

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
2009 MAY -5 PM 12:40 DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. M2008-337  
:   
JOSEPH M. HEISTER, :   
: LISA M. FINNEGAN  
RESPONDENT. : HEARING OFFICER

---

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued May 5, 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 March 24, 2009 at 77 South High Street, 19<sup>th</sup> Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the December 11, 2008 Notice of Intent to Deny Loan Officer Renewal and Notice of Intent to Fine & Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Joseph M. Heister ("Respondent") violated R.C. Section 1322.031(E)(2) and Ohio Administrative Code ("O.A.C.") Rules 1301:8-7-11(A) and (B) by permitting a new loan officer employee to work as a loan officer before submitting to the Division an application to transfer her loan officer's license to the new mortgage broker and before obtaining written confirmation of temporary authority to work. The Division also alleged that Respondent violated R.C. Section 1322.07(G) by attempting to influence an appraisal.

**B. Jurisdiction and Procedural Matters**

3. On December 11, 2008, the Division sent the NOH to Respondent by certified mail, return receipt requested. The Division obtained service on December 13, 2008. *State's Exhibit 1-A.*

4. On or about January 2, 2009, Respondent sent a Hearing Request Form to the Division requesting a hearing on the matter. *State's Exhibit 2.*

5. On January 13, 2009, the Division sent a letter to Respondent scheduling the hearing for January 22, 2009. In the same letter, on its own motion, the Division notified Respondent that it had rescheduled the hearing for March 3, 2009. *State's Exhibit 3*.

6. On February 19, 2009, Respondent's counsel entered an appearance and requested that the Hearing Officer consolidate the hearing on the instant matter with Case No. M2008-730, In the Matter of Judith I. Drake, for purposes of being heard simultaneously because the cases involved the same facts and witnesses. The Hearing Officer granted the request to consolidate the hearing on the Drake case with Respondent's case. The Division would hear both cases on March 3, 2009. *State's Exhibit 4*.

7. On March 2, 2009, Respondent's counsel requested a continuance for additional time to prepare for the consolidated hearings. The Hearing Officer continued the consolidated hearings to March 24, 2009. *State's Exhibits 5 and 6*.

8. The Hearing Officer consolidated In the Matter of Judith I. Drake, Case No. M2008-730 and the instant matter for purposes of the hearing only. The Hearing Officer will issue separate Report and Recommendations in each case.

9. Respondent appeared at the hearing on March 3, 2009 without counsel and stated his intention to proceed without counsel. *Testimony of Respondent, Transcript ("Tr.") at 9*.

10. Todd A. Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared at the hearing *pro se*. Lori A. Massey, an attorney examiner for the Division, testified on behalf of the Division. Judith I. Drake testified on her own behalf and on behalf of Respondent. The parties introduced and the Hearing Officer admitted the following exhibits into the record: State's Exhibits 1-A, 1-B, 2 through 18, and Respondents' Exhibits 1 and 2. The Hearing Officer closed the record at the conclusion of the proceeding.

### **C. The Division's NOH**

11. The Division is responsible for the licensing and regulation of loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, and the rules promulgated thereunder.

12. Respondent is an individual who holds a loan officer license issued by the Division pursuant to R.C. Chapter 1322.

13. Respondent's loan officer license was scheduled to expire on April 30, 2008. Respondent filed an on-line loan officer license renewal application form with the Division on or before April 30, 2008. *State's Exhibit 17; Testimony of Respondent, Tr. at 54*.

14. The Division alleged in the NOH that as the operations manager for Heritage Mortgage Corporation ("Heritage Mortgage"), Respondent violated R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B) by permitting Judith I. Drake,

a new loan officer employee, to work as a loan officer from December 2006 through February 2007 before submitting to the Division her application to transfer her loan officer's license to Heritage Mortgage, and before she received from the Division written confirmation of her temporary authority to work.

15. The Division also alleged in the NOH that Respondent violated R.C. Section 1322.07(G) by attempting to influence an appraisal.

16. The Division intends to deny Respondent's loan officer license renewal application and impose a \$9,000.00 fine. *State's Exhibit A*.

**D. Heritage Mortgage Corporation**

17. In or around 2004, Heritage Mortgage, an Ohio corporation, submitted to the Division an application for a certificate of registration to transact business in Ohio. *State's Exhibit 7*.

18. On November 3, 2004, the Division issued certificate of registration number MB.803350 to Heritage Mortgage. *State's Exhibit 7*.

19. On or about March 16, 2007, Heritage Mortgage voluntarily surrendered its certificate of registration to the Division. *State's Exhibit 18*.

20. After Heritage Mortgage closed on April 30, 2007, Respondent worked for Premier Mortgage Funding through April 2008 at which time he submitted his loan officer license renewal application to the Division. Respondent is currently employed by Emery Federal Credit Union and is no longer seeking to renew his loan officer license. *Testimony of Respondent, Tr. at 53-55; State's Exhibit 18*.

**E. Respondent's Activities – Application to Transfer Loan Officer License**

21. Respondent was the operations manager for Heritage Mortgage from November 2004 to April 2007. *Testimony of Respondent, Tr. at 39-40*. An operations manager is the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business. *R.C. Section 1322.01(H)*.

22. Judith I. Drake obtained her loan officer license on June 21, 2004. *State's Exhibit 8*. She was employed by Heritage Mortgage from December 1, 2006 to April 2007. *Testimony of Judith I. Drake, Tr. at 59-60*.

23. On December 1, 2006, Ms. Drake signed a Loan Officer License Transfer Application ("Transfer Application"). The Transfer Application indicated that Ms. Drake's effective date of employment with Heritage Mortgage was December 1, 2006. Ms. Drake was requesting the Division to transfer her loan officer license from her previous employer, Premier Mortgage Funding, to Heritage Mortgage. *State's Exhibit 8*.

24. Loan officers are required to submit a Transfer Application to the Division and obtain written confirmation of temporary authority to work before originating loans for a different mortgage loan broker. *Testimony of Lori A. Massey, Tr. at 18-20.*

25. Ms. Drake gave her Transfer Application to Respondent, the operations manager for Heritage Mortgage, to submit to the Division. *Testimony of Judith I. Drake, Tr. at 44.*

26. Respondent acknowledged that he received Ms. Drake's Transfer Application on or about December 1, 2006. Respondent did not execute the second page of the Transfer Application or submit it to the Division at that time. He explained that Ms. Drake's Transfer Application became lost in a pile of papers on his desk. *Testimony of Respondent, Tr. at 40-41.*

27. On or about December 11, 2006, January 4, 2007, January 21, 2007, and January 29, 2007, Ms. Drake originated four residential mortgage loans on behalf of Heritage Mortgage. *Testimony of Lori A. Massey, Tr. at 27-35; State's Exhibits 9, 10, 11, 12, and 15; Testimony of Respondent, Tr. at 41.* The Division had not authorized Ms. Drake to originate loans for Heritage Mortgage during that time.

28. On or about February 15, 2007, Respondent discovered Ms. Drake's Transfer Application on his desk, and immediately executed it and submitted it to the Division. *Testimony of Respondent, Tr. at 13-14; 40; State's Exhibit 8.* Respondent did not fill out the third page of the Transfer Application requesting from the Division written confirmation of Ms. Drake's loan officer status. *Testimony of Lori A. Massey, Tr. at 19-20.*

29. The Division received the Transfer Application on February 21, 2007. On February 22, 2007, the Division transferred Ms. Drake's loan officer license to Heritage Mortgage. *State's Exhibit 8; Testimony of Lori A. Massey, Tr. at 26.*

30. The Division did not issue a written confirmation of Ms. Drake's loan officer status to Heritage Mortgage from December 1, 2006 to February 20, 2007 because the Division did not receive the Transfer Application until February 21, 2007. The Division did not issue a written confirmation of Ms. Drake's loan officer status after February 21, 2007 because Respondent did not fill out the third page of the Transfer Application requesting written confirmation of Ms. Drake's loan officer status. *Testimony of Lori A. Massey, Tr. at 19-20; State's Exhibit 8.*

**F. Respondent's Activities – Influencing Appraisal**

31. On January 15, 2007, Respondent, as operations manager for Heritage Mortgage, submitted a Request for Appraisal to appraiser Milton Frieberg for the real property known as 3259 Ultra Court, Mason, Ohio 45060 ("3259 Ultra Court"). The Request for Appraisal contained the estimated value of the property to be refinanced in box number 14 of the form (\$323,000.00). *State's Exhibit 13.*

32. Effective January 1, 2007, a change to the Ohio Mortgage Broker Act in Senate Bill 185 stated that to avoid improperly influencing the appraiser's opinion in appraising the

property, loan officers and mortgage brokers could not include the estimated property value in an appraisal request. *Testimony of Lori A. Massey, Tr. at 36.*

33. Respondent explained that at the time he prepared the Request for Appraisal for 3259 Ultra Court, Heritage Mortgage was using a software program that had not yet been updated to conform to the changes in the Ohio Mortgage Broker Act. Respondent intended to obtain the software update that would automatically delete Heritage Mortgage's estimated property value on the Request for Appraisal form when it became available. Respondent had instructed his assistant to "white out" the property values printed by his software program on all Request for Appraisal forms until Heritage Mortgage obtained the software update. Respondent stated that his assistant erroneously failed to white out the property value for 3259 Ultra Court. *Testimony of Respondent, Tr. at 14, 41-43*

#### **G. Penalty**

34. The Division seeks to impose a \$9,000.00 fine against Respondent for the allegations set forth in the NOH. *State's Exhibit A*. The Division calculated the amount of the fine by assessing \$2,000.00 for each loan that Ms. Drake closed and \$1,000.00 for the improper appraisal request. The Division believes that the offenses are serious and that \$2,000.00 per violation is reasonable because they were repeated violations. *Testimony of Lori A. Massey, Tr. at 63-64.*

35. Respondent made a good faith effort to prevent violations of R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B). As the operations manager for Heritage Mortgage, Respondent supervised approximately ten loan officers and never failed to file a Transfer Application at any other time. Upon discovering his failure to submit Ms. Drake's Transfer Application to the Division, Respondent immediately submitted it to the Division. *Testimony of Respondent, Tr. at 13-14, 60.*

36. Respondent made a good faith effort to prevent violations of R.C. Section 1322.07(G). He knew that an estimated property value should not be included on a Request for Appraisal form in order to comply with recent changes in the Ohio Mortgage Broker Act. He accordingly instructed his assistant to white out any property values when preparing the forms. The Request for Appraisal for 3259 Ultra Court was an isolated case in which Respondent's assistant forgot to white out the property value. *Testimony of Respondent, Tr. at 14.*

37. Respondent does not have a history of R.C. Chapter 1322 violations or failure to comply with Division orders. *Testimony of Lori A. Massey, Tr. at 64.*

38. Respondent acknowledged responsibility for the allegations against himself and for those against Ms. Drake in Case No. M2008-730. Respondent maintained that Ms. Drake should not be penalized for his failure to submit her Transfer Application to the Division and requested that any penalty that the Division assesses to her should be assessed to him instead. *Testimony of Respondent, Tr. at 56-57.*

39. Respondent raised the defense of inability to pay the fines that the Division seeks to impose against Ms. Drake and him. In support of his position, Respondent provided his

2006, 2007, and 2008 joint federal income tax returns. *Respondents' Exhibit I*. Respondent stated that the fines would be unaffordable for his family and that he currently uses all of his resources to pay his normal bills. Respondent asked that the Division reduce the fines and allow him to make payments over time. *Testimony of Respondent, Tr. at 74-76*.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction**

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

### **B. Proposed Denial of Loan Officer License Renewal and Fine**

41. R.C. Section 1322.01(H) defines an operations manager as the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business.

42. O.A.C. Rule 1301:8-7-02(L) provides that no registrant, through its operations manager or otherwise, shall fail to reasonably supervise a loan officer or other persons associated with the registrant or to establish reasonable procedures designed to avoid violations of R.C. Chapter 1322., or of O.A.C. Chapter 1301:8-7.

43. R.C. Section 1322.10 (A)(1)(a) provides that after notice and opportunity for a hearing conducted in accordance with Chapter 119, the Superintendent of the Division may suspend, revoke or refuse to issue or renew a license if the Superintendent finds a violation of or failure to comply with any provision of R.C. Sections 1322.01 to 1322.12 or the rules adopted under those sections.

44. R.C. Section 1322.031(E)(2) provides that:

(2) If a loan officer's employment is terminated, the mortgage broker shall return the original license to the superintendent within five business days after the termination. The licensee may request the transfer of the license to another mortgage broker by submitting a relocation application, along with a fifteen-dollar fee, to the superintendent or may request the superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow shall cease activity as a loan officer.

A mortgage broker may employ a loan officer on a temporary basis pending the transfer of the loan officer's license to the mortgage broker, if the mortgage broker receives written confirmation from the superintendent that the loan officer is licensed under sections 1322.01 to 1322.12 of the Revised Code.

45. O.A.C. Rule 1301:8-7-11(A) & (B) provides that:

(A) A licensee must file a transfer application when:

(1) The licensee desires to change his or her employment from one registrant to another; or

(2) The licensee wants to reactivate his or her license and to transfer the license from escrow to a registrant.

(B) Filing a transfer application does not authorize an individual to originate mortgage loans for the registrant to which the individual is transferring. To be authorized to originate mortgage loans for the registrant to which the individual is transferring, either the license must be transferred and a new license printed identifying the new registrant, or a completed transfer application must be filed with the division and the registrant to which the individual is transferring must have received written confirmation from the superintendent in accordance with division (E)(2) of section 1322.031 of the Revised Code.

46. R.C. Section 1322.07(G) provides that no mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under R.C. Sections 1322.01 to 1322.12 shall do any of the following: Knowingly compensate, instruct, induce, coerce, or intimidate, or attempt to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under R.C. Chapter 4763 for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan.

47. O.A.C. Rule 1301:8-7-23(B) (1) provides that:

(B) Without limiting the scope or applicability to other acts or practices that may violate division (G) of section 1322.07 of the Revised Code, a person is attempting to instruct or induce “a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan if:

(1) In the case of any refinance loan or non-purchase second mortgage loan, a registrant, licensee, mortgage broker employee, or person acting at their direction identifies on the appraisal order form or communicates by any other means to any person licensed or certified under Chapter 4763 of the Revised Code either the loan amount or any other express or implied statement of the anticipated or desired appraisal value. A refinance loan for purposes of this rule provision includes any subsequent first mortgage loan on the borrower’s primary residence or other property subject to coverage pursuant to division (A) of section 1322.01 of the Revised Code;

48. As the operations manager for Heritage Mortgage, Respondent failed to submit Ms. Drake’s Transfer Application to the Division and did not receive written confirmation that the Division had transferred Ms. Drake’s license prior to Ms. Drake originating four residential mortgage loans for Heritage Mortgage in 2006 and 2007. The

Division has met its burden of proof that Respondent violated R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B).

49. As the operations manager for Heritage Mortgage, Respondent's inclusion of a value on the Request for Appraisal for 3259 Ultra Court in connection with a refinance of that property was a violation of R.C. Section 1322.07(G). O.A.C. Rule 1301:8-7-23(B)(1) states that a violation of R.C. Section 1322.07(G) includes refinances where the licensee or mortgage broker employee identifies the loan amount or any other express or implied statement of the anticipated or desired appraisal value on the appraisal order form.

50. Because Respondent violated R.C. Section 1322.07(G), R.C. Section 1322.031(E)(2), and O.A.C. Rules 1301:8-7-11(A) and (B), the Division is authorized under R.C. Section 1322.10(A)(1)(a) to deny renewal of Respondent's loan officer license application.

51. R.C. Section 1322.10(A)(2) provides that the Superintendent of the Division may "impose a fine of not more than one thousand dollars, for each day a violation of a law or rule is committed, repeated, or continued. If the registrant or licensee engages in a pattern of repeated violations of a law or rule, the superintendent may impose a fine of not more than two thousand dollars for each day the violation is committed, repeated, or continued."

52. The Hearing Officer finds that Respondent's conduct as operations manager in permitting Ms. Drake to originate the December 11, 2006 loan constitutes a violation of R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), for which the Division may impose a fine of not more than \$1,000.00 pursuant to R.C. Section 1322.10(A)(2).

53. The Hearing finds that Respondent's conduct as operations manager in permitting Ms. Drake to originate the three January 2007 loans constitute repeat violations of R.C. Section 1322.031(E)(2) and O.A.C. Rules 1301:8-7-11(A) and (B), for which the Division may, pursuant to R.C. Section 1322.10(A)(2), impose a fine not to exceed \$2,000.00 for each violation.

54. The Hearing Officer finds that Respondent's inclusion of a value on the Request for Appraisal for 3259 Ultra Court in connection with a refinance of that property was a violation of R.C. Section 1322.07(G). The Division may therefore impose a fine for this violation pursuant to R.C. Section 1322.10(A)(2) not to exceed \$1,000.00.

55. In determining the amount of a fine, the Superintendent of the Division shall consider the seriousness of the violation, the licensee's good faith efforts to prevent the violation; the licensee's history regarding violations and compliance with Division orders; the licensee's financial resources; and any other matters the Superintendent considers appropriate in enforcing R.C. Sections 1322.01-1322.12. *R.C. Section 1322.10(A)(2).*

56. For purposes of determining the amount of the fine, Respondent's failure to comply with the Mortgage Broker Act is serious. As the operations manager for Heritage



Mortgage, it was Respondent's responsibility to ensure that all loan officers were in compliance with all licensing requirements before originating loans. It was also Respondent's responsibility to ensure that all appraisal requests met statutory requirements. The evidence also shows that Respondent's conduct, while serious, was the result of clerical oversight, and should be viewed in that light. Respondent has no history of previous violations or failure to comply with Division orders. Respondent provided copies of his tax returns to demonstrate that he lacks the financial resources to pay the fines that the Division intends to impose. The Hearing Officer has made no determination as to Respondent's financial ability.

### **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 loan officer license renewal application pursuant to R.C. Section 1322.10(A)(1)(a) and for imposing a fine pursuant to R.C. Section 1322.10(A)(2) because he violated R.C. Sections 1322.031(E)(2) and 1322.07(G), and O.A.C. Rules 1301:8-7-11(A) and (B). The Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's license renewal application and that the Superintendent impose a fine in an amount consistent with a consideration of the factors set forth in R.C. Section 1322.10(A)(2).

Respectfully submitted,

Lisa M. Finnegan  
Administrative Hearing Officer  
May 5, 2009