003, the Respondent completed six hours of approved continuing education sponsored by The Ohio Mortgage Bankers Association. (Exhibit 8.)
7. On December 13, 2003, the Respondent completed six hours of approved continuing education sponsored by Hondros College. (Exhibit 13.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119. and jurisdiction over this matter has been established.

B. Loan Officer License Renewal Application.

1. R.C. 1322.052 provides:

On and after January 1, 2002, each licensee * * * shall complete at least six hours of continuing education every calendar year. To fulfill this requirement, the six hours of continuing education must be offered in a course of program of study approved by the superintendent of financial institutions.

2. R.C. 1322.041 (B) provides that a loan officer license shall be renewed if the Superintendent finds that certain conditions are met, including:

(2) On or after January 1, 2003, the loan officer has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under section 1322.052 of the Revised Code.

(3) The applicant meets the conditions set forth in divisions (A) (2) to (5) of this division.

3. R.C. 1322.041 (A) provides in pertinent part:

* * *

(5) The applicant's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

4. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119., the Superintendent may, among other things, refuse to renew a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.
5. The Respondent did not complete six hours of continuing education approved by the Superintendent by the statutory December 31, 2002 deadline or by the March 31, 2003 deadline as extended by the Division.
6. Respondent asserts that the deadline for meeting the continuing education requirement should not apply to him because the Division failed to notify him that it had not approved the course that he attended in May or June of 2002. (Exhibit A; TR 31,32.) However, the Respondent admits that he did not notify the Division that he attended the course and does not know whether or not the course sponsors notified the Division that he attended the course. (TR at 35.) Based upon the information in the record, the Division could not have notified the Respondent that it did not approve the course for continuing education because it did not know that the Respondent attended the course. The Respondent's complaint addresses the omissions by the sponsors of the course, more than it addresses any omission by the Division.
7. Respondent objects to the Division's offer of a Settlement Agreement because it included a fine. However, the proposed settlement is not the subject of this hearing. The subject of this hearing is the NOH issued after the Respondent refused to agree to the Division's offer of a Settlement Agreement.
8. The Respondent failed to timely complete six hours of approved continuing education in calendar year 2002 and therefore failed to meet the condition for renewal of his loan officer license in R.C. 1322.041 (B) (2).
9. The Division alleges that the Respondent's failure to complete his 2002 continuing education requirement shows that his character and general

fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. The Respondent's credible testimony establishes that he completed a six hour course of instruction in 2002, that the sponsors of that course were reputable and trustworthy in the industry, that the sponsors informed him that the course would meet the continuing education requirements for loan officers, that he was not notified that the course was not approved until after the statutory and extended deadlines for completing the continuing education requirement had expired and that he completed an approved six-hour course shortly after learning that the course had not been approved. Under these circumstances, the Respondent's failure to complete the 2002 continuing education requirement does not, by itself, establish that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. Accordingly, the Division has not shown that the loan officer license renewal prerequisite in R.C. 1322.041(A) (5) and (B) (3) has not been met.

III. RECOMMENDATION

The Respondent has not established that he satisfied the loan officer license renewal prerequisite set forth in R.C. 1322.041(B) (2). Therefore, I respectfully recommend that the Superintendent of Financial Institutions refuse to renew the Respondent's loan officer license pursuant to R.C. 1322.10(A)(1)(a).

Respectfully Submitted,

James J. Lawrence
James J. Lawrence
Hearing Officer
June 30, 2004