

STATE OF OHIO
DEPARTMENT OF COMMERCE

CASE NO. 05-0098-LOD

IN THE MATTER OF: ALBERT MALDONADO

REPORT AND RECOMMENDATION OF THE HEARING OFFICER
William R. Damschroder

I. Findings of Fact

A. Background

This matter came before William R. Damschroder, an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on September 6, 2005, in accordance with the Administrative Procedures Act, found in Ohio Revised Code ("ORC") Chapter 119. Subsequent to the hearing, the undersigned was appointed as hearing officer for purposes of preparing this Report and Recommendation based upon the hearing transcript and all exhibits admitted into the record at hearing.

The hearing was held to consider whether an **Order to Deny the Loan Officer License Application** should be issued by the Division regarding Albert Maldonado, an individual, because Mr. Maldonado has twice failed to comply with statutory continuing education requirements and, because of this failure, the Division is authorized by statute to refuse to issue a loan officer license, and that Mr. Maldonado's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General James Evans. The Division presented Riene Roszak, an employee of the Division responsible for coordinating the continuing education for mortgage brokers, and Mark Rhea, staff attorney in the Consumer finance Section of the Division, as witnesses. Albert Maldonado ("Respondent") did not appear in person or submit anything in writing, and was not represented by counsel at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for Hearing to Respondent on May 25, 2005, and served it upon Respondent by certified mail. The first attempt at service was returned unclaimed. A subsequent attempt at service was successful, with the certified mail receipt signed on Respondent's behalf on June 24, 2005, with the certified mail receipt being received by the Division on June 28, 2005. (State's Exhibit #4)

2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny Respondent a license. This form was received by the Division on June 28, 2005 (State's Exhibit #5)
3. By letter of June 28, 2005, the Division notified Respondent that the requested hearing was to be held on July 8, 2005. In that letter, however, the Division continued the hearing on its own motion. By subsequent letter of August 1, 2005, the Division rescheduled Respondent's hearing to September 6, 2005 at 1:00 p.m. (State's Exhibits #6, #7)
4. Even though the hearing start time was delayed by fifteen minutes to allow for his arrival, Respondent did not attend the hearing. (Tr. p. 7)

C. Respondent's Loan Officer Application

1. On or about December 6, 2004, the Respondent applied to the Division for a Mortgage Broker Loan Officer License. (State's Exhibit #2)
2. The Division submitted evidence of two mortgage broker loan officer licenses being issued to Respondent; one license being issued on February 13, 2003 and the other license being issued on June 2, 2004.
3. The Division's representative, Ms. Roszak, testified that the Division's position is that Respondent was required to submit proof of completion of continuing education hours for the years 2003 and 2004. (Tr. pp 26-27)
4. The Division records indicated that Respondent did not complete the required hours of continuing education for 2003 or 2004. (Tr. pp. 29-30)
5. Respondent submitted to the Division faxed copies of two certificates indicating that he completed academic training offered by the National Mortgage Broker Academy of America. The Division's position is that neither certificate is relevant since the course were not approved for Ohio. (State's Exhibit #3, Tr. p. 28)
6. The Division submitted a settlement offer to Respondent, with the signed agreement due for return by March 21, 2005. The agreement required Respondent to complete the necessary continuing education hours and pay a fine for noncompliance. The Division's representative testified that the settlement agreement was not signed, returned or complied with by Respondent, and Respondent never contacted the Division about the agreement. (State's Exhibits #1, Tr. pp. 26-29)

II. Conclusions of Law

A. Jurisdictional and Procedural Matters

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for on behalf of the Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

B. Loan Officer License Application

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show he is entitled to a license.
4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate

to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

6. R. C. Section 1322.052 states that:


On and after January 1, 2002, each licensee and each person designated under division (A)(3) of section 1322.03 of the Revised Code to act as operations manager for a mortgage broker business shall complete at least six hours of continuing education every calendar year. To fulfill this requirement, the six hours of continuing education must be offered in a course or program of study approved by the superintendent of financial institutions.

7. Respondent offered no claim or proof that he completed Ohio approved continuing education for 2003 or 2004. The Division's records indicate that Respondent has not completed Ohio approved continuing education for 2003 and 2004. Respondent failed to respond to the settlement offer from the Division, which included a requirement that Respondent complete continuing education hours for 2003 and 2004. Respondent offered no defense, and did not participate in his hearing. Given the evidence and complete lack of explanation, or any effort to become compliant after the fact, the Superintendent is completely justified in refusing to deny Respondent's license application. In fact, the Superintendent has no other option.
8. On an additional note, the record contains much evidence and testimony about Respondent's failure to comply with licensing requirements, and those failures do call into questions Respondent's character and general fitness, and the Superintendent has no reason to believe that Respondent will operated his business honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

9. The Division has met its burden of proof to show that Respondent has not complied with Revised Code Sections 1322.041 (A) or 1322.052.
10. Respondent has not presented evidence of sufficient weight to meet his burden of proof that he is entitled to a license.

II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Albert Maldonado be found to have **not met** the prerequisites set forth in Revised Code Sections 1322.041 (A) and 1322.052, and that the Superintendent of Financial Institutions **deny** Respondent's application for a Loan Officers License.



William R. Damschroder, Esq.
Hearing Officer



Date