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April 11, 2005

Hand Delivered

Superintendent of Financial Institutions
Department of Commerce
77 South High Street
Columbus, Ohio 43215-6120

Re: Hearing Officer's Report and Recommendation
Walter D. Borkowski
Case No. 04-0437-LOD

Dear Superintendent:

Enclosed is my Report and Recommendation in the matter of Walter D. Borkowski, Case No. 04-0437-LOD. I have also enclosed the transcript and exhibits.

Very truly yours,

ZAINO & HUMPHREY

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James J. Lawrence

JJL/map

Encl.
Report and Recommendation
Transcript
Exhibits A - F

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DIVISION OF FINANCIAL
INSTITUTIONS
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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. 04-0437-LOD
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Walter D. Borkowski : James J. Lawrence, Hearing Officer

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION**
April 8, 2005

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 March 15, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Walter D. Borkowski (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 2003 as required by R.C. 1322.052. Therefore, the Division asserts that the 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.

Timothy C. Loughry, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent failed to appear at the hearing without explanation for his absence. At the hearing, State's Exhibits A through F were admitted into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on December 3, 2004 by certified mail, return receipt requested. (Exhibit C.) Respondent's hearing request was received by the Division on December 20, 2004. (Exhibit D.) The Division scheduled the hearing for January 3, 2005, but, on its own motion, continued the hearing to March 15, 2005. Notices of the date, time and location of the hearing were sent by ordinary mail to the Respondent at the same address at which the Respondent received the NOH. (Exhibits E & F.)

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. The Respondent did not complete any hours of continuing education in calendar year 2003. (TR at 12.)
3. The Respondent filed a loan officer renewal application on April 19, 2004. (Exhibit A.)
4. By letter dated June 11, 2004, the Division notified the Respondent that it was unable to renew his loan officer license because he failed to fulfill his 2003 continuing education requirement. (Exhibit B.) 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 \$500.00 fine and otherwise agreed to the terms of the Settlement Agreement by July 12, 2004. (Exhibit B; TR at 11 -12.) The letter and the agreement were mailed to the Respondent's attention at his employer's Cleveland, Ohio address.

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. 1322.041 (B) provides that the Superintendent may renew a loan officer license if the Superintendent finds that certain conditions are met, including the loan officer has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under R.C. 1322.052. R.C. 1322.041 (B) (2). R.C. 1322.052 further requires that, to fulfill this requirement, the six hours of continuing education must be offered in a course or program of study approved by the Superintendent.
2. The Respondent failed to complete any hours of continuing education in calendar year 2003. The Respondent failed to meet his obligation under R.C. 1322.052.
3. R.C. 1322.041 (B) also provides that the Superintendent may renew a loan officer license if the Superintendent finds that 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 R.C. 1322.01 to 1322.12. R.C. 1322.041 (B) (3) and R.C. 1322.041 (A) (5).
4. The Division alleges that the Respondent's failure to complete his 2003 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 purpose of the continuing education requirement is to enable loan officers to stay current with the professional requirements of the loan industry and assure the public that the

loan officers that they are trusting are maintaining professional competency in the loan industry. By failing to complete his continuing education requirement, the Respondent failed to maintain the confidence of the public in his general fitness to be a loan officer.

5. 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.

III. RECOMMENDATION

The Respondent's failure to complete his continuing education requirement in 2003 violated R.C. 1322.052 and caused the public to lose confidence in his general fitness to be a loan officer in violation of R.C. 1322.041 (B) (3) and R.C. 1322.041 (A) (5). Accordingly, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer renewal application pursuant to R.C. 1322.041(B) and R.C. 1322.10(A) (1) (a).

Respectfully Submitted,

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James J. Lawrence
Hearing Officer
April 8, 2005