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DIVISION OF FINANCIAL INSTITUTIONS

CASE NO. 06-0002MBR

**LANDI JACKSON-FORBES
HEARING OFFICER**

Issued November 30, 2006

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the Hearing Officer finds the following to be fact:

This matter came before Landi Jackson-Forbes, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for the above captioned matter in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "Revised Code").

The hearing was held at 9:00 a.m. on May 4, 2006, at 77 South High Street, 19th Floor, Room 1936, Columbus, Ohio. The Division, represented by Deputy Attorney General Matthew Lampke, appeared at the hearing. Attorney Kenneth P. Frankel

represented Respondent at the hearing. At the hearing, State's Exhibits A through L were stipulated to and admitted into the record as discussed in the transcript (hereinafter "Tr.").

B. Mortgage Broker Certificate of Registration

1. The Division is the state agency responsible for the administering and enforcing the Ohio Mortgage Broker Act, Revised Code Chapter 1322. (State Ex. L)
2. Respondent holds an active Ohio mortgage broker under certificate of registration number MB#2235, with its principle place of business located at 33360 Liberty Parkway, North Ridgeville, Ohio. Respondent has held an active Ohio mortgage broker certificate for six years. (Tr. at 28)
3. Mark Walker is the sole owner, president, CEO and operations manager of Future Mortgage. His wife is also in the business with him. (Tr. at 28 & 51)
4. On February 2, 2004 James D. Freeley applied for a loan officer license with the Division. Mark Walker executed the certificate of employment sponsoring Mr. Freeley's loan officer license application. (State Ex. G; Tr. at 28)
5. Mr. Freeley was issued a loan officer license to work with Respondent on May 25, 2004. The face of the license states that the license expires on April 30, 2005. (State Ex. G)
6. Pursuant to Revised Code §1322.051(B), a loan officer licensee shall successfully pass an examination within ninety days after the original issuance date of the license. The loan officer license terminates by operation of law if the licensee fails to pass the examination within the ninety day timeframe.
7. Mr. Freeley did not take and/or pass the requisite examination within ninety days from May 25, 2004, therefore his license terminated by operation of law on August 23, 2004. (State Ex. J)
8. On September 9, 2004 the Division sent a letter notifying Respondent that Mr. Freeley's license was terminated by operation of law therefore he was not authorized to conduct business under the Ohio Mortgage Broker Act. (State Ex. J)
9. Mr. Walker does not dispute that the letter was sent but does not recall having seen or read the letter. (Tr. at 35)
10. Mr. Freeley completed another loan officer license application on September 23, 2004 under Respondent's sponsorship, which the Division received on October 1, 2004. The Division issued Mr. Freeley a loan officer license on February 2, 2005 with an expiration date of April 30, 2005. (State Ex. H)

11. As of the date of the hearing, Freeley is not and has not been licensed as a loan officer in Ohio.
12. On or about September 23, 2005, the Division received a consumer complaint from individuals who obtained a mortgage with the assistance of Respondent and James Freeley. (State Ex. C, E, & K; Tr. at 20-22)
13. As a result of the complaint and the Division's subsequent investigation, it was discovered that during the time period between August 24, 2004 and Feb 1, 2005, Mr. Freeley originated four loans: (1) September 2, 2004, (2) October 7, 2004, (3) October 12, 2004, and (4) October 18, 2004. (State Ex. E & F)
14. Mark Walker acknowledged at the hearing that Mr. Freeley did not hold a loan officer license during the time period that Mr. Freeley originated the four loans at issue. At the time the loans were originated, he believed that Mr. Freeley held a valid loan officer license because of the dates on the face of the license issued to Mr. Freeley, which indicate that he was licensed from May 25, 2004 to April 30, 2005. Mr. Walker also believed that Mr. Freeley's reapplied in October 2004 because his time in which to take the examination had expired. (Tr. at 36, 39-40 & 55-56)
15. Mr. Walker was apologetic and appeared remorseful about the complaint and his allowing Mr. Freeley to originate loans without a license. He intends to employ only persons experienced in loan officer activities and with an active loan officer license to prevent this incident from reoccurring. He has initiated weekly one on one meetings with each loan officer in his employ to review the loan officer's pending files. He also intends to have all loan officers employed with Future Mortgage attend continuing education training with him to be certain that the loan officers are in compliance with the requirements for licensure renewal. (Tr. at 41-42)
16. Effective January 1, 2007, new provisions of the Ohio Mortgage Broker Act will go into affect. Amendments to Revised Code §1322.031 will require applicants for an Ohio loan officer license to have successfully completed at least twenty-four hours of live classroom instruction in various areas relating loan origination. New amendments to Revised Code §1322.041 will also now require applicants to successfully complete the examination required under Revised Code §1322.051(B) prior to the issuance of a loan officer license. (S.B. Bill 185)
17. No evidence was introduced that Respondent has violated any provision of the Ohio Mortgage Broker Act or allowed any other person not properly licensed by the Division to engage in loan officer activities prior to or since the Division initiated this action.

II. CONCLUSIONS OF LAW

A. Jurisdiction

The Division procedurally complied with Revised Code Chapter 119 in mailing the NOH, in demonstrating delivery of the NOH, and in scheduling the hearing that had been requested by Respondent within the time parameters established in Revised Code §119.07, §119.08 and §119.09. The Division has jurisdiction in this matter.

B. Mortgage Broker Certificate of Registration

1. Revised Code §1322.10(A)(1) permits the Division to revoke a mortgage broker certificate of registration if it finds that the registrant has engaged in conduct that constitutes improper, fraudulent, or dishonest dealings. Revised Code §1322.10(E) requires any such revocation to be permanent.
2. There is no dispute that Mr. Freeley did not have a loan officer license at the time that the four loans at issue were originated. Mr. Walker's testimony regarding how he understood the Ohio Mortgage Broker Act which led him to continue to allow Mr. Freeley to originate loans was consistent and credible and does not support a conclusion that his conduct was intentionally fraudulent or dishonest.
3. As the sole owner, president and operations manager, Mr. Walker has a duty to be not only aware of the laws that govern mortgage brokers and loan officers, but to also understand those laws and how they apply to and affect his business operations; or at the least engage assistance to help him understand and comply with the laws affecting his business. By not thoroughly understanding or seeking assistance to understand the laws that govern his business operations and his livelihood, Mr. Walker's conduct in allowing Mr. Freeley to engage in loan officer activities was improper and violated Revised Code §1322.07(C).
4. The language in Revised Code §1322.10(A)(1) is permissive not mandatory. Thus, although a registrant may be found to have violated a provision of Chapter 1322, the Superintendent has the discretion to determine whether to revoke the certificate of registration. In this instance, Respondent has developed a plan to prevent the facts of this case from reoccurring. The Division did not present any evidence to demonstrate that Respondent's plan is insufficient to address any future concerns with its compliance with the Ohio Mortgage Broker Act. In addition, the new provisions of the Ohio Mortgage Broker Act that go into effect on January 1, 2007 will also prohibit Respondent from allowing an unlicensed person to engage in the activities of a loan officer.

5. The fact that Respondent does not have a pattern of violating the Ohio Mortgage Broker Act, coupled with the negative impact that revocation of the mortgage broker certificate of registration will have on the livelihood of Respondent, his wife and the other loan officers in his employ, and the implementation of the new provisions of the Ohio Mortgage Broker act should alleviate the concerns raised by Respondent's sole violation.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that the Superintendent of Financial Institutions not revoke the certificate of registration of Future Mortgage, Inc. It is further recommended that the Superintendent levy a fine in that amount of \$4, 000 for the violation of Revised Code §1322.07(C).

Respectfully submitted,



Landi Jackson-Forbes
Hearing Officer
November 30, 2006
Docket No. 06-DFI-045