

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

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INSTITUTIONS
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In re: Nancy J. George,
dba Ohio Mortgage Company

Case No. 04-0007-MBD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Certificate of Registration issued by the Division to Nancy J. George, dba Ohio Mortgage Company (the "Respondent") be denied for renewal. The Division determined that the Respondent violated Section 1322.052 of the Ohio Revised Code which requires every operations manager to have completed a minimum of six hours of approved continuing education during the prior year. Because of the failure of the Operations Manager to have completed the continuing education requirement in 2002, the Division asserts that the Respondent does not have the requisite character and general fitness to command the confidence of the public and to warrant the belief that the business will be conducted in compliance with the Ohio Mortgage Broker Act.

2. The Respondent's address is 4311 Ridge Road, Brooklyn, Ohio 44144.

3. This matter was initiated by the Superintendent of the Division by the issuance on January 16, 2004, of a Notice of Intent to Deny Mortgage Broker Certificate of Registration & Opportunity for Hearing. (Exhibit 2).

4. On January 26, 2004, the Respondent wrote to the Division requesting a hearing. (Exhibit 3).

5. On February 12, 2004, the Division wrote to the Respondent scheduling a Hearing for Tuesday, March 23, 2004, at 1:00 p.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio, 43215. (Exhibit 4).

6. On March 23, 2004, the Division wrote to Nate N. Malek, Esq., counsel for the Respondent, rescheduling the Hearing for 1:00 p.m. on Wednesday, May 5, 2004. (Exhibit 5).

7. On May 4, 2004, the Division wrote to Attorney Malek rescheduling the Hearing for 1:30 p.m. on Monday, June 28, 2004. (Exhibit 6). On June 28, 2004, Attorney Malek wrote to the Hearing Officer with copies to Assistant Ohio Attorney General Daniel P. Jones indicating that the Respondent's application had been withdrawn. (Exhibit 7).

8. On June 28, 2004, the Division wrote to Attorney Malek rescheduling the Hearing for 11:00 a.m. on Friday, July 2, 2004. (Exhibit 8).

9. The Hearing in this matter took place on Friday, July 2, 2004, beginning at 11:00 a.m. in Room 1918 of the Vern Riffe Center located at 77 S. High Street, Columbus, Ohio. Attending was Daniel P. Jones, Assistant Attorney General of Ohio in the Executive Agencies

Section. Appearing as a witness was Reine Roszak, of the Division. No one attended on behalf of the Respondent.

10. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. The Respondent is an individual doing business as Ohio Mortgage Company that holds an active Ohio Mortgage Broker Certificate of Registration. The Respondent's Mortgage Broker Certificate of Registration was scheduled to expire on April 3, 2003, and the Respondent filed an application to renew its Certificate prior to that date. (Exhibit 2).

2. On July 15, 2003, the Division wrote to the Respondent to indicate that the continuing education requirement for 2002 had not been met. (Exhibit 1).

3. There is no evidence in the Record on which the Hearing Officer can rely to demonstrate that the Respondent has completed the required minimum of six (6) hours of continuing education prior to the expiration of the deadline for calendar year 2002.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.052 provides:

On or after January 1, 2002 each licensee . . . shall complete at least six hours of continuing education every calendar year. To fulfill this requirement, the six hours of continuing education must be offered in a course of program of study approved by the superintendent of financial institutions.

2. Ohio Revised Code Section 1322.041(B) provides that a loan officer license shall be renewed if the Superintendent of the Division finds that certain conditions are met, including:

. . . (2) On or after January 1, 2003, the loan officer has completed during the immediately preceding calendar year at least six hours of continuing education as required under Section 1322.52 of the Revised Code.

(3) The applicant meets the conditions set forth in Divisions (A)(2) to (5) of this division.

3. Ohio Revised Code Section 1322.041(A)(5) provides:

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 sections 1322.01 to 1322.12 of the Revised Code.

4. Ohio Revised Code Section 1322.10(A) provides:

(A) After notice and opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the superintendent of financial institutions may do the following:

(1) Suspend, revoke, or refuse to issue or renew a certificate of registration or license if the superintendent finds either of the following:

(a) A violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration;

(b) A conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

(2) 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 license 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. All fines collected pursuant to this division shall be paid to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code. In determining the amount of a fine to be imposed pursuant to this division, the superintendent shall consider all of the following:

(a) The seriousness of the violation;

(b) The registrant's or licensee's good faith efforts to prevent the violation;

(c) The registrant's or licensee's history regarding violations and compliance with division orders;

(d) The registrant's or licensee's financial resources;

(e) Any other matters the superintendent considers appropriate in enforcing section 1322.01 to 1322-12 of the Revised Code.

5. Ohio Revised Code Section 1322.10 provides that after notice and an opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the Superintendent of the Division may, among other things, refuse to renew a loan officer license or may impose such other sanctions as the Superintendent deems appropriate.

DISCUSSION

1. The Hearing Officer notes that the record contains a proposed Settlement Agreement that had been proposed at some point prior to the Hearing in this matter. However, the Hearing Officer has not reviewed the proposed Settlement Agreement and does not take it into account in any way in connection with this Report and Recommendation.

2. Initially, the Hearing Officer is presented with the issue of whether the withdrawal of the application by the Respondent defeats the Division's statutory authority to continue with the Hearing and ultimately to consider denial of the application to renew the Respondent's license. There are several foundations for the proposition that the Division should permit the withdrawal of an application at any time. First, there is no statutory or administrative authority, whether direct or implied, for the proposition that withdrawal should be denied. The Hearing Officer notes that the Division has issued no regulations with regard to the withdrawal of applications. By contrast, other agencies, including the Division of Securities, have issued regulations concerning the withdrawal of an application. *See, generally* Ohio Administrative Code 1301:6-3-151(K)(2). Second, the decision to file an application rests with the applicant and he/she should have a corresponding ability to withdraw the application. Third, until there has been a final decision, after notice and a hearing, there is no decision on the merits of an application. Fourth, it is a waste of scarce administrative resources to conduct a hearing, prepare a report, and commit the Superintendent to review that report when the applicant has expressed a clear and unequivocal decision to withdraw. Finally, no party is prejudiced by a timely withdrawal. The Division's counsel has not asserted that the Division will be adversely affected if the application is withdrawn. It will be the recommendation of this Hearing Officer that, in light of these factors, the Division should consider the application to have been withdrawn and that, therefore, the Division need not act on the renewal application filed by the Respondent.

3. Hearing Officer notes that the Respondent did not appear at the hearing and there is, therefore, no factual record supporting the required burden of proof placed on the Respondent.

4. There is in the record sufficient evidence to show that the Respondent did not complete the requisite number of continuing education hours prior to her withdrawal of the Application.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer first that the Division deem the Respondent's application to have been withdrawn. Second, if the Division elects not to have treated the Application as withdrawn, it is the recommendation that the Division deny the renewal.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
August 13, 2004