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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:	:	CASE NO. M2008-730
	:	
JUDITH I. DRAKE,	:	
	:	LISA M. FINNEGAN
RESPONDENT.	:	HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 7, 2009

I. FINDINGS OF FACT

A. Background

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, Division of Financial Institutions ("Division"), to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The Division held the hearing on March 24, 2009 at 77 South High Street, 19th Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the December 11, 2008 Notice of Intent to Revoke Loan Officer License and Notice of Intent to Fine & Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Judith I. Drake ("Respondent") violated R.C. Section 1322.031(E)(2) and Ohio Administrative Code ("O.A.C.") Rules 1301:8-7-11(A) and (B) by originating four loans for a mortgage broker before the Division transferred her license to the mortgage broker and before Respondent received from the Division written confirmation of temporary authority to work.

B. Jurisdiction and Procedural Matters

3. On December 11, 2008, the Division sent the NOH to Respondent by certified mail, return receipt requested. The Division obtained service on or about December 12, 2008. *State's Exhibit 1-A.*

4. On or about January 3, 2009, Respondent sent a Hearing Request Form to the Division requesting a hearing on the matter. *State's Exhibit 2.*

5. On January 6, 2009, the Division sent a letter to Respondent scheduling the hearing for January 12, 2009. In the same letter, on its own motion, the Division notified Respondent that it had rescheduled the hearing for January 21, 2009. *State's Exhibit 3.*

6. The Hearing Officer granted Respondent's continuance request to February 23, 2009. *State's Exhibit 4.*

7. On February 19, 2009, Respondent's counsel entered an appearance and requested that the Hearing Officer consolidate the hearing in the instant matter with Case No. M2008-337, In the Matter of Joseph M. Heister, for purposes of being heard simultaneously because the cases involved the same facts and witnesses. The Hearing Officer granted the request and continued the consolidated hearings to March 3, 2009 and then to March 24, 2009. *State's Exhibits 5 and 6.*

8. The Hearing Officer consolidated In the Matter of Joseph M. Heister, Case No. M2008-337 and the instant matter for purposes of the hearing only. The Hearing Officer will issue separate Report and Recommendations in each case.

9. Respondent appeared at the hearing without counsel and stated her intention to proceed without counsel. *Testimony of Respondent, Transcript ("Tr. ") at 9.*

10. Todd A. Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared at the hearing *pro se*. Lori A. Massey, an attorney examiner for the Division, testified on behalf of the Division. Joseph M. Heister testified on behalf of Respondent. The parties introduced and the Hearing Officer admitted the following exhibits into the record: State's Exhibits 1-A, 1-B, and 2 through 18, and Respondents' Exhibits 1 and 2. The Hearing Officer closed the record at the conclusion of the proceeding.

C. The Division's NOH

11. The Division is responsible for the licensing and regulation of loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, and the rules promulgated thereunder.

12. Respondent is an individual who holds a loan officer license issued by the Division pursuant to R.C. Chapter 1322.

13. The Division alleged in the NOH that Respondent violated R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B) by originating loans for Heritage Mortgage Corporation ("Heritage Mortgage") as a loan officer before submitting to the Division an application to transfer her loan officer's license to Heritage Mortgage and before receiving written confirmation of temporary authority to work from the Division.

14. The Division intends to revoke Respondent's loan officer license and impose an \$8,000.00 fine. *State's Exhibit A.*

D. Heritage Mortgage Corporation

15. In or around 2004, Heritage Mortgage, an Ohio corporation, submitted to the Division an application for a certificate of registration to transact business in Ohio. *State's Exhibit 7.*

16. On November 3, 2004, the Division issued certificate of registration number MB.803350 to Heritage Mortgage. *State's Exhibit 7.*

17. On or about March 16, 2007, Heritage Mortgage voluntarily surrendered its certificate of registration to the Division. *State's Exhibit 18.*

E. Respondent's Activities

18. Respondent first obtained a loan officer license on June 21, 2004. Respondent renewed her license every year thereafter until 2008. In April 2008, Respondent renewed her license in escrow. Respondent's license is currently in escrow. *Testimony of Respondent, Tr. at 62; State's Exhibit 14.* Respondent's loan officer license number is LO.013435.000. *State's Exhibit 8.*

19. Respondent was employed by Heritage Mortgage from December 1, 2006 to April 2007. *Testimony of Respondent, Tr. at 59-60.*

20. On December 1, 2006, Respondent signed a Loan Officer License Transfer Application ("Transfer Application"). The Transfer Application indicated that Respondent was requesting the Division to transfer her loan officer license from her previous employer, Premier Mortgage Funding, to Heritage Mortgage. *State's Exhibit 8.*

21. Loan officers are required to submit a Transfer Application to the Division and obtain written confirmation of temporary authority to work before originating loans for a different mortgage loan broker. *Testimony of Lori A. Massey, Tr. at 18-20.*

22. Respondent gave her Transfer Application to Joseph M. Heister, the operations manager for Heritage Mortgage, to submit to the Division. *Testimony of Respondent, Tr. at 44.*

23. Mr. Heister acknowledged that he received Respondent's Transfer Application on or about December 1, 2006. Mr. Heister did not execute the second page of the Transfer Application as operations manager nor did he submit the Transfer Application to the Division at that time. He explained that Respondent's Transfer Application became lost in a pile of papers on his desk. *Testimony of Joseph M. Heister, Tr. at 40-41.*

24. On or about December 11, 2006, January 4, 2007, January 21, 2007, and January 29, 2007, Respondent originated four residential mortgage loans on behalf of Heritage Mortgage. *Testimony of Lori A. Massey, Tr. at 27-35; State's Exhibits 9, 10, 11, 12, and 15.* The Division had not authorized Respondent to originate loans for Heritage Mortgage during that time.

25. On or about February 15, 2007, Mr. Heister discovered Respondent's Transfer Application on his desk and immediately submitted it to the Division. *Testimony of Joseph M. Heister, Tr. at 13-14; State's Exhibit 8.* Mr. Heister did not fill out the third page of the Transfer Application requesting written confirmation of Respondent's loan officer status. *Testimony of Lori A. Massey, Tr. at 19-20.*

26. The Division received the Transfer Application on February 21, 2007. On February 22, 2007, the Division transferred Respondent's loan officer license to Heritage Mortgage. *State's Exhibit 8; Testimony of Lori A. Massey, Tr. at 26.*

27. The Division did not issue a written confirmation of Respondent's loan officer status to Heritage Mortgage from December 1, 2006 to February 20, 2007 because the Division did not receive the Transfer Application until February 21, 2007. The Division did not issue a written confirmation of Respondent's loan officer status after February 21, 2007 because Mr. Heister did not fill out the third page of the Transfer Application requesting written confirmation of Respondent's loan officer status. *Testimony of Lori A. Massey, Tr. at 19-20; State's Exhibit 8.*

F. Penalty

28. The Division seeks to revoke Respondent's loan officer license and impose a \$8,000.00 fine against Respondent for the allegations set forth in the NOH. *State's Exhibit A.* The Division calculated the amount of the fine by assessing \$2,000.00 for each loan that Respondent closed from December 1, 2006 through February 21, 2007. *Testimony of Lori A. Massey, Tr. at 63-64.*

29. Respondent admitted the allegations in the NOH. She stated that she executed the Transfer Application as required prior to originating loans, but then relied on Heritage Mortgage's operations manager, Mr. Heister, to submit her Transfer Application to the Division and believed that he had done so. *Testimony of Respondent, Tr. at 15, 44.*

30. Mr. Heister acknowledged responsibility for failing to submit Respondent's Transfer Application to the Division. He stated that the Division should not penalize Respondent for his failure to submit Respondent's Transfer Application to the Division. Mr. Heister requested that any fine that the Division assesses to Respondent should be assessed to him instead. *Testimony of Joseph M. Heister, Tr. at 56-57.*

31. Respondent raised the defense of inability to pay the fines that the Division seeks to impose against her. In support of her position, Respondent provided her 2006, 2007, and 2008 federal income tax returns. Respondent's income totaled approximately \$12,000.00 in 2008, \$15,000.00 in 2007, and \$36,000.00 in 2006. *Respondents' Exhibit 2.*

32. Respondent also contended that a fine of \$8,000.00 is excessive in that it exceeds the amount of commission that she earned on the four loans. *Testimony of Respondent, Tr. at 75.* There was no evidence as to how much commission Respondent received for the four loans.

33. Respondent requested that the Division not revoke her loan officer license. Although Respondent's loan officer license is currently in escrow and she is not utilizing it in her current employment, she is concerned that a license revocation on her record could negatively impact her future employment. *Testimony of Respondent, Tr. at 58.*

34. Respondent does not have a history of R.C. Chapter 1322 violations or failure to comply with Division orders. *Testimony of Lori A. Massey, Tr. at 64.*

II. CONCLUSIONS OF LAW

A. Jurisdiction

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

B. Proposed Revocation of Loan Officer License and Fine

36. R.C. Section 1322.10 (A)(1)(a) provides that after notice and opportunity for a hearing conducted in accordance with Chapter 119, the Superintendent of the Division may suspend, revoke or refuse to issue or renew a license if the Superintendent finds a violation of or failure to comply with any provision of R.C. Sections 1322.01 to 1322.12 or the rules adopted under those sections.

37. R.C. Section 1322.031(E) provides that:

* * * * *

(2) If a loan officer's employment is terminated, the mortgage broker shall return the original license to the superintendent within five business days after the termination. The licensee may request the transfer of the license to another mortgage broker by submitting a relocation application, along with a fifteen-dollar fee, to the superintendent or may request the superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow shall cease activity as a loan officer.

A mortgage broker may employ a loan officer on a temporary basis pending the transfer of the loan officer's license to the mortgage broker, if the mortgage broker receives written confirmation from the superintendent that the loan officer is licensed under sections 1322.01 to 1322.12 of the Revised Code.

* * * * *

38. O.A.C. Rule 1301:8-7-11 provides that:

(A) A licensee must file a transfer application when:

(1) The licensee desires to change his or her employment from one registrant to another; or

(2) The licensee wants to reactivate his or her license and to transfer the license from escrow to a registrant.

(B) Filing a transfer application does not authorize an individual to originate mortgage loans for the registrant to which the individual is transferring. To be authorized to originate mortgage loans for the registrant to which the individual is transferring, either the license must be transferred and a new license printed identifying the new registrant, or a completed transfer application must be filed with the division and the registrant to which the individual is transferring must have received written confirmation from the superintendent in accordance with division (E)(2) of section 1322.031 of the Revised Code.

39. It is undisputed that Respondent originated four loans on behalf of Heritage Mortgage from December 2006 to January 2007 when the Division had not yet transferred her license to Heritage Mortgage and when Respondent had not received from the Division written confirmation of temporary authority to work for Heritage Mortgage. The Division has met its burden of proof that Respondent violated R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B).

40. Because Respondent violated R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), the Division is authorized under R.C. Section 1322.10(A)(1)(a) to revoke Respondent's loan officer license.

41. It is to be noted that Respondent did possess a loan officer license when she originated loans; that she did execute a Transfer Application before originating loans; and that she was dependent to some extent on Heritage Mortgage's operations manager to submit the Transfer Application to the Division. Respondent's error was in not following up with her operations manager or with the Division to verify that the Division had transferred her license to Heritage Mortgage. For these reasons, suspension rather than revocation of Respondent's license is the appropriate penalty under R.C. Section 1322.10(A)(1)(a).

42. R.C. Section 1322.10(A)(2) provides that the Superintendent of the Division may "impose a fine of not more than one thousand dollars, for each day a violation of a law or rule is committed, repeated, or continued. If the registrant or licensee engages in a pattern of repeated violations of a law or rule, the superintendent may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued."

43. The Division alleged, and the Hearing Officer finds, that Respondent's conduct in originating the 2006 loan constitutes a violation of R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), for which the Division may impose a fine of not more than \$1,000.00 pursuant to R.C. Section 1322.10(A)(2). In addition, each time Respondent originated a loan on behalf of Heritage Mortgage in 2006 and 2007 when her license was not affiliated with Heritage Mortgage, she committed a repeated violation of R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), for which the

Division may, pursuant to R.C. Section 1322.10(A)(2), impose a fine not to exceed \$2,000.00 for each day Respondent committed a repeated violation.

44. In determining the amount of a fine, the Superintendent of the Division shall consider the seriousness of the violation, the licensee's good faith efforts to prevent the violation; the licensee's history regarding violations and compliance with Division orders; the licensee's financial resources; and any other matters the Superintendent considers appropriate in enforcing R.C. Sections 1322.01-1322.12. *R.C. Section 1322.10(A)(2).*

45. For purposes of determining the amount of the fine, Respondent's failure to comply with the Mortgage Broker Act is serious. Concerning evidence of Respondent's good faith efforts to prevent the violations, Respondent did give her Transfer Application to the operations manager for submission to the Division and it is clear that she attempted to comply with the statutory requirements. It is also clear that Mr. Heister, as operations manager, failed to transmit the Transfer Application to the Division. Nevertheless, it was Respondent's responsibility to ensure that she had complied with all licensing requirements before originating loans.

46. Respondent has no history of previous violations or failure to comply with Division orders. Respondent provided copies of her tax returns to demonstrate to the Superintendent that she lacks the financial resources to pay a large fine.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established the alleged violations set forth in the NOH. Consequently, the Hearing Officer respectfully recommends that the Superintendent suspend Respondent's loan officer license pursuant to R.C. Section 1322.10(A)(1)(a) for violations of R.C. Sections 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), and that the Superintendent impose a fine in an amount consistent with a consideration of the factors set forth in R.C. Section 1322.10(A)(2).

Respectfully submitted,

—
Lisa M. Finnegan
Administrative Hearing Officer
May 7, 2009