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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0063-LOD  
: :  
MICHAEL G. ROGERS : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued May 9, 2006

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I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio 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 hearing was held on April 19, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Michael G. Rogers ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2004. For that reason alone, the Division contends that his loan officer license renewal application ("Renewal Application") should be denied.

Timothy Loughry, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Carrie Moore attended the hearing as the Division's representative and testified for the Division. Neither Mr. Rogers nor counsel representing him appeared at the hearing. At the hearing, State's Exhibits 1 through 4 were admitted into the record. After the hearing, the Hearing Officer reopened the record for the submission of evidence indicating when the Renewal Application was received by the Division. The Division submitted additional documents that were admitted into the record. Those documents are the last seven pages of State's Exhibit 2.

State's Exhibits 2 and 4 contain identifying numbers including social security and bank account numbers. The Division should redact any such identifying numbers from those documents. They are not relevant to any issues in this proceeding and redacting them could help prevent identity theft and theft.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on January 11, 2006. The NOH was sent to Respondent at 1561 Archwood, Toledo, Ohio, 43614, the address on Respondent's Renewal Application. Respondent signed the Renewal Application on March 29, 2005, and submitted it to the Division sometime thereafter. The NOH was received by certified mail at the address on Respondent's Renewal Application. It is clear that the Respondent received the NOH by certified mail because he sent the Division the hearing request form sent to him with the NOH. (State's Exhibits 1 and 2.)
2. Respondent's hearing request form was received by the Division on January 23, 2006. (State's Exhibit 1.)
3. The Division set the hearing for February 2, 2006, and continued it to April 19, 2006 on its own motion. On January 25, 2006, the Division sent a letter to Respondent notifying him of the date, time, and location for the February 2, 2006 and April 19, 2006 hearings. The January 25, 2006 letter was sent by regular mail to the Respondent at the address in his Renewal Application where he also received the NOH by certified mail. The letter was not returned to the Division as undeliverable. (State's Exhibit 1.)
4. The Respondent did not contact anyone at the Division, the Division's counsel, or the Hearing Officer to indicate that he could not be present at the April 19, 2006 hearing or to make a continuance request.
5. The hearing was held on the date and at the location set forth in the January 25, 2006 letter continuing the case to April 19, 2006. The hearing started at least 35 minutes after the time set forth in that letter to make sure that Respondent was not running late or in the wrong location. (State's 1.)
6. The Respondent received the NOH by certified mail and received written notice of the date, time and location for each scheduled hearing date in this case.

**C. Respondent's 2005 Renewal Application.**

7. Respondent is, and was during 2004, an Ohio mortgage loan officer licensed by the Division. The Division received his Renewal Application on or before May 3, 2005. (State's Exhibit 2.)
8. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division and complete at least six hours of continuing education ("CE") each calendar year. R.C. 1322.02(B) and 1322.052.
9. Carrie Moore, an attorney with the Division, testified that information in a system at the Division indicates that Respondent did not complete 6 hours of CE in 2004. Ms. Moore, however, has no personal knowledge of whether Respondent completed any CE in 2004. She testified that Riene Roszak, another Division employee, reviews CE information submitted to the Division and enters it into a system that is used to determine if licensees have complied with the CE requirement. The system includes information obtained from unspecified sources not identified or made part of the record. Testimony about what Ms. Moore has heard is in a system based upon information from unspecified other sources is not sufficient evidence upon which to base any finding of fact. The record does not include any documents from the system or a certificate evidencing the lack of documents indicating CE compliance in the Division's system files.
10. The lack of relevant system information coupled with the lack of a witness with personal knowledge about it prevents any consideration of the accuracy of the information input into the system and cross-examination of a witness with personal knowledge at this level and on appeal.
11. The Hearing Officer finds that the Division has not established that the Respondent failed to complete the required six hours of continuing education for 2004.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

1. Ohio Revised Code Section 1322.10(A)(1) provides that the superintendent of the division of financial institutions may refuse to issue or renew a license under certain circumstances "{a}fter notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code."
2. Ohio Revised Code Section 119.07 requires the Division to notify Mr. Rogers of his right to request a hearing. The Division's NOH properly notified Mr. Rogers that he was entitled to request a hearing and was served upon him by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Mr. Rogers of his right to request a hearing.
3. Ohio Revised Code Section 119.07 also requires an agency to notify the "party" of the time, date, and place of the hearing once a date is set. Mr. Rogers is the "party" entitled to receive the notice of the time, date, and place of the hearing since he is the "person whose interests are the subject of an adjudication by an agency." R.C. 119.01(G).
4. The Division's January 25, 2006 hearing scheduling letter was sent to Mr. Rogers by regular mail at the address he provided to the Division in his Renewal Application and at which he received certified mail service of the NOH. That letter notified him of the date, time, and location for the February 2, 2006 and April 19, 2006 hearings set in this case. It was not returned to the Division as undeliverable.
5. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
6. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the actual hearing in this matter.
7. Mr. Rogers received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124,125-26, 532 N.E.2d 189, 191.
8. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.


**B. Proposed Denial of 2005 Renewal Application.**

9. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
10. Mortgage loan officers licensed by the Division must complete at least six hours of continuing education each calendar year. R.C. 1322.052. Compliance with this provision is a required condition that must be met for a loan officer license to be renewed pursuant to R.C. 1322.041. R.C. 1322.041(B)(2).
11. The Division seeks to deny Respondent's Renewal Application solely based upon its allegation that he did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2004.
12. The Hearing Officer finds and concludes that the Division did not establish that the Respondent failed to complete the required six hours of continuing education for 2004.
13. The Division has not established that the Respondent violated R.C. 1322.052 and has not met the CE requirement set forth in R.C. 1322.041(B)(2). Therefore, there is no basis for denying Respondent's Renewal Application pursuant to R.C. 1322.10(A)(1)(a) for lack of compliance with R.C. 1322.041(B)(2).

**III. RECOMMENDATION**

The Division has not established any basis for not renewing Respondent's loan officer license pursuant to R.C. 1322.10(A)(1)(a). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions renew Respondent's loan officer license.

Respectfully submitted,

  
Jane Stempel Arata  
Administrative Hearing Officer  
May 9, 2006