

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 DEC 30 PM 12:31

IN RE: : CASE NO. M2008-555
:
PIERRE D. HABER, : DELORES EVANS
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued December 30, 2009

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as the Hearing Officer for this hearing in accordance with the Ohio Administrative Code and Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on December 7, 2009, at 77 South High Street, Room 1936, in Columbus, Ohio.

The Division held the hearing to consider the allegation that Pierre D. Haber ("Respondent") failed to respond to the Division's September 25, 2008 request for information in violation of R.C. §1322.072(A). The Division intends to deny Respondent's 2008 loan officer license application.

Dennis P. Smith, Jr., Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Jacqueline Mallett, Esq., testified at the hearing. Respondent did not appear at the hearing, but Respondent's counsel, Glen Littlejohn, Esq., appeared on Respondent's behalf. The parties stipulated to the authenticity and admission of State's Exhibits A through H and such were admitted into the record. The Hearing Officer closed the record at the conclusion of the hearing on December 7, 2009.

B. Jurisdiction and Procedural Matters

1. On July 6, 2009, the Division issued a Notice of Intent to Deny Loan Officer License Renewal & Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2008 loan officer license renewal application. Respondent had 30 days to request a hearing. The Division sent the NOH to Respondent by certified mail, return receipt requested. *State's Exhibit A*

2. On August 4, 2009, the United States Postal Service returned the certified mail envelope and NOH to the Division marked "unclaimed, unable to forward." *State's Exhibit B*
3. R.C. §119.07 provides that when any notice sent by certified mail is returned because the party failed to claim the notice, 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.
4. On August 5, 2009, in accordance with R.C. §119.07, the Division perfected service when it re-sent the NOH to Respondent by ordinary mail and obtained a certificate of mailing. *State's Exhibit B*
5. On September 3, 2009, the Division received Respondent's hearing request. *State's Exhibit C*
6. On September 4, 2009, the Division sent a hearing notice to Respondent by regular mail. The Division scheduled a hearing for October 22, 2009. *State's Exhibit C*
7. On October 22, 2009, the Hearing Officer continued the hearing to allow Respondent's recently retained counsel the opportunity to prepare for the hearing. The hearing was rescheduled to December 7, 2009. *State's Exhibit D*
8. On December 7, 2009, the hearing commenced with the Division and Respondent's counsel in attendance.

C. Respondent's Activities

9. Jacqueline Mallett, an attorney examiner with the Division, reviews licensing applications of loan officers and mortgage brokers to verify their compliance with the Ohio Mortgage Broker Act. Ms. Mallett reviewed Respondent's loan officer file. *Testimony of Ms. Mallett*
10. On September 27, 2006, the Division issued a loan officer license (# 003245) to Respondent. *State's Exhibit E*
11. S.B. 185, effective January 1, 2007, requires loan officer applicants to submit a federal background check with their loan officer license applications. *Testimony of Ms. Mallett; R.C. §1322.031*
12. On or before April 20, 2008, Respondent submitted an on-line 2008 loan officer license renewal application to the Division. *Testimony of Ms. Mallett*

13. On September 25, 2008, the Division sent a letter to Respondent regarding his 2008 loan officer license renewal application. In the letter, the Division stated:

* * *

In compliance with the Division's investigation and in order to further review your application, you are required to submit the following with respect to your 1995 charges for Grand Theft of Personal Property in California, your 1996 charges for Forgery, Possession of Forged Notes, Acquired Access Credit Validity without Consent, Sell Access Card Fraud, Possession of Blank Bill and Note and Sale/Receipt of Access Card in California:

1. A detailed explanation of the facts and circumstances which gave rise to the charges; and
2. A certified copy of the judgment entries which evidences your plea and the court's finding. Your submission of the documentation is due on or before October 31, 2008.

* * *

State's Exhibit G

14. On October 28, 2008, Respondent contacted Ms. Mallett by telephone. Respondent requested additional time to obtain certified copies of documents. Ms. Mallett granted Respondent an extension until November 28, 2008. *State's Exhibit H; Testimony of Ms. Mallett*
15. The Division did not receive any of the requested documents from Respondent prior to the issuance of the NOH or the hearing. Respondent also did not contact the Division to request an additional extension of time to submit the requested documents. *Testimony of Ms. Mallett*
16. Respondent did not provide any of the requested documentation to the Division.

II. CONCLUSIONS OF LAW

17. The Division has procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
18. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, R.C. Chapter 1322.
19. At all times relevant to this matter, Respondent held a loan officer license and was subject to the laws in R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.

20. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner* (1950), 59 Ohio L. Abs. 135, 98 N.E. 2d 60.
21. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.* (1987), 39 Ohio App.3d 15
22. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87.
23. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

24. R.C. §1322.072(A) states:

No person, in connection with any examination or investigation conducted by the superintendent of financial institutions under sections 1322.01 to 1322.12 of the Revised Code, 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.

25. R.C. §1322.041(A)(2), (6) and (B)(3) states:

(A) Upon the conclusion of the investigation required under division (D) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan originator license to the applicant if the superintendent finds that the following conditions are met:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code and the rules adopted thereunder.

* * *

(6) The applicant's financial responsibility, 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. The superintendent shall not use a credit score as the sole basis for a license denial.

* * *

(B) The license issued under division (A) of this section may be renewed annually on or before the thirty-first day of December if the superintendent finds that all of the following conditions are met:

* * *

(3) The applicant meets the conditions set forth in divisions (A)(2) to (8) of this section.

26. Respondent's failure to respond the Division's September 25, 2008 request for information constitutes a failure to cooperate in violation of R.C. §1322.072(A).
27. Therefore, Respondent's character and general fitness does not command the confidence of the public to warrant the belief that the business will be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. *R.C. §1322.041(A)(6)*
28. R.C. §1322.10(A)(1)(a) authorizes the Division to refuse to renew an applicant's mortgage loan officer license if the Division finds that the applicant has violated or failed to comply with any provision of R.C. §§1322.01 through 1322.12.
29. The Division has met its burden of proof for denying Respondent's 2008 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a).

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 2008 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a). Consequently, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's 2008 loan officer license renewal application.

Respectfully submitted,

Delores Evans
Hearing Officer
December 30, 2009