

STATE OF OHIO
2010 FEB -4 AM 8:45 DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. M2009-813
:
STONEGATE MORTGAGE & FINANCIAL :
SERVICES, INC., : LISA M. FINNEGAN
RESPONDENT. : HEARING OFFICER
:

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued February 3, 2010

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 January 12, 2010 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the November 16, 2009 Order of Summary Suspension, Notice of Intent to Deny Renewal & Notice of Hearing ("NOH"). The Division issued the NOH suspending Respondent's mortgage broker certificate of registration pursuant to R.C. § 1322.10(F)(1)(b) because Respondent failed to keep a surety bond in effect in violation of R.C. § 1322.05(A) and (F). The NOH also informed Respondent of the Division's intent to deny Respondent's certificate of registration renewal application.

3. Janyce C. Katz, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori A. Massey, Esq. testified on behalf of the Division. Neither Respondent nor anyone on its behalf appeared at the hearing. The Hearing Officer admitted into the record State's Exhibits A through F. The Hearing Officer closed the record at the conclusion of the hearing.

B. Jurisdiction and Procedural Matters

4. Respondent is an Ohio corporation that holds a certificate of registration to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. James Delfino is Respondent's operations manager and statutory agent. Respondent's address of record

with the Division is 16 ½ West College Avenue, Westerville, Ohio 43081. *State's Exhibit E; Testimony of Lori A. Massey, Transcript ("Tr.") at 12.*

5. On November 16, 2009, the Division mailed the NOH to Respondent's address of record with the Division by certified mail, return receipt requested. The NOH notified Respondent that the Division had scheduled a hearing on the NOH for December 14, 2009. *State's Exhibit C.*

6. On November 20, 2009, the United States Postal Service returned the certified mail envelope and NOH to the Division marked "not deliverable as addressed; unable to forward." *State's Exhibit D; Testimony of Lori A. Massey, Tr. at 10.*

7. The Division also mailed the NOH on November 16, 2009 to Respondent's statutory agent, Mr. Delfino, by certified mail, return receipt requested. On November 19, 2009, the United States Postal Service returned the certified mail envelope and the NOH to the Division marked "attempted- not known; unable to forward." *State's Exhibit D.*

8. In accordance with R.C. § 119.07, the Division published notice of the NOH in The Daily Reporter, a daily newspaper of general circulation in Franklin County, Ohio. The notice was published once a week for three successive and/or consecutive weeks on December 2, 2009, December 9, 2009, and December 16, 2009. *State's Exhibit B; Testimony of Lori A. Massey, Tr. at 10.*

9. On December 18, 2009, the Division sent a copy of the publication notice by regular mail to Respondent's statutory agent with a cover letter notifying Respondent that the hearing had been rescheduled for January 12, 2010. The letter also contained the location and time of the hearing. *State's Exhibit A; Testimony of Lori A. Massey, Tr. at 10-11.*

10. Respondent did not contact the Hearing Officer, the Attorney General's Office, or the Division concerning the January 12, 2010 hearing. *Tr. at 7.*

11. The Division held the hearing on the date, and at the time and place specified in its December 18, 2009 letter to Respondent.

C. Respondent's Activities

12. Lori A. Massey, an attorney examiner with the Division, testified at the hearing. Ms. Massey reviews licensing applications for compliance with the Ohio Mortgage Broker Act. Ms. Massey reviewed Respondent's renewal application for a mortgage broker certificate of registration. *Testimony of Lori A. Massey, Tr. at 8.*

13. Mortgage brokers must renew their certificate of registration with the Division on or before April 30 of every calendar year. Respondent submitted its certificate of registration renewal to the Division on May 1, 2009. *State's Exhibit F; Testimony of Lori A. Massey, Tr. at 12-13.*

14. In order to renew its certificate of registration with the Division, a mortgage broker must maintain a surety bond in effect. *State's Exhibit F; Testimony of Lori A. Massey, Tr. at 12-13.*

15. On June 3, 2009, the Division received a Notice of Cancellation of Bond from Hartford Fire Insurance Company stating that Respondent's surety bond was cancelled effective July 25, 2009. *State's Exhibit F.*

16. As of the hearing date on this matter, the Division had not received any information indicating that Respondent had reinstated its surety bond. *Testimony of Lori A. Massey, Tr. at 13-14.*

II. CONCLUSIONS OF LAW

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

18. The Division is responsible for administering and enforcing the Ohio Mortgage Broker Act, codified in R.C. Chapter 1322. In accordance therewith, the Division is accountable for the registration of residential mortgage brokers.

19. R.C. § 1322.05(A)(1) states, in pertinent part, that: "no registrant shall conduct business in this state, unless the registrant has obtained and maintains in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state."

20. R.C. § 1322.05(F) states that no registrant or licensee shall fail to comply with this section.

21. R.C. § 1322.10(F)(1)(b) states that to protect the public interest, the superintendent may, without a prior hearing, suspend the certificate of registration of a registrant who violates R.C. § 1322.05(F).

22. R.C. § 1322.04(B)(4) states that the certificate of registration issued by the Division may be renewed annually if the Superintendent of the Division finds that certain conditions are met, including that the applicant's certificate of registration is not subject to an order of suspension by the Superintendent.¹

23. R.C. § 1322.10(A)(1)(a) states that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent of the Division may

¹ On December 28, 2009, R.C. § 1322.04 was amended and the requirement set forth in R.C. § 1322.04(B)(4) was moved to R.C. § 1322.04(C)(4). Although the citation changed, the requirement that a registrant cannot renew its certificate of registration if it is subject to an order of suspension by the Superintendent of the Division remained the same.

suspend, revoke, or refuse to renew a certificate of registration or license if the superintendent finds a violation of or a failure to comply with any provision of R.C. §§ 1322.01 to 1322.12.

24. The Division suspended Respondent's certificate of registration pursuant to R.C. § 1322.10(F)(1)(b) for Respondent's failure to maintain a surety bond required by R.C. § 1322.05(A) and 1322.05(F). The Division now seeks to continue the suspension and to deny Respondent's renewal application because of Respondent's failure to maintain a surety bond.

25. The Division has established that Respondent failed to maintain a surety bond in violation of R.C. §§ 1322.05(A) and 1322.05(F). Therefore, sufficient evidence exists to continue the suspension of Respondent's mortgage broker certificate of registration and to deny Respondent's renewal application pursuant to R.C. § 1322.10(A)(1)(a).

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for continuing the suspension of Respondent's mortgage broker certificate of registration and for denying Respondent's certificate of registration renewal application pursuant to R.C. § 1322.10(A)(1)(a), for failure to comply with R.C. § 1322.05(A) and (F). Therefore, the Hearing Officer respectfully recommends that the Division continue the suspension of Respondent's mortgage broker certificate of registration and deny Respondent's renewal application.

Respectfully submitted,

Lisa M. Finnegan
Administrative Hearing Officer
February 3, 2010