

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 DEC 16 AM 11:31

IN THE MATTER OF:	:	CASE NO. M2009-777
	:	
TIMOTHY C. PITMAN,	:	
	:	LISA M. FINNEGAN
RESPONDENT.	:	HEARING OFFICER
	:	

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued December 16, 2009

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 November 19, 2009 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the October 1, 2009 Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Timothy C. Pitman ("Respondent") violated R.C. § 1322.052 because he failed to complete at least six hours of approved continuing education during the 2004 calendar year. The Division intends to deny Respondent's loan officer license application for this reason.

3. Janyce C. Katz, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori A. Massey, Esq., testified on behalf of the Division. Respondent appeared at the hearing *pro se* and waived counsel. The Division introduced and the Hearing Officer admitted State's Exhibits A, B, C, D, E, F-1, F-2, F-3, G, H, I, and J into the record at the hearing without objection. The Hearing Officer admitted Respondent's Exhibits 1 and 2 over the Division's objection that Respondent did not authenticate the first page of both exhibits.

B. Jurisdiction and Procedural Matters

4. On October 1, 2009, the Division issued to Respondent the NOH notifying him that the Division intended to deny his loan officer license application. The NOH also notified

Respondent that he had an opportunity to request a hearing within thirty-one days from the date of the mailing of the NOH. *State's Exhibit C*.

5. The Division sent the NOH to Respondent by certified mail, return receipt requested. Respondent received the NOH on or about October 5, 2009. *State's Exhibit D*.

6. On October 8, 2009, Respondent timely requested a hearing. *State's Exhibit B*.

7. On October 9, 2009, the Division mailed a notice to Respondent setting the matter for hearing on October 16, 2009. Within the same notice, the Division rescheduled the hearing for November 19, 2009. *State's Exhibit A*.

8. The Division held the hearing on the date, time, and location as specified in the October 9, 2009 hearing notice.

C. Respondent's Activities

9. Respondent currently has an application for a loan officer license pending with the Division. Respondent held a loan officer license issued by the Division in 2002 and 2004. *State's Exhibits C, F-1, and F-3*.

10. Lori A. Massey, an attorney examiner with the Division, testified at the hearing. Ms. Massey reviews the files of loan officers and mortgage brokers to verify their compliance with the annual continuing education requirement of R.C. § 1322.052. *Testimony of Lori A. Massey, Transcript ("Tr.") at 15*.

11. Ms. Massey reviewed Respondent's loan officer file and found that Respondent held loan officer license #5435 issued to him by the Division on August 6, 2002. *Testimony of Lori A. Massey, Tr. at 16; State's Exhibit F-1*.

12. In order to obtain a loan officer license, the Ohio Mortgage Broker Act requires a first-time applicant to pass the loan officer examination within ninety days of the license issuance date. Respondent did not successfully complete his loan officer examination within the required time limit and his license terminated by operation of law in November 2002. *Testimony of Lori A. Massey, Tr. at p. 14, 16-17; State's Exhibit F-2*.

13. Although Respondent held a loan officer license in 2002, he was not required to complete six hours of continuing education courses in calendar year 2002 because licensees are exempt from this requirement the first year that they hold a loan officer license. Licensees are not exempt from the continuing education requirement at any subsequent time that they hold a loan officer license. *Testimony of Lori A. Massey, Tr. at 16-17*.

14. Respondent reapplied for a loan officer license on June 2, 2004 and held loan officer license number LO.008310.000, which would have remained in effect until April 30, 2005 if Respondent had passed the loan officer examination within ninety days of the

issuance date of his license. Respondent did not take or pass the loan officer examination within the required ninety-day time limit in 2004 and his license was cancelled by operation of law. *Testimony of Lori A. Massey, Tr. at 16; State's Exhibit E.*

15. Regardless of the fact that Respondent did not take or pass his loan officer examination in 2004, he held a loan officer license in 2004 and was required to complete six hours of continuing education courses during the 2004 calendar year. *Testimony of Lori A. Massey, Tr. at 20-21.*

16. Respondent did not complete six hours of continuing education courses during the 2004 calendar year. *Testimony of Respondent, Tr. at 11; Testimony of Lori A. Massey, Tr. at 22-23; State's Exhibit H.*

17. Respondent reapplied to the Division for a loan officer license on June 22, 2009. *State's Exhibit I.*

18. Respondent argued that the loan officer license he held in 2004 lapsed and the Division cannot enforce the requirements of his previous license because he is now applying for a new license. *Testimony of Respondent, Tr. at 9, 30-31.*

19. Ms. Massey explained that a licensee's licensing history follows the licensee regardless of whether the licensee holds a license continuously or not. While the actual license number on the license that Respondent held in 2002 and 2004 changed due to a change in the Division's computer system, Respondent's license remains the same regardless of how many times he may leave and re-enter the business. Therefore, Respondent is still responsible for any continuing education that he failed to take at any time that he held his license. *Testimony of Lori A. Massey, Tr. at 37-38.*

II. CONCLUSIONS OF LAW

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

21. The Division is responsible for the licensing and regulation of loan officers and mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

22. R.C. § 1322.052 and Ohio Adm.Code 1301:8-7-18(B) require that mortgage loan officers licensed by the Division complete six hours of continuing education courses during each calendar year.

23. Ohio Adm.Code 1301:8-7-09 (F) states that an applicant who previously held a loan officer license and failed to complete the continuing education requirement of R.C. § 1322.052 must complete that requirement before the Division will issue the applicant a new license.

24. R.C. § 1322.10(A)(1)(a) authorizes the Superintendent of the Division to refuse to issue a license if the Superintendent finds a failure to comply with any provision of R.C §§ 1322.01 through 1322.12.

25. Respondent's failure to complete six hours of continuing education courses for calendar year 2004 constitutes a violation of R.C. § 1322.052. Accordingly, the Division is authorized to deny Respondent's loan officer license application pursuant to R.C. § 1322.10(A)(1)(a) and Ohio Adm.Code 1301:8-7-09(F) for his non-compliance with R.C. § 1322.052, and to impose a fine pursuant to Ohio Adm.Code 1301:8-7-09(F) for Respondent's prior non-compliance with R.C. § 1322.052.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for denying Respondent's 2009 loan officer license application pursuant to R.C. § 1322.10(A)(1)(a) and Ohio Adm.Code 1301:8-7-09(F) because Respondent failed to comply with R.C. § 1322.052 for calendar year 2004. Therefore, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's 2009 loan officer license application until Respondent completes his 2004 continuing education and pays any required fines and charges.

Respectfully submitted,

Lisa M. Finnegan
Administrative Hearing Officer
December 16, 2009