

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

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DIVISION OF FINANCIAL
INSTITUTIONS

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In re: Sandie Lytle

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Case No. 04-344-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License 2003 Renewal Application of Sandie Lytle not be granted (Exhibit D1).
2. The Division based its action on the following:
 - A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew a loan officer license if the Division finds that the licensee has violated "or fail[ed] to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted[.]"
 - B. R.C. 1322.052 requires every licensed loan officer to complete at least six (6) hours of approved continuing education ("CE") every calendar year (by December 31st).
 - C. Respondent failed to comply with the 2002 CE requirements.
 - D. The Division must refuse to renew a loan officer license if the Division finds that the "applicant's character and general fitness [does not] command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of [the Ohio Mortgage Broker Act]."
 - E. In an effort to evade disciplinary action for her non-compliance with the 2002 CE requirements, on November 18, 2003, Lytle attempted to obtain a new loan officer license while her 2003 renewal application was pending.
 - F. Because Lytle failed to comply with R.C. 1322.052, the Division finds Lytle's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. See R.C. 1322.041(A)(5) & (B)(3).
 - G. Because Lytle attempted to circumvent her legal obligations, as described above in Paragraph E, the Division finds Lytle's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with

the purposes of the Ohio Mortgage Broker Act. See R.C. 1322.041(A)(5) & (B)(3).

- H. Because Respondent failed to comply with R.C. 1322.052 and did not meet the condition outlined in R.C. 1322.041(A)(5) & (B)(3), the Division has the authority to refuse to renew Lytle's loan officer license.

(Exhibit D2)

3. Ms. Lytle's address is 5629 Raintree Place, Columbus, Ohio, 43229. She is hereinafter referred to as the "Respondent".

4. This matter was initiated by the Superintendent of the Division by the issuance on April 6, 2004, of a Notice of Intent to Deny 2003 Renewal Application and Notice of Opportunity for Hearing. (Exhibit D2). The document was accompanied by a letter from a staff attorney of the Division. (Exhibit D2).

5. The document was received by the Respondent by certified mail. (Exhibit D3).

6. Thereafter, the Division received a Hearing Request Form from the Respondent. (Exhibit E).

7. On April 28, 2004, the Division wrote to the Respondent scheduling a hearing for Monday, May 10, 2004, at 10:00 a.m. in the offices of the Division at 77 S. High Street, Columbus, Ohio. (Exhibit F).

8. On May 14, 2004, the Division wrote to the Respondent indicating that the Hearing would be rescheduled for 10:30 a.m. on Monday, May 24, 2004, in Room 1910 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. (Exhibit G).

9. The Hearing was held beginning at 10:30 a.m. on Monday, May 24, 2004, in Room 1910 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. Attending were Emily A. Smith, Assistant Attorney General of Ohio in the Executive Agencies Section and Sandie Lytle, pro se. Also attending were Laura Wood and Carrie Moore. Appearing as witness were Diane L. Wagenbrenner, Staff Attorney to the Division, Riene Roszak of the Division and John Ferrell.

10. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. The Respondent received a loan officer license in December, 2002.

2. The Respondent did not complete six hours of continuing education by December 31, 2002 or by March 31, 2003.

3. The Respondent filed a 2003 Loan Officer Renewal Application on April 11, 2003. (Exhibit A).

4. The Respondent executed, on November 14, 2003, a Loan Officer Application and submitted it to the Division. (Exhibit C).

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.052 provides:

On or after January 1, 2002 each licensee . . . 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 of program of study approved by the superintendent of financial institutions.

2. Ohio Revised Code Section 1322.041(B) provides that a loan officer license shall be renewed if the Superintendent of the Division finds that certain conditions are met, including:

. . . (2) On or after January 1, 2003, the loan officer has completed during the immediately preceding calendar year at least six hours of continuing education as required under Section 1322.52 of the Revised Code.

(3) The applicant meets the conditions set forth in Divisions (A)(2) to (5) of this division.

3. Ohio Revised Code Section 1322.041(A)(5) provides:

The Applicant's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

4. Ohio Revised Code Section 1322.10(A) provides:

(A) After notice and opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the superintendent of financial institutions may do the following:

(1) Suspend, revoke, or refuse to issue or renew a certificate of registration or license if the superintendent finds either of the following:

(a) A violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration;

(b) A conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

(2) 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 license 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. All fines collected pursuant to this division shall be paid to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code. In determining the amount of a fine to be imposed pursuant to this division, the superintendent shall consider all of the following:

- (a) The seriousness of the violation;
- (b) The registrant's or licensee's good faith efforts to prevent the violation;
- (c) The registrant's or licensee's history regarding violations and compliance with division orders;
- (d) The registrant's or licensee's financial resources;
- (e) Any other matters the superintendent considers appropriate in enforcing section 1322.01 to 1322-12 of the Revised Code.

5. Ohio Revised Code Section 1322.10 provides that after notice and an opportunity for a hearing conducted in accordance with Chapter 119 of the Revised Code, the Superintendent of the Division may, among other things, refuse to renew a loan officer license or may impose such other sanctions as the Superintendent deems appropriate.

DISCUSSION

1. This hearing involves the 2003 renewal of a loan officer license that was granted in December, 2002. The year 2002 was the initial year that the Division began its licensing process. The Respondent received her license in December 2002. The Respondent needed to complete six hours of continuing education within the few remaining days of 2002, which period of time was extended through March 31, 2003.

2. The Respondent owns a limited liability company named Processing Marketing & Technologies Ltd., an Ohio limited liability company. (Respondent's Exhibit 3, Tr. 19). In December 2002, the Respondent received a loan officer's license. (Tr. 21). She had that license prior to seeking its renewal in April, 2003. (Id).

3. However, the Respondent did not work as a loan officer. Rather, she worked as a processing manager. (Tr. 21).

4. The Respondent was aware that there were continuing educational requirements. (Tr. 23). She acknowledges that she did not fulfill those requirements for 2002 and subsequently filed a new application in 2003. (Tr. 23). The Respondent's first application was filed under Allied Home Mortgage, which subsequently discontinued or cancelled its license, according to the Respondent. (Tr. 23-24). Then, the Respondent started working with Premier Mortgage and was told, by someone, that she should file a new application. (Tr. 24). The Respondent believes that she did not call the Division for advice on whether she should file a new application. (Tr. 26). Thereafter, the Respondent submitted a copy of the April 28, 2004, letter from the Division to the Respondent, (Respondent's Exhibit 1), as well as a Resume, (Respondent's Exhibit 2).

5. The Respondent submitted a copy of the Division's letter to the Respondent dated April 28, 2004, and attached to it was a copy of the Division's letter to the Respondent dated April 6, 2004, as well as a copy of the Notice of Intent to Deny 2003 Renewal Application and Notice of Opportunity for a Hearing. Additionally, attached was a photocopy of a check from Processing Marketing & Technology to the Division showing a new home address for the Respondent, a copy of a 2004 Escrow Loan Officer Renewal Invoice and a copy of a 2004 Escrow Loan Officer Renewal Application Package. Finally, attached to Exhibit 4 was a copy of the Hearing Request Form.

6. The Division confirms that the Respondent's loan officer license was issued initially in December, 2002. (Tr. 56). She then had an extended period through March 2003 to complete six hours of continuing education. (Tr. 56).

7. The Division further confirms that the Respondent did in fact fulfill her 2003 continuing education requirements by having completed courses in December, 2003. (Tr. 57).

8. Riene Roszak, the Continuing Education Coordinator for the Division testified. (Tr. 51, et seq.) Ms. Roszak confirms that the Respondent completed her continuing education requirements for 2003. (Tr. 62). Ms. Roszak further stated that the Respondent did not fulfill her continuing education requirements for 2002. (Tr. 62). Ms. Roszak further testified that following the extension of the 2002 period to complete continuing education through March 31, 2003, there is nothing a license holder can do to get credited with continuing education for 2002.

9. Testifying in support of the Respondent was John Ferrell. Mr. Ferrell testified that the Respondent received her loan officer license in the latter part of December, 2002. (Tr. 79). There was not sufficient time between the issuance of the license in the latter part of December and December 31, 2002, for the Respondent to have received six hours of continuing professional education. (Tr. 79). Mr. Ferrell testified that he believed that an extension of the 2002 continuing education requirement was granted allowing license-holders to have through March 31, 2003, to receive six hours of education. (Tr. 79). However, the procedures were new and not thoroughly understood. (Tr. 80). Mr. Ferrell is a loan officer with Premier Mortgage. (Tr. 83).

10. Understandably, there was some substantial confusion among license-holders at the end of 2002 as to the processes that were being developed by the Division to implement the new provisions of the Ohio Mortgage Broker Act. Continuing education courses and instructors needed to be approved by the Division, and word of those approved courses needed to be disseminated to license-holders.

11. The Respondent submitted certificates of completion for three hours of continuing education in December, 2003 and ten hours of education in August, 2003. (Respondent's Exhibits 9 and 10). The Respondent also submitted a certificate showing completion of six hours of continuing education in April, 2004. (Respondent's Exhibit 7A).

12. Missing from the record in this case is any evidence that the Respondent willfully or intentionally sought to circumvent the provisions of the continuing education requirement or any other provisions of the Ohio Mortgage Broker Act whether in seeking renewal of her 2002 license or subsequently submitting a new application in 2003.

13. The Hearing Officer finds that there is no doubt that the Respondent was confused about her continuing education requirements. The Division would suggest that the failure to complete that continuing education in 2002, or as extended through March, 2003, constitutes a failure to comply with Section 1322.10(A) and that the license renewal should be denied. Applying that logic, the Division would contend that there is no remedy for the failure to have completed that continuing education in 2003 and that therefore each year thereafter, whether a renewal was filed or a subsequent new application was filed, any applicant would be unable to overcome the failure to have received continuing education in 2002. Therefore, each renewal or new application in any subsequent year would be subject to denial because of the 2002 shortcoming. The failure to have received sufficient continuing education in any one year would be, in effect, a death penalty offense to any applicant in any subsequent year.

14. Other professional licenses which have annual continuing educational requirements, including specifically, the license to practice law in Ohio, have provisions for the imposition of fines and the requirement to take remedial education. There is no evidence suggesting that the Respondent intentionally violated the statute. The Respondent has shown good faith efforts, including having successfully completed six hours of continuing education in 2003. The Respondent's license history shows no other violations and full compliance with Division matters. The Hearing Officer concludes that denial of the license renewal for 2002 would be inappropriate here.

15. The Hearing Officer finds that the character and general fitness of the Respondent are sufficient to warrant the belief that the business will indeed be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. There is no evidence in the record to suggest that the Respondent has not been honest and that she has not operated her business in full compliance with the law.

16. More appropriate here is the imposition of a fine together with a requirement that the Respondent submit evidence of her successful completion of not less than six hours of continuing education which will be applicable solely to the 2002 requirement. To the extent that

the Respondent needs continuing education hours for any other calendar year, those hours will be over and above the requirement to complete six hours of continuing education for the year 2002.

17. The imposition of a fine is also warranted here. Considering the Respondent's financial condition and other factors, a fine of \$500.00 seems appropriate.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Division impose a fine of \$500 on the Respondent and require her to complete six hours of continuing education applicable only to the 2002 requirement within 90 days of the final order of the Superintendent of the Division. Further, failure by the Respondent to pay the fine within 90 days and/or to complete the requirement of continuing education within 90 days shall be grounds for the Division to deny the renewal application of the 2002 license.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
September 29, 2004