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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0062-LOD
: :
TAMIKO JOHNSON-SHARPE : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued July 19, 2006

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio 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 hearing was held June 19, 2006 at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Tamiko Johnson-Sharpe ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2004. For that reason alone, the Division contends that her loan officer license renewal application ("Renewal Application") should be denied.

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Riene Roszak attended the hearing as the Division's representative and testified for the Division. Neither Respondent nor counsel representing her appeared at the hearing. At the hearing, State's Exhibits A through H were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. On February 7, 2006, the Division sent the NOH by certified mail to Respondent at 1822 Amber Hills Drive, Apt B, Akron, Ohio 44313-8541 ("Amber Hills Drive address"). The NOH was received by certified mail at the Amber Hills Drive address. It is clear that the Respondent received the NOH by certified mail because she sent the Division the hearing request form sent to her with the NOH. (State's Exhibits A and B.)
2. Respondent's hearing request form was received by the Division on March 1, 2006. (State's Exhibit B.)
3. The Division set the hearing for March 13, 2006, and continued it to June 19, 2006 on its own motion. The Division's March 6, 2006 letter to Respondent notified her of the date, time, and location for those scheduled hearings. The record contains no evidence indicating that the March 6, 2006 letter was returned to the Division as undeliverable. (State's Exhibit C; Hearing Transcript ("TR") at 12-13.)
4. The Respondent did not contact anyone at the Division, the Division's counsel, or the Hearing Officer to indicate that she could not be present at the June 19, 2006 hearing or to make a continuance request. (TR at 4-5.)
5. The hearing was held on the date and on the same floor set forth in the Division's March 6, 2006 letter. The hearing started at least 30 minutes after the time set forth in that letter to make sure that Respondent was not running late or in the wrong location. (State's Exhibit C; TR at 1, 4-5.)
6. The Respondent received the NOH by certified mail and received notice of the date, time, and location for each scheduled hearing date in this case.

C. Respondent's 2005 Renewal Application.

7. Respondent is, and was during 2004, an Ohio mortgage loan officer licensed by the Division. The Division received her 2005 Renewal Application sometime after she signed it on March 23, 2005. Respondent's loan officer license expired on April 30, 2005 while her renewal application was pending. (State's Exhibits D, E, F, and G; TR at 13-16.)
8. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division and complete at least six hours of continuing education ("CE") each calendar year. R.C. 1322.02(B) and 1322.052.

9. Riene Roszak, the Division employee responsible for maintaining the Division's records of licensees' continuing education and reviewing them to determine compliance with applicable CE requirements, testified at the hearing. Ms. Roszak receives records from approved continuing education providers and loan officers regarding CE taken each calendar year. She inputs the information from those records into the Division's e License Management System ("eLMS"), a computer database that reflects CE taken by each loan officer by name. State's Exhibit H is a printout of the information in the eLMS database pertaining to CE taken by Respondent. Exhibit H evidences that the Division has no records indicating that Respondent completed six hours of CE during the 2004 calendar year. (State's Exhibit H; TR at 8-9, 17-20.)
10. The Hearing Officer finds that the Division has established that it has no records indicating that the Respondent completed the required six hours of continuing education for 2004.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

1. Ohio Revised Code Section 1322.10(A)(1) provides that the superintendent of the division of financial institutions may refuse to issue or renew a license under certain circumstances "{a}fter notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code."
2. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her right to request a hearing. The Division's NOH properly notified Respondent that she was entitled to request a hearing and was served upon her by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of her right to request a hearing.
3. Ohio Revised Code Section 119.07 also requires the Division to notify the "party" of the time, date, and place of the hearing once a date is set. Respondent is the "party" entitled to receive the notice of the time, date, and place of the hearing since she is the "person whose interests are the subject of an adjudication by an agency." R.C. 119.01(G).
4. The Division's March 6, 2006 letter notified her of the date, time, and location for each of the scheduled hearings set in this case. The March 6, 2006 letter notifying her of the date, time, and location for the June 19, 2006 hearing was not returned to the Division as undeliverable.

5. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
6. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the actual hearing in this matter.
7. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in her absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124, 125-26, 532 N.E.2d 189, 191.
8. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Proposed Denial of 2005 Renewal Application.

9. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
10. Mortgage loan officers licensed by the Division must complete at least six hours of continuing education each calendar year. R.C. 1322.052. Compliance with this provision is a required condition that must be met for a loan officer license to be renewed pursuant to R.C. 1322.041(B)(2). Ohio Revised Code Section 1322.10(A)(1)(a) also permits the Division to deny Respondent's Renewal Application for lack of compliance with R.C. 1322.041(B)(2).
11. Respondent was, during 2004, a loan officer licensed by the Division. Respondent's loan officer license expired in 2005 while her renewal application was pending. The expiration of Respondent's loan officer license does not affect these proceedings or the validity of any order issued after the hearing. R.C. 119.091. "The failure of any agency to hold an adjudication hearing before the expiration of a license shall not terminate the request for a hearing and shall not invalidate any order entered by the agency after holding the hearing." R.C. 119.091.
12. The Division seeks to deny Respondent's Renewal Application solely based upon its allegation that she did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2004.

13. The Hearing Officer finds and concludes that the Division has established that it has no records indicating that the Respondent completed the required six hours of continuing education for 2004.
14. The Division has established that the Respondent violated R.C. 1322.052 and has not met the CE requirement for license renewal set forth in R.C. 1322.041(B)(2). Therefore, there is a sufficient evidentiary basis for denying Respondent's Renewal Application pursuant to R.C. 1322.10(A)(1)(a) for lack of compliance with R.C. 1322.041(B)(2).

III. RECOMMENDATION

The Division has established a sufficient evidentiary basis for denying Respondent's Renewal Application pursuant to R.C. 1322.10(A)(1)(a) for lack of compliance with R.C. 1322.041(B)(2). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions deny Respondent's loan officer license renewal application.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
July 19, 2006