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**REPORT AND RECOMMENDATION**  
**ADMINISTRATIVE HEARING OFFICER JAMES N. TURNER**

## I. FINDINGS OF FACT

This matter first came before Hearing Officer Terrence O'Donnell, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (the "R.C."). Said hearing was held 1:18 PM on May 23, 2005, at 77 South High Street, Room 1924, Columbus Ohio. Following the hearing it was determined that as result of another client relationship held by the law firm of Bricker & Eckler, with which Mr. O'Donnell is employed as an Associate Attorney, Mr. O'Donnell had been placed in a situation involving a potential conflict of interest. As a result, James N. Turner, Chief Legal Counsel for the Ohio Department of Commerce, an attorney licensed to practice law in Ohio, assumed the responsibility to serve as Hearing Officer for the purpose of preparing a Report and Recommendation in accordance with R.C. Chapter 119.

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that are set forth in R.C. Sections 1322.04(B)(3) and 1322.04(A)(5) with the result that that its conduct allows the Superintendent to refuse renewal of a certificate of registration or a license pursuant to R.C. Section 1322.10(A)(1)(a). The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Martine Jean. Respondent requested a hearing (Ex. "1-D") but did not appear (Transcript (the "T").) pp. 9). The Respondent did not submit a written statement to the Division. During the hearing, the Division produced a copy of the letter sent by the Division to the Respondent as notice of the hearing that had been re-scheduled to May 23, 2005. The Division did not produce a copy of a return receipt for delivery of certified mailing for such notice, relying on an inference that delivery had been effected for that letter since the same delivery address was used for it as was used for the NOH and a prior notice of continuance, which were delivered via certified mail. (T. pp. 14-15, Exhibit "1-J", "1-K" and "1-L"). At the hearing, State's Exhibits "1-A" through "8" were admitted into the record (T. pp. 28, 35-36).

## B. JURSDICTION

The Division issued the NOH to Respondent on September 13, 2004 (Ex. "1-A", "1-B"). Service on the NOH was perfected on September 14, 2004 (Ex. "1-C"). Respondent timely requested a hearing by an undated document received in the Division on September 16, 2004. (Ex. "1-D"). The Division scheduled a hearing for September 27, 2004 by letter dated September 16, 2004, as required by R.C. Chapter 119 (Ex. "1-E"), and on either its own or the Respondent's motion continued that date three times, ultimately scheduling the hearing for May 23, 2005 (Ex. "1-E" through "1-L"). The hearing went forward, notwithstanding that the Respondent failed to appear, on May 23, 2005. (T., pp. 6-36).

## C. PROPOSED ISSUANCE OF ORDER TO DENY RENEWAL OF MORTGAGE BROKER CERTIFICATE OF REGISTRATION

1. A statutory requirement became effective on May 2, 2002, which mandated that mortgage loan officers become licensed and that Mortgage Brokers obtain a Certificate of registration from the Division. (Senate Bill 76, 2001).
2. The Division is the state agency responsible for the licensing and regulation loan of mortgage officers pursuant to R.C. Chapter 1322.
3. Respondent is an entity that wishes to conduct business in Ohio as a mortgage loan brokerage. (Exhibit "1-B")
4. Pursuant to R.C. Section 1322.10(B) and 1322.04(B), the Division conducted an investigation into the affairs of the Respondent as a result of its receipt of a notice of surety bond cancellation from King Insurance Agency, Inc. (Exhibits "1-B" and "3")

5. As a result of that investigation, the Division found that the Respondent's original surety bond had been cancelled on December 3, 2003 for lack of response to requests for underwriting information. (Exhibits "1-B" and "4")
6. As a result of that investigation, the Division also found that the Respondent's replacement surety bond was effective for the period June 24, 2004 through April 30, 2005. (Exhibit "1-B" and "8")
7. As a result of that investigation, the Division further found that the Respondent had been conducting business as a mortgage broker without the existence of a valid surety bond during the period December 3, 2003 to June 24, 2004. (Exhibits "4" through "8")
8. On the basis of the findings set forth at paragraphs 5-7 above, the Division thereupon determined that by failing to maintain a surety bond in effect for the period December 3, 2003 through June 23, 2004, the Respondent violated the requirements established in R.C. Section 1322.05, and that the Respondent consequently does not meet the conditions for renewal of its Mortgage Broker Certificate of Registration that are set forth in R.C. Sections 1322.04 (A)(5) and 1322.04 (B)(3). (Exhibit "1-B")
9. R.C. Section 1322.10(A)(1)(a) gives the Superintendent of Financial Institutions the discretionary authority to refuse renewal of a certificate of registration or a license in the event that a Respondent has violated any provisions established in R.C. Sections 1322.01 to 1322.12, or the administrative rules adopted under those code sections.
10. Respondent did not appear to submit evidence into the hearing record (T. pp. 6-36).

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119.
2. An agency is under no duty to discover whether someone subject to adjudication has moved so that notice can be mailed to their present address. The duty rests upon the person subject to the adjudication to notify the agency of their new address, and if they fail to do so, it is enough that the notice was sent to the last known address. See: *McCoy V. Bureau of Unemployment Compensation* (1947), 81 Ohio App. 158 and *Blanchard v. Bureau of Unemployment Compensation* (1968), 14 Ohio Misc. 181.

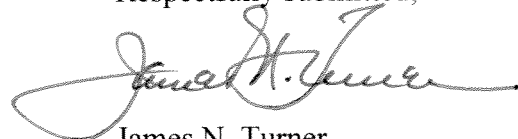
B. APPLICATION TO RENEW MORTGAGE BROKER CERTIFICATE OF REGISTRATION

3. The Division has proven by the preponderant evidence that the Respondent's original surety bond was cancelled on December 3, 2003 for lack of response to requests for underwriting information.
11. The Division has proven by the preponderant evidence that the Respondent's replacement surety bond was effective for the period June 24, 2004 through April 30, 2005.
12. The Division has proven by the preponderant evidence that the Respondent conducted business as a mortgage broker without the existence of a valid surety bond during the period December 3, 2003 to June 24, 2004.
13. The Division has proven by the preponderant evidence that the Respondent violated the requirements established in R.C. Section 1322.05, and that the Respondent consequently does not meet the conditions for renewal of its Mortgage Broker certificate of Registration that are set forth in R.C. Sections 1322.04 (A)(5) and 1322.04 (B)(3)O.R.C.
14. Because the allegations set forth in the NOH have been proven by the preponderance of the evidence admitted, both the burden of proof and the burden of going forward shifted to Respondent once evidence was presented by the Division to support its own burden.
15. The Respondent did not appear nor did the Respondent present evidence to sustain its burden.

III. RECOMMENDATION

The Division has proven the Respondent failed to maintain a required surety bond and Respondent did not appear or submit any evidence on its own behalf. Consequently, the recommendation to the Superintendent of Financial Institutions is to **deny the Respondent's application for renewal of its Mortgage Broker Certificate of Registration.**

Respectfully submitted,



James N. Turner  
Hearing Officer  
August 26, 2005