

STATE OF OHIO
DEPARTMENT OF COMMERCE

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IN THE MATTER OF: : DIVISION OF FINANCIAL
: INSITUTIONS
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:
Ray S. McKinney : Case No. 04-0315-LOD
:
:

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH

Issued August 13, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 3:00 P.M. on June 21, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Ray S. McKinney (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon Respondent's failure to comply with the 2002 CE requirements and is thereby ineligible to renew his license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General James Evans. Respondent did not appear.

At the hearing, State's Exhibits 1 through 7 were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on March 31, 2004. The Respondent requested a hearing. The Division scheduled the hearing for May 3, 2004. The Division, upon its own motion continued the hearing to June 21, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Ex. 4).
2. Respondent is an individual who has applied for Renewal of Loan Officer License with the Ohio Department of Commerce, Division of Financial Institutions. (Tr. p. 7; Ex.1).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers complete Continuing Education requirements (hereinafter CE). (Senate Bill 76, 2001).
4. On or about August 31, 2003, the Division sent a letter to Respondent regarding his failure to meet CE renewal requirements. (Tr.p.6; Ex.1). The Division also sent the Settlement Agreement provided, which Respondent could have entered into and paid a fine and promise to take the required CE's by the date provided in the Settlement Agreement. (Tr. 7; Ex.2).
5. Respondent did not sign the Settlement Agreement. (Tr. p. 8).
6. Respondent was sent the NOH. (Tr. p.12; Ex.4).
7. Respondent requested a hearing (Tr.p.13;Ex. 5)
5. Respondent did not appear.
9. Hearing Officer gave Respondent 30 minutes to appear.
10. The State presented two witnesses. Ms. Riene Roszak, an employee of the Ohio Department of Commerce, Division of Financial Institutions who is the continuing education coordinator and Mark Rhea, Staff Attorney for Division of Financial Institutions. (Tr. pp. 5-14).

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. Ohio Revised Code Section 1322.041(B) empowers the Department of Financial Institutions (hereinafter DFI) to renew an applicant's loan officer license if DFI finds among other things, that the applicant has complied with R.C. 1322.052 by completing a minimum of six (6) hours of approved CE the prior calendar year.
3. Ohio Revised Section 1322.10(A)(1)(a) authorizes DFI to refuse to renew an applicant's loan officer license if DFI finds that the applicant has violate "or failed 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".
4. Ohio Revised Section 1322.041(A) provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:
 - (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.
5. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

 - (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make any false or misleading statements of a material fact or any omission or statements required by state law, or false promises regarding a material fact through advertising or other means, or engage in a continued course of misrepresentations;

6. Because the Respondent failed to comply with the 2002 CE requirements the Division finds Respondent's character and general fitness do not command the confidence of the public and therefore the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
7. Respondent did not appear at the Hearing that Respondent had requested.

DISCUSSION


1. The State presented Riene Roszak, employee with the Department of Commerce, Division of Financial Institutions, CE coordinator, and Mark Rhea, attorney for the Division of Financial Institutions as its witnesses. (Tr.pp. 5-15). Ms. Roszak and Mr. Rhea verified the authenticity of each document that the State presented in its case against Respondent (Tr. App. -15; Ex.'s 1-7).
2. The Respondent submitted an Application to be a Loan Officer (Tr.p. 7; Ex. 1).
3. The Respondent did not comply with the 2002 CE requirement nor did he enter into a Settlement Agreement with the State complying with the requirement (Tr.p.7;Ex. 2).
4. Respondent had the burden of proof to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker Act.
6. Respondent did not appear at the Hearing that Respondent requested.
7. The Hearing Officer waited for Respondent to appear for 30 minutes before beginning hearing.
8. Assistant Attorney Jim Evans argued on behalf of the State that Respondent be denied a loan officer's license for failing to comply with the 2002 CE requirements (Tr. p.15) and that Respondent did not overcome his burden to prove by a preponderance of the evidence that he has the character and honesty to command the trust of the public.

9. Based upon the State's witness, and the Respondent's lack of appearance at the Hearing the Respondent requested, his character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division deny a Loan Officer License to the Respondent.

Respectfully submitted,


Julie M. Lynch
Hearing Officer
August 13, 2004