

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

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DIVISION OF FINANCIAL
INSTITUTIONS

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REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Stephen T. Noel

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0470-LOD**

FINDINGS OF FACT

1. On or about April 19, 2004, Stephen T. Noel ("Respondent" herein) submitted an application (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for renewal of Respondent's license as a loan officer under Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A herein.
2. On or about December 3, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.031, 1322.041, and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on January 19, 2005, at the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorney General Timothy C. Loughry, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 13)

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CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.031, 1322.041, and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.031, 1322.041, and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

DISCUSSION

According to testimony provided by the Division, Respondent failed to comply with statutory continuing education requirements for continued licensing as a loan officer contained in Chapter 1322 of the Ohio Revised Code. (Tr. Pages 8, 11)

Respondent did not contest the fact that he failed to complete the required continuing education for 2003. (Tr. Page 18; see also Respondent's Exhibit 1)

Section 1322.052 of the Ohio Revised Code sets forth specific continuing education requirements for loan officers, and the Division is authorized by Section 1322.10 of the Ohio Revised Code to deny an application for licensing as a loan officer if an applicant fails to comply with the requirements contained in Sections 1322.01 through 1322.12 of the Ohio Revised Code.

While the Respondent testified that he failed to complete the required continuing education as the result of his misunderstanding of the continuing education requirements (Tr. Page 15; see also Respondent's Exhibit 1), the statute unfortunately provides no excuse for misunderstanding, mistake, or other failure to complete the required continuing education on an annual basis. Respondent took full responsibility for his failure to complete the required continuing education, and did not attempt to conceal that fact or offer any excuse other than his misunderstanding of the requirements.

In addition, Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent of the Division (the "Superintendent") shall issue 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer

license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Respondent presented only his own testimony to explain his failure to comply with the continuing education requirements, and to contradict the Division's assertions regarding Respondent's character and fitness.

In light of the lack of objective testimony or evidence by the Respondent with respect to Respondent's character and fitness, and in light of the fact that the law does not excuse Respondent's failure to comply with continuing education requirements on the basis of misunderstanding, mistake, or otherwise, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under the referenced sections of Chapter 1322 of the Ohio Revised Code.

RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the Application of the Respondent be denied.

Respectfully submitted,

~~Jeffery E. Smith, Hearing Examiner~~

1 May 05

Date