

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2010 JUN 25 PM 12:30

IN THE MATTER OF: : CASE NO. M2010-137
:
MARK R. JORDAN, : LISA M. FINNEGAN
RESPONDENT. : HEARING OFFICER
:

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 25, 2010

I. FINDINGS OF FACT

A. Background

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, 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 Division held the hearing on May 27, 2010 at 77 South High Street, 19th Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the allegations in the March 11, 2010 Notice of Intent to Revoke Loan Officer License, Notice of Intent to Impose Fine, and Notice of Opportunity for a Hearing ("NOH"). In the NOH, the Division alleged that Mark R. Jordan ("Respondent"), as operations manager for Star Point Mortgage, Inc. ("Star Point"), knowingly caused two Star Point consumers to sign incomplete mortgage related documents and allowed a loan processor to complete the documents after signature.

3. James M. Evans, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Neither Respondent nor anyone on his behalf attended the hearing. Lori A. Massey, Esq. and Rubie W. Ames testified on behalf of the Division. The Division introduced and the Hearing Officer admitted State's Exhibits 1 through 8 into the record at the hearing. The Hearing Officer closed the record at the conclusion of the proceeding.

B. Jurisdiction and Procedural Matters

4. The Division issued the NOH to Respondent on March 11, 2010. In the NOH, the Division indicated that it sought to revoke Respondent's loan officer license. The NOH also notified Respondent that he was entitled to an opportunity for a hearing on the matter and that he had to request a hearing within thirty days of the time of the mailing of the NOH. *State's Exhibit 1.*

5. The Division sent the NOH to Respondent by certified mail, return receipt requested, at Respondent's address of record with the Division. *State's Exhibits 1 and 5; Testimony of Lori A. Massey, Tr. at 13-16, 20.*

6. On April 5, 2010, the United States Postal Office returned the certified mail envelope and the NOH to the Division marked "unclaimed." *State's Exhibit 1; Testimony of Lori A. Massey, Tr. at 16, 19.*

7. R.C. § 119.07 provides if any notice sent by certified mail is returned because the party failed to claim the notice, then the agency shall send the notice by ordinary mail to the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained, unless the notice is returned for failure of delivery. *Testimony of Lori A. Massey, Tr. at 19.*

8. On April 5, 2010, the Division re-sent the NOH and a cover letter to Respondent at his address of record with the Division by ordinary mail, accompanied by a Certificate of Mailing. *State's Exhibit 2; Testimony of Lori A. Massey, Tr. at 19-21.*

9. The Division provided the Certificate of Mailing issued by the United States Postal Service demonstrating that the Division had mailed the NOH to Respondent by ordinary mail on April 5, 2010. *State's Exhibit 2.*

10. The United States Post Office did not return the NOH and cover letter to the Division as undeliverable. *Testimony of Lori A. Massey, Tr. at 20-21.*

11. Lori A. Massey, an attorney examiner with the Division, spoke with Respondent after he received the NOH. Respondent indicated that he was going to request a hearing but was unsure whether he was going to retain counsel. *Testimony of Lori A. Massey, Tr. at 50.*

12. On April 22, 2010, Respondent submitted his request for a hearing to the Division. *State's Exhibit 3; Testimony of Lori A. Massey, Tr. at 21-22.*

13. On April 23, 2010, the Division sent a notice of hearing letter to Respondent informing him that the Division had scheduled a hearing on the matter for April 30, 2010, and within the same notice, the Division continued the hearing on its own motion to May 27, 2010. *State's Exhibit 4; Testimony of Lori A. Massey, Tr. at 22-23.*

14. The Division held the hearing on the date, time, and location specified in the Division's April 23, 2010 notice of hearing letter. The Division received no contact from either Respondent or an attorney on his behalf. *Testimony of Lori A. Massey, Transcript ("Tr.") at 8-9, 12, 50.*

C. Respondent's Loan Officer License

15. Respondent is an individual who holds loan officer license number LO.001872 issued by the Division pursuant to R.C. Chapter 1322. *State's Exhibit 5.*

16. Respondent is the operations manager and 100% shareholder of Star Point, an Ohio corporation registered with the Ohio Secretary of State's office. *State's Exhibits 5 and 7; Testimony of Lori A. Massey, Tr. at 13, 46.*

17. Respondent's license shows that he has held his loan officer license as the operations manager for Star Point since September 1, 2006. *State's Exhibit 5; Testimony of Lori A. Massey, Tr. at 23-24.*

18. Respondent's loan officer license expired on April 30, 2010. Respondent has applied to renew his loan officer license for the 2010 calendar year and his application is pending with the Division. *State's Exhibit 5; Testimony of Lori A. Massey, Tr. at 24.*

D. The Division's Compliance Examination of Star Point

19. On July 6 and 7, 2009, Rubie W. Ames, a consumer finance examiner with the Division, conducted a compliance examination of Star Point. *Testimony of Rubie W. Ames, Tr. at 54.*

20. Ms. Ames notified Star Point in advance by return receipt electronic mail that she would be conducting a compliance examination. Ms. Ames received an electronic mail indicating that Star Point had received and opened her electronic mail. *Testimony of Rubie W. Ames, Tr. at 55-56.*

21. During Star Point's compliance examination, Ms. Ames examined mortgage loan origination disclosures. *Testimony of Ms. Ames, Tr. at 56-57.*

22. A mortgage loan origination disclosure ("MLOD") is a document that informs the consumer of the costs that the consumer will incur from the mortgage broker's origination of a loan for the consumer. *Testimony of Lori A. Massey, Tr. at 14-15.*

23. Ms. Ames reviews MLODs pursuant to a Division mortgage broker examiner's checklist. Ms. Ames looks for inclusion on the MLOD of the registrant's name, address, city, state, zip code, telephone number, fax number, and the mortgage broker's registration number. Ms. Ames also checks to see if the mortgage broker disclosed the loan origination percentage, the underwriting and/or processing fee, and the total costs to be paid by the consumer. Ms. Ames reviewed Star Point's MLODs for these items during her compliance examination on July 6 and 7, 2009. *Testimony of Rubie W. Ames, Tr. at 57.*

i. The Mahams' Loan File

24. During her compliance examination, Ms. Ames reviewed documents from a loan file for consumers Steve Maham and Donna Maham. A closing statement from the loan file indicated that the Mahams' refinance of their residential real estate mortgage closed on December 17, 2008. *Testimony of Rubie W. Ames, Tr. at 56-57; State's Exhibit 6, Bates stamp nos. 0016 - 0018.*

25. Ms. Ames examined the MLOD for the Mahams' loan during her compliance examination. She discovered that the loan officer had not filled in the blank spaces on the MLOD to disclose the loan origination percentage, the underwriting and/or processing fee, and the total costs the Mahams were to pay for the loan. *Testimony of Rubie W. Ames, Tr. at 57; State's Exhibit 6.*

26. Ms. Ames also found that the Mahams' MLOD did not contain the Mahams' address and telephone number, the Mahams' signature, the date the loan officer completed the loan application, or the loan officer's name, license number, and signature. *Testimony of Rubie W. Ames, Tr. at 57; State's Exhibit 6.*

27. Ms. Ames wrote on the top right-hand corner of the Mahams' MLOD. Ms. Ames' writing indicated the applicable Ohio Revised Code statute and the Ohio Administrative Code rule requiring the inclusion of the missing information on a MLOD: R.C. § 1322.062 and Ohio Adm.Code 1301:8-7-15(A). *Testimony of Rubie W. Ames, Tr. at 58; State's Exhibit 6.*

28. Ms. Ames made a copy of the Maham's MLOD that she examined on July 6 and 7, 2009 and brought the copy to the hearing on the instant matter. Ms. Ames identified her copy of the MLOD that she made at Star Point on July 6 and 7, 2009 as being the same as the copy in State's Exhibit 6, Bates stamp no. 0019. *Testimony of Rubie W. Ames, Tr. at 59-60; State's Exhibit 6, Bates stamp no. 0019.*

29. Ms. Ames also obtained other copies of documents from the Mahams' loan file at Star Point, such as their residential loan application and the closing statement for their loan. *Testimony of Rubie W. Ames, Tr. at 60-61.*

30. Ms. Ames mailed a copy of her compliance examination report with the Maham's loan documents to her supervisor. *Testimony of Rubie W. Ames, Tr. at 61.*

31. Upon reviewing Star Point's file at the Division in connection with the compliance examination, Division attorney examiner Lori A. Massey subpoenaed copies of the Maham's loan documents from Star Point on September 16, 2009. *State's Exhibit 6, Bates stamp no. 0015; Testimony of Lori A. Massey, Tr. at 24-26.*

32. The MLOD for the Mahams that Ms. Massey obtained from Star Point by subpoena differed from the copy of the MLOD that Ms. Ames obtained during her compliance examination. The MLOD that Ms. Massey obtained by subpoena showed that someone had altered the original MLOD by filling in all of the missing information. *Testimony of Lori A. Massey, Tr. at 25-28; State's Exhibit 6, Bates stamp nos. 0019 and 0020.*

33. The altered MLOD for the Mahams indicated that Nick Hunter was the loan officer. Mr. Hunter was an employee of Star Point when he originated the Mahams' loan. *State's Exhibit 6, Bates stamp no. 0020; Testimony of Lori A. Massey, Tr. at 46.*

ii. The Stevens' Loan File

34. During her compliance examination of Star Point on July 6 and 7, 2009, Ms. Ames reviewed documents from a loan file for consumer Larry Stevens. A closing statement from the loan file indicated that Mr. Stevens' refinance of his residential real estate mortgage closed on March 17, 2009. *Testimony of Rubie W. Ames, Tr. at 62; State's Exhibit 6, Bates stamp no. 0031.*

35. Ms. Ames examined the MLOD for Mr. Stevens' loan during her compliance examination. She discovered that the loan officer had not filled in the blank spaces on the MLOD to disclose the underwriting fee and the total costs Mr. Stevens was to pay. *Testimony of Rubie W. Ames, Tr. at 62; State's Exhibit 6, Bates stamp no. 0025.*

36. During her compliance examination, Ms. Ames wrote on the top right-hand corner of Mr. Stevens' MLOD. Ms. Ames' writing indicated the applicable Ohio Revised Code statute and the Ohio Administrative Code rule requiring the inclusion of the missing information on the MLOD: R.C. § 1322.062 and Ohio Adm.Code 1301:8-7-15(A). *Testimony of Rubie W. Ames, Tr. at 62-63; State's Exhibit 6.*

37. Ms. Ames made a copy of Mr. Stevens' MLOD that she examined on July 6 and 7, 2009 and brought the copy to the hearing on the instant matter. Ms. Ames identified her copy of the MLOD that she made at Star Point on July 6 and 7, 2009 as being the same as the copy in State's Exhibit 6, Bates stamp no. 0025. *Testimony of Rubie W. Ames, Tr. at 63-64; State's Exhibit 6, Bates stamp no. 0025*

38. Ms. Ames also examined other documents from Mr. Stevens' loan file at Star Point such as the closing statement for the loan. *Testimony of Rubie W. Ames, Tr. at 62.*

39. Ms. Ames mailed a copy of her compliance examination report with Mr. Stevens' loan documents to her supervisor. *Testimony of Rubie W. Ames, Tr. at 64.*

40. Upon reviewing Star Point's file at the Division in connection with the compliance examination, Division attorney examiner Lori A. Massey subpoenaed copies of Mr. Stevens' loan documents from Star Point on September 16, 2009. *State's Exhibit 6, Bates stamp no. 0015; Testimony of Lori A. Massey, Tr. at 24-25.*

41. The MLOD for Mr. Stevens that Ms. Massey obtained from Star Point by subpoena differed from the copy of the MLOD that Ms. Ames obtained during her compliance examination. The MLOD that Ms. Massey obtained by subpoena showed that someone had altered the original MLOD by filling in the missing information. *Testimony of Lori A. Massey, Tr. at 25-28; State's Exhibit 6, Bates stamp nos. 0019 and 0020.*

42. Both copies of the MLODs for Mr. Stevens' loan indicated that Heather Witt was the loan officer. Ms. Witt was an employee of Star Point when she originated Mr. Stevens' loan. *State's Exhibit 6, Bates stamp nos. 0025 and 0026.*

E. Responsibility of the Operations Manager for Compliance

43. The operations manager for a mortgage broker office is required to supervise all loan officers and ensure compliance with R.C. Chapter 1322. *Testimony of Lori A. Massey, Tr. at 14, 46-47.*

44. Ohio law requires that a mortgage broker make disclosures to a consumer prior to originating a loan, specifically, the mortgage broker must disclose how much it will cost the buyer to obtain the loan as well as the interest and fees to be paid back over the life of the loan. *Testimony of Lori A. Massey, Tr. at 28-29.*

45. During Ms. Ames' exit interview with Respondent after the compliance examination, Respondent signed an Operations Manager Questionnaire as the "Operations Manager or Owner." *State's Exhibit 8; Testimony of Rubie W. Ames, Tr. at 64-66.*

46. Ms. Massey spoke with Respondent by telephone on January 28, 2010. Respondent admitted that after Star Point closed loans, Star Point's processor filled out any missing information on documents in the loan files. *Testimony of Lori A. Massey, Tr. at 47-48.*

47. The Hearing Officer finds that as the operations manager for Star Point, Respondent knowingly permitted loan officers to prepare MLODs that did not contain required disclosures to consumers and caused the consumers to sign the MLODs in blank.

48. Respondent allowed alteration of documents at Star Point after signature and after the loans closed. Respondent allowed alteration of documents prior to sending them to the Division in response to the subpoena. *Testimony of Lori A. Massey, Tr. at 47-48.*

49. Respondent's actions in causing consumers to sign blank documents that did not contain required disclosures and Respondent's actions in altering documents after signature are serious violations of R.C. Chapter 1322. The Division seeks to revoke Respondent's loan officer license and impose a fine upon Respondent for his actions. *Testimony of Lori A. Massey, Tr. at 17-18, 28.*

50. In calculating the amount of the \$3,000.00 fine that the Division seeks to impose on Respondent, the Deputy Superintendent of the Division considered all of the factors set forth in R.C. § 1322.10(A)(2). *Testimony of Lori A. Massey, Tr. at 17-18.*

II. CONCLUSIONS OF LAW

A. Jurisdiction

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

B. The Division's Proposed Revocation of Respondent's Loan Officer License and Imposition of a Fine

52. The Division is responsible for the licensing and regulation of loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, and the rules promulgated thereunder.

53. An operations manager is the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business. *R.C. § 1322.01(H)*.

54. Ohio Adm.Code 1301:8-7-02(L) provides that no registrant, through its operations manager or otherwise, shall fail to reasonably supervise a loan officer or other persons associated with the registrant or to establish reasonable procedures designed to avoid violations of R.C. Chapter 1322 or of Ohio Adm.Code 1301:8-7.

55. As the operations manager for Star Point, Respondent was responsible for Star Point's compliance with R.C. Chapter 1322.

56. R.C. § 1322.07 states that no registrant, licensee, person required to be registered or licensed under R.C. §§ 1322.01 to 1322.12 shall do any of the following:

* * *

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;

* * *

(F) Knowingly instruct, solicit, propose, or otherwise cause a buyer to sign in blank a mortgage related document;

* * *

57. Respondent's conduct in failing to make required disclosures to buyers and in knowingly causing buyers to sign blank MLODs, a mortgage-related document, constitutes a violation of R.C. § 1322.07(C) and R.C. § 1322.07(F).

58. R.C. § 1322.072 states that no person, in connection with any examination or investigation conducted by the superintendent of the Division under R.C. §§ 1322.01 to 1322.12, shall knowingly do any of the following:

(A) Circumvent, interfere with, obstruct, or fail to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness;

(B) Tamper with, alter, or manufacture any evidence;

(C) Withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

59. Respondent's actions in altering the MLODs subpoenaed by the Division constitute a violation of R.C. § 1322.072.

60. R.C. § 1322.10 (A)(1)(a) provides, in pertinent part, that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent of the Division may suspend, revoke or refuse to issue or renew a license if the Superintendent finds a violation of or failure to comply with any provision of R.C. §§ 1322.01 to 1322.12 or the rules adopted under those sections.

61. The Division is authorized under R.C. § 1322.10(A)(1)(a) to suspend or revoke Respondent's loan officer license for his violations of R.C. §§ 1322.07(C), 1322.07(F), and 1322.072.


62. R.C. § 1322.10(A)(2) provides that the Superintendent of the Division may "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 licensee 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."

63. The Division is authorized under R.C. § 1322.10(A)(2) to impose a fine upon Respondent for his violations of R.C. §§ 1322.07(C), 1322.07(F), and 1322.072.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established that Respondent violated R.C. §§ 1322.07(C), 1322.07(F) and 1322.072. Therefore, the Hearing Officer respectfully recommends that the Division revoke Respondent's loan officer license and impose a fine.

Respectfully submitted,


Lisa M. Finnegan (0033537)
Administrative Hearing Officer
June 25, 2010