

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:

Eric A. Drumheller
6964 Parmalee Avenue
Mentor, OH 44060

:
: Case No. 04-0326-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on June 30, 2004. Appearing were Respondent Mr. Eric A. Drumheller, accompanied by Mr. Larry Hickman. Mr. Hickman did not represent Mr. Drumheller at the hearing. Assistant Attorney General James M. Evans represented the Department of Commerce's Division of Financial Institutions ("the Division)." He called one witness, Ms. Riene Roszak, who serves as the Division's coordinator for continuing education ("CE").

After due consideration of the evidence, the Hearing Examiner makes the following findings of fact, conclusions of law, and recommendation of the action to be taken.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, the Division is charged with approving the CE coursework for licensees and verifying that licensees complete their requirements. See O.R.C. 1322.052.
2. On August 21, 2003, the Division informed Mr. Drumheller that he had failed to meet his requirement of six hours of CE for 2002. Therefore, his license could not be renewed. See

Letter, State's Exhibit 1.

3. However, in that same letter, the Division offered through a Settlement Agreement to renew Mr. Drumheller's license if he were to meet certain conditions. See Letter, State's Exhibit 1.
4. On October 1, 2003, the Division sent a letter to Mr. Drumheller informing him that he had not met said conditions. See Letter, State's Exhibit 4.
5. On March 31, 2004, the Division sent Mr. Drumheller a "Notice of Intent to Deny Loan Officer License Renewal & Notice of Opportunity for Hearing." The Division stated as its basis for the intent to deny that Mr. Drumheller failed to comply with his CE requirements. As a result, the Division found his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated fairly and honestly in compliance with the purposes of the Ohio Mortgage Broker Act. See Notice, State's Exhibit 5.
6. On April 16, 2004, Mr. Drumheller requested this hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 6.

b. Failure to Complete CE Requirements

7. It is undisputed that Mr. Drumheller did not complete his CE requirement for 2002. See Transcript, pp. 16, 18-19. However, the question now becomes, in effect, did Mr. Drumheller comply with the terms of the Settlement Agreement, or perhaps substantially comply, such that the Division should renew his license? The starting point for this analysis is the Settlement Agreement itself.
8. The Settlement Agreement states that in order for Mr. Drumheller to accept it, he must tender a \$250.00 fine to the Division by cashier's check or money order. See Agreement, Agreed Condition #1. Payment must have been returned to the Division by September 30,

2003. See Settlement Agreement, p. 1, capital letters.

9. Mr. Drumheller attempted to comply with this condition by sending a money order to the Division, where it was received October 1, 2003, one day after the deadline. See Ms. Roszak's testimony, p. 15.
10. The Settlement Agreement also states that in order for Mr. Drumheller to accept it, he must "complete six hours of approved CE prior to submitting this Agreement, write in RED INK on the face of the copy of the attendance certificate(s) PLEASE APPLY TO 2002 CE REQUIREMENT, and to submit the marked copy with this agreement." Capitals in original. See Agreement, Condition #2.
11. Mr. Drumheller testified at the hearing that he completed six hours of CE, but in October of 2003, after the deadline. See Transcript, pp. 38-40. He also presented for demonstrative purposes a certificate indicating the same.
12. However, upon review of the certificate, Ms. Roszak noted that it states the Mr. Drumheller completed the CE in accordance with the requirements of the *Florida* Department of Financial Services. She testified that the course is not approved for CE credit in Ohio. See Transcript, pp. 39-40. In addition, Mr. Drumheller offered this information only at the hearing (beyond the deadline), and not accompanied by an executed Settlement Agreement in accordance with its instructions.

c. Reasons for Failure to Comply

13. Mr. Drumheller testified that he was delinquent in complying with his CE requirements because for a time, he was "out of the industry." He then decided at some point to resume work as a loan officer. See Transcript, p. 19.
14. During the course of this transition, Mr. Drumheller testified that he changed his address.

He testified that this delayed his receipt of some of the Division's correspondence. See Transcript, p. 18. He also explained that on his renewal application, he checked the box noting a change of address, and penned in his new address below the signature of the notary public in attempt to notify the Division of the change. See Application, State's Exhibit 3. He acknowledges this was "confusing." See Transcript, p. 23.

15. At the hearing, Ms. Roszac testified that a change of address form accompanied the application. As this form was not returned, and she did not interpret Mr. Drumheller's notations to indicate his new address, the Division did not update its records with this new information.
16. Though the testimony was rather vague, Mr. Drumheller conceded that even with the miscommunication over his address, he did receive the Division's communications before the applicable deadlines ran. See Transcript, p. 19-20.

d. Communication With The Division

17. Mr. Drumheller also indicated that with respect to his failure to comply with the some of the terms of the Settlement Agreement, he felt the Division significantly constrained his ability to communicate back and forth and clear up any misunderstandings he may have had. See Transcript, p. 20. He was referring to the cover letter contained with the Settlement Agreement, which states "if there is an error in our records, do not telephone the Division," (emphasis in original), and "[t]he Division will not take any calls regarding this matter; your options are outlined above." See Letter, State's Exhibit 1.
18. At the hearing, Ms. Roszac testified that this "do not call" language is meant to convey only that the Settlement Agreement is a legal document, for which applicants should consult an attorney. She testified that the Division does not provide legal advice, but that calls are

welcome with respect to all other matters. See Transcript, pp. 32-33, 42. (“Of course, you can always call, too.”)

III. Conclusions of Law

19. It is conceded that Mr. Drumheller did not strictly comply with the terms of the Division’s Settlement Agreement. His payment of the \$250.00 fine one day after the deadline is evidence of this.
20. At the same time, his interpretation of the Division’s correspondence indicating he should not telephone (as “the Division will not take any calls regarding this matter”) was reasonable. This language simply does not reasonably support an interpretation that general inquiries are welcome, but the Division does not issue legal advice to the general public. The language is more broad than that.
21. Thus, if the only issues presented were 1) the miscommunication over Mr. Drumheller’s address (which he did try to clarify on his renewal application), and (2) that the miscommunication caused him to make payment of his fine a mere one day past the deadline, he would have made a strong case that he qualified for a license.
22. However, these are not the only issues. The fact remains that as of the date of the hearing, Mr. Drumheller still had not complied with one of the basic requirements of the Settlement Agreement: *that he complete the outstanding CE*. Payment of the fine was only one term of the agreement. Taking six hours of qualified CE coursework was another.
23. His explanation that he managed to take some CE in October 2003, which qualified under Florida law but not Ohio, does not represent substantial compliance. He should have performed the due diligence necessary to at least take a course qualified under Ohio law. This would have been easy enough to discover, even without telephoning the Division. He

could have simply asked the course provider before he signed up.

24. Therefore, based on the foregoing, the Hearing Examiner finds that Mr. Drumheller did not complete his CE for 2002, nor did he accept the terms of the Division's Settlement Agreement in an appropriate manner.

B. RECOMMENDATION

25. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends the Superintendent of the Division of Financial Institutions find that Mr. Drumheller did not meet his CE requirements and take appropriate action in accordance with that finding.

1/5/05
Date

Terrence O'Donnell
Hearing Examiner