

2009 DEC 30 PM 12:31

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2009-930
: :
JUSTIN W. SMITH, : DELORES EVANS
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued December 30, 2009

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as the Hearing Officer for this hearing in accordance with the Ohio Administrative Code and Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on December 8, 2009, at 77 South High Street, Room 1936, in Columbus, Ohio.

The Division intends to deny Justin W. Smith's ("Respondent") 2009 loan officer license application because the Division is unable find that Respondent's character and general fitness meet the renewal requirements set forth in R.C. §1322.041(A)(6) and (B)(3).

Theodore Klecker, Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Stephen E. DeFrank, Jr., Esq, testified at the hearing. Neither Respondent nor any representative appeared at the hearing. State's Exhibits 1 through 3 were introduced and admitted into the record. The record consists of the Exhibits, properly marked and admitted, and the transcript from the hearing. The Hearing Officer closed the record at the conclusion of the hearing on December 8, 2009.

B. Jurisdiction and Procedural Matters

1. On October 29, 2009, the Division issued a Notice of Intent to Deny Loan Officer License Renewal & Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2008 loan officer license renewal application. Respondent had 30 days to request a hearing. The Division sent the NOH to

Respondent by certified mail, return receipt requested. Service was perfected on or before November 3, 2009. *State's Exhibit 1*

2. On November 9, 2009, the Division received Respondent's hearing request. *State's Exhibit 1*
3. On November 12, 2009, the Division sent a hearing notice to Respondent by regular mail. The Division rescheduled the hearing for December 8, 2009. *State's Exhibit 1*
4. On December 7, 2009, the hearing commenced with only the Division in attendance.

C. Respondent's Activities

5. Stephen E. DeFrank, Jr., an attorney examiner with the Division, reviews licensing applications of loan officers and mortgage brokers to verify their compliance with the Ohio Mortgage Broker Act. Mr. DeFrank reviewed Respondent's loan officer file. *Testimony of Mr. DeFrank*
6. On August 2, 2006, the Division issued a loan officer license (# 027499) to Respondent. *State's Exhibit 2*
7. S.B. 185, effective January 1, 2007, requires loan officer applicants to submit a federal background check with their loan officer license applications. *R.C. §1322.031*
8. On or before April 30, 2009, Respondent submitted an on-line 2009 loan officer license renewal application to the Division. *Testimony of Mr. DeFrank*
9. Respondent failed to submit a federal background check with his 2009 loan officer license renewal application. *State's Exhibit 3; Testimony of Mr. DeFrank*
10. On June 18, 2009, the Division sent a letter to Respondent indicating that the Division had received his 2009 loan officer license renewal application. The letter informed Respondent that the Division had not received his FBI background check results and provided Respondent with 14 days to respond. *State's Exhibit 3*
11. On July 20, 2009, the Division sent a second letter to Respondent indicating that the Division had yet to receive his FBI background check results. Respondent had 30 days to provide a response concerning the deficiency. *State's Exhibit 3*
12. As of December 8, 2009, Respondent had yet to respond to the Division's requests to submit FBI background check results.

II. CONCLUSIONS OF LAW

13. The Division has procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
14. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, R.C. Chapter 1322.
15. At all times relevant to this matter, Respondent held a loan officer license and was subject to the laws in R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
16. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner* (1950), 59 Ohio L. Abs. 135, 98 N.E. 2d 60.
17. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.* (1987), 39 Ohio App.3d 15
18. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87.
19. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.
20. R.C. §1322.041(A)(6) and (B)(3) states:

(A) Upon the conclusion of the investigation required under division (D) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan originator license to the applicant if the superintendent finds that the following conditions are met:

* * *

(6) The applicant's financial responsibility, 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. The

superintendent shall not use a credit score as the sole basis for a license denial.

* * *

(B) The license issued under division (A) of this section may be renewed annually on or before the thirty-first day of December if the superintendent finds that all of the following conditions are met:

* * *

(3) The applicant meets the conditions set forth in divisions (A)(2) to (8) of this section.

21. With respect to a loan officer license application, the superintendent of financial institutions shall request criminal record information from the FBI be obtained as part of the criminal records check and that any fee shall be paid by the applicant. *R.C. §1322.031(B)(1)*
22. Respondent failed to submit a federal background check to the Division. The Division has insufficient information to determine whether Respondent's character and general fitness commands the confidence of the public to warrant the belief that the business will be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act and therefore cannot renew Respondent's loan officer license. *R.C. §1322.041(A)(6)*
23. *R.C. §1322.10(A)(1)(a)* authorizes the Division to refuse to renew an applicant's mortgage loan officer license if the Division finds that the applicant has violated or failed to comply with any provision of *R.C. §§1322.01 through 1322.12*.
24. The Division has met its burden of proof for denying Respondent's 2009 loan officer license renewal application.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for denying Respondent's 2009 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a). Consequently, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's 2009 loan officer license renewal application.

Respectfully submitted,

Delores Evans
Hearing Officer
December 30, 2009