

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. M2009-509
:
J. FRANK COPELAND, :
: LISA M. FINNEGAN
RESPONDENT. : HEARING OFFICER
:

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued December 4, 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 4, 2009 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the October 7, 2009 Order of Summary Suspension, Notice of Intent to Deny Renewal, and Notice of Hearing ("NOH"). The Division alleged that J. Frank Copeland ("Respondent") violated R.C. § 1322.052 because he failed to complete at least six hours of approved continuing education during the 2008 calendar year.

3. Theodore L. Klecker, 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. Neither Respondent nor anyone on his behalf appeared at the hearing. The Division introduced and the Hearing Officer admitted State's Exhibits A, A-1, B, C, D, and E into the record at the hearing.

B. Jurisdiction and Procedural Matters

4. On October 7, 2009, the Division issued the NOH suspending Respondent's loan officer license pursuant to R.C. § 1322.10(F)(2) because Respondent failed to fulfill his continuing education requirement for calendar year 2008. In the NOH, the Division also indicated that it sought to deny Respondent's 2009 loan officer license renewal application. The Division set the matter for hearing on November 4, 2009.

5. The Division sent the NOH to Respondent by certified mail, return receipt requested, at Respondent's address of record with the Division. The Division obtained service on or about October 13, 2009. *State's Exhibits A, A-1, and B; Testimony of Lori A. Massey, Transcript ("Tr.") at pp. 9-11.*

6. On November 4, 2009, prior to the hearing, Respondent left a voice-mail message with the Division indicating that he did not intend to appear at the hearing. *Testimony of Lori A. Massey, Tr. at 6-7.*

7. The Division held the hearing on the date, time, and at the address as specified in the NOH.

C. Respondent's Loan Officer License

8. Respondent held loan officer license number LO.024510.000 in calendar year 2008. *State's Exhibit C.*

9. On April 27, 2009, Respondent applied on-line to renew his loan officer license with the Division. *State's Exhibit D.*

10. The Division is seeking to deny Respondent's loan officer license application because he did not complete his required six hours of continuing education during the 2008 calendar year and did not pay a \$500.00 fine. *Testimony of Lori A. Massey, Tr. at 14-15; State's Exhibit A.*

11. Lori A. Massey, Esq., 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. Ms. Massey reviewed Respondent's loan officer file. *Testimony of Lori A. Massey, Tr. at 9.*

12. In May 2009, the Division placed Respondent's loan officer license in escrow because he no longer was affiliated with a mortgage broker. A loan officer licensee is required to complete six hours of continuing education courses per calendar year even if the licensee's license is in escrow. *Testimony of Lori A. Massey, Tr. at 11-12; State's Exhibit C.*

13. At the hearing, the Division introduced a printout of Respondent's continuing education file maintained by the Division. The printout showed that Respondent did not complete the required six hours of continuing education courses during the 2008 calendar year. *Testimony of Lori A. Massey, Tr. at 13-14; State's Exhibit E.*

14. The Division's printout showed that Respondent completed six hours of continuing education courses on January 2, 2009, which the Division applied to Respondent's 2008 continuing education requirement. *Testimony of Lori A. Massey, Tr. at 14-15; State's Exhibit E.*

15. The Division's printout indicated that the Division applied Respondent's 2009 continuing education courses to his 2008 requirement on or before September 24, 2009. *State's Exhibit E.*

16. The Division suspended Respondent's loan officer license on October 7, 2009, after the Division had applied Respondent's 2009 continuing education courses to his 2008 continuing education requirement. According to the Division's records, at the time the Division suspended Respondent's license, he was in compliance with his 2008 continuing education requirement. *State's Exhibits A and E.*

17. Ms. Massey acknowledged that the Division had applied Respondent's 2009 continuing education courses to his 2008 requirement. Ms. Massey explained that the basis of the Division's suspension of Respondent's loan officer license was his failure to pay the \$500.00 fine for his failure to fulfill his 2008 continuing education requirement during the 2008 calendar year. *Testimony of Lori A. Massey, Tr. at 13-15; State's Exhibit E.*

II. CONCLUSIONS OF LAW

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

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

20. R.C. § 1322.052 requires that mortgage loan officers licensed by the Division complete six hours of continuing education courses during each calendar year.

21. Ohio Administrative Code ("Ohio Adm.Code") 1301:8-7-08(C)(3)(b) states that a license in escrow does not exempt the licensee from the continuing education requirements of R.C. § 1322.052 and Ohio Adm.Code 1301:8-7-18.

22. R.C. § 1322.10(F)(2) requires the Division to suspend, without a prior hearing, the license of a licensee who has failed to fulfill the continuing education requirements of R.C. § 1322.052. The suspension remains in effect until the licensee completes the required continuing education and pays a fine of \$500.00 to the treasurer of state to the credit of the consumer finance fund.

23. To suspend a loan officer license under R.C. § 1322.10(F)(2) for failure to complete continuing education courses under R.C. § 1322.052, the Division must show that a licensee was not in compliance with R.C. § 1322.052 at the time of the suspension. The Division did not establish that Respondent failed to meet his 2008 continuing education requirement at the time of the suspension. The Division's September 24, 2009 printout and the testimony of Ms. Massey demonstrated that the Division had credited Respondent's 2009 continuing education courses to his 2008 continuing education requirement prior to issuing the suspension order. Therefore, the Division did not have a

basis upon which to suspend Respondent's license pursuant to R.C. § 1322.10(F)(2) on that date.

24. The payment of a \$500.00 fine under R.C. § 1322.10(F)(2) is one of the conditions a licensee must satisfy for his suspension to be lifted. Since the Division did not have a basis upon which to suspend Respondent's loan officer license pursuant to R.C. § 1322.10(F)(2), the Division also does not have a basis upon which to require payment of a fine pursuant to R.C. § 1322.10(F)(2). The Division did not cite any other statutory authority as its basis for imposing a \$500.00 fine upon Respondent.

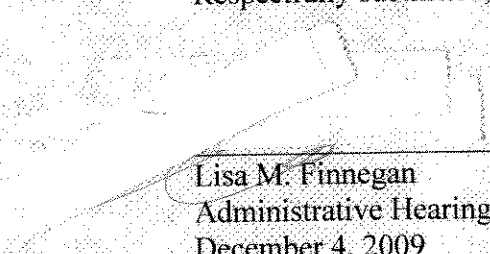
25. R.C. § 1322.10(A)(1)(a) authorizes the Division to deny a loan officer license renewal application for lack of compliance with any provisions of R.C. §§ 1322.01 through 1322.12. At the time the Division issued the suspension order, Respondent was in compliance with the provisions of R.C. §§ 1322.01 through 1322.12 and therefore the Division cannot deny his loan officer license application pursuant to R.C. § 1322.10(A)(1)(a).

26. The Division has not established that Respondent is in violation of R.C. § 1322.052. Therefore, there is insufficient evidence to continue the suspension of Respondent's loan officer license and to require that Respondent pay a \$500.00 fine pursuant to R.C. § 1322.10(F)(2). There is also insufficient evidence for the Division to deny Respondent's 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 not established a sufficient basis to continue the suspension of Respondent's loan officer license pursuant to R.C. § 1322.10(F)(2), and to deny Respondent's loan officer license renewal application pursuant to R.C. § 1322.10(A)(1)(a). Therefore, the Hearing Officer respectfully recommends that the Superintendent of the Division lift the suspension of Respondent's loan officer license and grant Respondent's loan officer license renewal application.

Respectfully submitted,



Lisa M. Finnegan
Administrative Hearing Officer
December 4, 2009