

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL INSTITUTIONS
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IN THE MATTER OF: : CASE NO. 04-0358-LOD
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:
Johnnie Williams : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 30, 2004

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 May 27, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Johnnie Williams (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 2002 as required by R.C. 1322.052. Therefore, the Division asserts that 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 purposed of the Ohio Mortgage Broker Act.

Daniel P. Jones, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 10 were admitted into the record. The Respondent submitted no Exhibits for admission into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on April 1, 2004. Respondent's hearing request was received by the Division on May 3, 2004. The Division scheduled the hearing for May 13, 2004 but, on its own motion, continued the hearing to May 27, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time and location of the hearing.

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 Division extended the deadline for loan officers to complete their 2002 continuing education requirements to March 14, 2003. (TR at 13.)
4. On August 29, 2003, the Division notified the Respondent his loan officer license could not be renewed because its records indicated that he did not fulfill his 2002 continuing education requirement. 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 \$250.00 fine and otherwise agreed to the terms of the Settlement Agreement by September 30, 2003. (Exhibit 1; TR at 15,16.)
5. The Respondent did not sign or otherwise agree to the terms of the Settlement Agreement. (TR at 16.)

6. On September 16, 2003, the Respondent completed six hours of approved continuing education sponsored by Hondros College. (Exhibit 2.)

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. 1322.052 provides:

On and 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. R.C. 1322.041 (B) provides that a loan officer license shall be renewed if the Superintendent 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 1322.052 of the Revised Code.

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

3. R.C. 1322.041 (A) provides in pertinent part:

* * *

(5) 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. 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.

5. The Respondent did not complete six hours of continuing education approved by the Superintendent by the statutory December 31, 2002 deadline or by the March 14, 2003 deadline as extended by the Division.
6. Respondent asserts that the deadline for meeting the continuing education requirement should not apply to him because around the date in 2003 when he paid the fee for his loan officer license renewal, he called the Division and asked if he could still earn credit for continuing education for 2002, but the Division could not answer his question. Respondent asserts that he made additional calls in the following months. (TR at 29.) The record does not establish when the Respondent made these calls or to whom he spoke. Therefore, it cannot be determined if the Respondent would have benefited from being informed that the deadline had been extended to March 14, 2003. In any event, the Division's inability to answer his questions in 2003 did not excuse the Respondent's failure to complete the continuing education requirement in 2002.
7. Respondent also asserts that the deadline for completing the continuing education requirement should not apply to him because the Division mailed its August 29, 2003 letter together with the proposed Settlement Agreement to his former address in Cleveland. (TR at 33.) Although the record does not establish the date that he received the August 29, 2003 letter, the Respondent admits that he did receive the letter and Settlement Agreement not later than September 11, 2003 when he faxed a copy of a course completion certificate to the Division. (TR at 30.) At that time, the Respondent, having completed a six-hour continuing education course at Hondros College, still had adequate time to comply with the agreement if he had so chosen.
8. The Respondent failed to timely complete six hours of approved continuing education in calendar year 2002 and therefore failed to meet the condition for renewal of his loan officer license in R.C. 1322.041 (B) (2).
9. The Division alleges that the Respondent's failure to complete his 2002 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 Respondent's credible testimony establishes that he attempted to comply by trying to obtain information from the Division about how he could comply with the

requirement and completing a six-hour course of instruction in August 2003. Under these circumstances, the Respondent's failure to complete the 2002 continuing education requirement does not, by itself, establish that the Respondent's character and 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. Accordingly, the Division has not shown that the loan officer license renewal prerequisite in R.C. 1322.041(A) (5) and (B) (3) has not been met.

III. RECOMMENDATION

The Respondent has not established that he satisfied the loan officer license renewal prerequisite set forth in R.C. 1322.041(B) (2). Therefore, I respectfully recommend that the Superintendent of Financial Institutions refuse to renew the Respondent's loan officer license pursuant to R.C. 1322.10(A)(1)(a).

Respectfully Submitted,

James V. Lawrence
Hearing Officer
June 30, 2004