

**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**  
**Division of Financial Institutions**  
**Consumer Finance**

In the matter of:	)	Case No. 04-0007-LOD
	)	
<b>NANCY J. GEORGE,</b>	)	<b><u>DIVISION ORDER</u></b>
<b>dba OHIO MORTGAGE COMPANY)</b>	)	
4311 Ridge Road	)	
Brooklyn, Ohio 44144	)	<b>Denial of Mortgage Broker Certificate</b>
	)	<b>of Registration Renewal Application</b>
	)	

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**DIVISION ORDER**

Nancy J. George, dba Ohio Mortgage Company ("Respondent") submitted an application to renew her Mortgage Broker Certificate of Registration to the Division of Financial Institutions ("Division"). Said Certificate of Registration expired on April 30, 2003. On January 16, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of her right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119. on July 2, 2004.

The hearing officer filed his written report and recommendation with the Division on August 16, 2004, recommending that the Division deem the Respondent's application to have been withdrawn, and in the alternative the Division to deny Respondent's renewal application. A copy of the Report and Recommendation and a letter explaining Respondent's right to submit written objections to the report was mailed to Respondent via certified mail on August 17, 2004. A copy of the Report and Recommendation is attached hereto and incorporated herein. Respondent received the previously mentioned Report and Recommendation and letter, and she has not filed any objections.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein.

- The Division disapproves paragraph 2 under Discussion, on page 4 of the Report and Recommendation.

Pursuant to R.C. 119.09, it is the hearing officer's responsibility to submit to the agency "a written report of his findings of fact and conclusions of law and a recommendation of the action to be taken by the agency." As indicated by the hearing officer, there is no direct statutory or administrative authority that addresses withdrawal of an application. The hearing officer is correct that the

Division of Securities promulgated a rule to amplify R.C. 1707.151. The hearing officer is correct that the Division has no regulations with regard to the withdrawal of applications.<sup>1</sup> These are the facts adduced by the hearing officer. The hearing officer makes no conclusion of law regarding the Respondent's request to withdraw his application. Instead, the hearing officer attempts to establish Division policy concerning requests for application withdrawals. The hearing officer has no authority to do so, and his recommendation that "the Division should consider the application to have been withdrawn and that, therefore, the Division need not act on the renewal application" is expressly denied.

The mere fact that the Division has no administrative rule addressing application withdrawals does not mean the Division lacks the authority to deny application withdrawals. The Division is broadly empowered to investigate and adjudicate charges of violations of the Ohio Mortgage Broker Act, impose disciplinary sanctions, refuse to renew licenses, and revoke licenses. *See R.C. 1322.10*. The regulation of registrants and licensees under the Ohio Mortgage Broker Act is for the purpose of protecting the public. The licensing of professionals is recognized as falling within a state's broad police powers for the protection of the general welfare.

The statutory authority to issue or deny a license necessarily implies the discretionary authority to deny leave to withdraw a license application. After all, a licensee may not evade disciplinary action merely by resigning or allowing a license to expire. Otherwise, the licensee could apply for admission in another jurisdiction, or subsequently reapply in the same jurisdiction, and maintain that he or she has never been disciplined for professional misconduct. This would defeat the underlying purposes of the regulatory scheme to protect the public and maintain the integrity of the profession.

The state's interest is no less urgent in the case of a renewal application. The Division's authority to investigate a renewal applicant's background is every bit as broad as its authority to investigate an applicant for a license, or any other licensee. *See R.C. 1322.04(B)*. When that investigation discloses grounds for denial on the basis of false or fraudulent representations, or questions whether the applicant's character and general fitness command the confidence of the public and questions whether the applicant could operate his or her business honestly and fairly in compliance with the Ohio Mortgage Broker Act, the safety of the public and the integrity of the profession may, in the Division's discretion, be better served by issuing a formal ruling, so that a decision of record would be available in this or any other jurisdiction where the applicant might subsequently apply. Allowing an applicant to avoid scrutiny of his or her background, training, experience, character, honesty, truthfulness, and/or morals by simply withdrawing the application at his or her convenience would ill serve the public safety in this state and the other state licensing jurisdictions.

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<sup>1</sup> The lack of a rule does not indicate that an agency lacks authority to take an action. Rules expound the powers already granted by statute, and do not create powers in addition to those found in a statute.

Respondent submitted herself to the Division's jurisdiction when she filed an application for a certificate of registration as a mortgage broker. The Division retained jurisdiction over her after the certificate was issued, including during the renewal process. *See R.C. 119.06*, which states in part

When periodic registration of licenses or renewal of licenses is required by law, a licensee who has filed his application for registration or renewal within the time and in the manner provided by statute or rule of the agency, shall not be required to discontinue a licensed business or profession merely because of the failure of the agency to act on his application.

Respondent attempted to renew her certificate of registration as a mortgage broker that was due to expire on April 30, 2003. By statute, Respondent was allowed to continue to operate as a mortgage broker pending the Division's action on the renewal application. On January 16, 2004, the Division instituted formal proceedings to deny Respondent's application. On January 26, 2004, Respondent requested a hearing in the matter. It was not until June 28, 2004, that Respondent indicated that she would withdraw her renewal application. In fact, the record is void of any evidence indicating that Respondent has indeed withdrawn her renewal application.<sup>2</sup>

Based upon the above reasons, the Division will not entertain Respondent's request to withdraw her application.

- The Division disapproves paragraph 3 under Discussion, on page 4 of the Report and Recommendation.

The Respondent had no "required burden of proof" placed upon her. The Division had the burden of proof in this matter, to prove that:

1. Respondent failed to comply with the CE requirements of the Ohio Mortgage Broker Act, codified in R.C. 1322.052.
2. Respondent does not meet the conditions for renewal, as set forth in R.C. 1322.041(B)(2).
3. Respondent's non-compliance with the Ohio Mortgage Broker Act, as described above in Paragraph 1, causes the Division to believe that Respondent does not hold the requisite character and general fitness to command the confidence of the public and warrant the belief that Respondent's business will be conducted in compliance with the Act (R.C. 1322.04(A)(10)).

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<sup>2</sup> State's Exhibit 7 is a fax from the Division to AAG Daniel P. Jones. It includes a letter from Nate N. Malek, attorney for Respondent, addressed to Hearing Officer Kenneth R. Cookson. The letter is advising the Hearing Officer that "[his] client is withdrawing her application for renewal of the above captioned license [MB 0265], and therefore, as to my understanding closing this case for good."

- The Division disapproves the first sentence of the RECOMMENDATION on page 4 of the Report and Recommendation. As mentioned above, the Division does not accept Respondent's attempt to withdraw her renewal application.

Upon consideration of the hearing officer's report and recommendation, the Division modifies the Recommendation as indicated above. Accordingly, Respondent's application for a loan officer license is hereby denied.

### **NOTICE OF RIGHT TO APPEAL**

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.

Signed and sealed this 15<sup>th</sup> day of November 2004.

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**ROBERT M. GRIESER**

Deputy Superintendent for Consumer Finance  
Division of Financial Institutions  
Ohio Department of Commerce

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