

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

2004 DEC 10 AM 10: 58

IN RE: : CASE NO. 04-0055-LOD  
: :  
DOUGLAS C. RUSSELL : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued December 10, 2004

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I. FINDINGS OF FACTA. 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 on September 24, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Douglas C. Russell ("Respondent") to consider the allegations in the Division's Notice of Intent to Revoke Loan Officer License 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 2002. For that reason alone, the Division contends that his loan officer license should be revoked.

Emily Smith, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Reine Roszak attended the hearing as the Division's representative and testified for the Division. Respondent appeared pro se and testified at the hearing. At the hearing, State's Exhibits 1 through 6 and Respondent's Exhibits A through D were admitted into the record.

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**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on April 1, 2004. The Division's first attempt to serve the NOH by certified mail was unsuccessful. The Division sent the NOH to an old address for the Respondent and the time for forwarding to his new address had expired. The NOH only references the certified mail number for this failed effort. A certified mail return receipt signed by Respondent on April 22, 2004 with a different certified mail number not referenced anywhere else in the record was attached to the NOH. No witness identified the return receipt as a receipt showing certified mail service of the NOH on the Respondent. Statements by the Division's counsel, unless merely recitation of an agreed upon stipulation, are not evidence. (State's Exhibit 2; TR at 22-23.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. Respondent's hearing request form was received by the Division on April 30, 2004, prior to the May 13, 2004 deadline for filing a hearing request set forth in that form. (State's Exhibit 3; TR at 23.)
3. The Division set the hearing for May 14, 2004, and continued it to July 29, 2004 on its own motion. On May 11, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location for the May 14, 2004 and July 29, 2004 hearings. Respondent's motion for a continuance was granted and the hearing continued until September 23, 2004. On August 6, 2004, the Division sent the order granting the continuance and a letter to Respondent notifying him of the date, time, and location for the September 23, 2004 hearing. Respondent received written notice of the date, time and location for each of the three hearing dates set in this case. (State's Exhibits 4 and 5; TR at 23-24.)
4. The hearing was held on the date and at the location set forth in the continuance order and the Division's August 6, 2004 letter. The hearing started one hour after the time set forth in those documents because the Division's counsel was late. Respondent was very cooperative and agreed to wait for the later starting time. (State's Exhibit 6; TR at 1, 4.)
5. Based upon reasonable inferences made from the evidence in the record, the Respondent received the NOH by certified mail. Respondent received written notice of the date, time and location for all three of the hearing dates set in this case.

**C. Respondent's 2002 Continuing Education.**

6. Respondent is an Ohio licensed mortgage loan officer who currently resides at 8138 Trail Lake Drive, Powell, Ohio 43065. (TR at 27, 44.)
7. 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.
8. Respondent was licensed as a loan officer in 2002. He worked as a loan officer until he took a position with a bank that did not require a loan officer license. From November of 2002 until April of 2003, Respondent was in a position that did not require a loan officer license. (TR at 10-11, 25-27, 33-35.)
9. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage brokers to return a loan officer's original license to the Division within five business days after the loan officer's employment terminates. R.C. 1322.031(E)(1).
10. The record does not contain any evidence indicating whether the mortgage broker that employed Respondent in 2002 returned Respondent's license to the Division in accordance with R.C. 1322.031(E)(1). (TR at 27-28.)
11. In April of 2003, Respondent returned to a position with a mortgage broker and contacted the Division to find out what he needed to do to make sure his loan officer license was in good standing. He spoke with a Division employee who told him that he needed to complete the six hours of continuing education for 2002 by April 30, 2003 and referred him to an online CE course. Respondent took a six-hour online CE course on April 24, 2003, got the certificate, and faxed it to the Division. He then called the same Division employee and confirmed that the certificate had been received. The Division employee told him that he had done everything he needed to do to keep his license up to date. He also completed another six hours of continuing education for 2003 before December 31, 2003. (Respondent's Exhibits A, B, C, and D; TR at 10-12, 25-26, 30-31, 39-40.)
12. Respondent's testimony in this case was consistent, forthright and credible. His testimony that the Division told him that he could have until April 30, 2003 to complete six hours of continuing education for 2002 was clear, unequivocal and consistent with a letter he sent to the Division on April 28, 2004. He described the scenario three times at the hearing – in his opening statement, on cross-examination, and during his own case presentation. Since Respondent was appearing pro se, he was sworn in as a witness prior to his opening statement. The Hearing Officer, after carefully observing Respondent's demeanor while

testifying and after carefully and thoroughly reviewing the transcript of his testimony as well as his letter, finds that Respondent is honest, truthful and credible. His statements and testimony clearly evidence that the Division told him he could have until April 30, 2003 to complete the six hours of continuing education for 2002.

13. Riene Roszak, a Division employee who inputs information into a database from continuing education certificates and rosters, testified that the deadline for all loan officer licensees to complete the six hours of continuing education for 2002 was extended to March 14, 2003. She had no personal knowledge of Respondent's situation and indicated that her testimony was based upon her review of the file and the database. Testimony about what someone has seen in a file and in a database is not sufficient evidence upon which to base any finding of fact. The record contains no evidence indicating that any of the documents from the Division's file provided for the record were prepared by her or sent to her. No documents from the database or a certificate evidencing the lack of documents indicating compliance in the Division's file were put into the record. (TR at 14-21.)
14. A document itself is the most reliable and accurate evidence of what it states. A printout of information from a database is likewise the best evidence of what is in that database. By not printing out the relevant database information and providing it for the record, the Division effectively precluded the Respondent from reviewing the materials for accuracy and cross-examining the witness on this matter. Ms. Roszak's own testimony established that she had no personal knowledge of the information in the database. The database consisted of information obtained from other documents provided to her. (TR at 14-21.)
15. It is clear that the Division did not require loan officers to comply with the CE requirements effective May 2, 2002, by the end of the 2002 calendar year on December 31, 2002. Instead, the Division extended the deadline for compliance to at least March 14, 2003. Thus, the Division believed it had the ability to extend the deadline and in fact did so.
16. The Hearing Officer finds that the Division extended the deadline for Respondent to complete the required six hours of continuing education for 2002 to April 30, 2003.
17. The Hearing Officer finds that Respondent completed the required six hours of continuing education for the year 2002 before April 30, 2003.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

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

### **B. Proposed Revocation of Loan Officer License.**

1. 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.
2. The Division seeks to revoke Respondent's license solely based upon its claim that he did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2002. No one disputes that the Division extended the deadline for compliance beyond December 31, 2002.
3. The Hearing Officer found that the Division extended the deadline for Respondent to complete six hours of continuing education for 2002 to April 30, 2003. Respondent completed six hours of continuing education for the year 2002 before April 30, 2003. Respondent also completed another six hours of continuing education for the year 2003 before December 31, 2003.
4. Respondent did not violate R.C. 1322.052. Therefore, there is no basis for revoking Respondent's loan officer license pursuant to R.C. 1322.10(A)(1)(a).

## **III. RECOMMENDATION**

The Respondent completed the required six hours of continuing education for the year 2002 on a timely basis. He also completed the required six hours of continuing education for the year 2003 on a timely basis. Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions not revoke Respondent's loan officer license.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
December 10, 2004