

STATE OF OHIO  
DEPARTMENT OF COMMERCE

04-2 10 431

CASE NO. 04-0464-LOD

IN THE MATTER OF: STEVEN H. LEFFEL

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. Damschroder

I. Findings of Fact

A. Background

This matter came before Terrence O'Donnell, an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on April 19, 2005, in accordance with the Administrative Procedures Act, found in Ohio Revised Code ("ORC") Chapter 119. Subsequent to the hearing, the undersigned was appointed as hearing officer for purposes of preparing this Report and Recommendation based upon the hearing transcript and all exhibits admitted into the record at hearing.

The hearing was held to consider whether an **Order to Deny the Loan Officer License Renewal** should be issued by the Division regarding Steven H. Leffel, an individual, because Mr. Leffel has failed to comply with statutory continuing education requirements and, because of this failure, Mr. Leffel's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General James Evans. The Division presented Riene Roszak, an employee of the Division responsible for coordinating the continuing education for mortgage brokers, as a witness. Steven H. Leffel ("Respondent") did appear in person and was not represented by counsel at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for Hearing to Respondent on December 3, 2004, and served it upon Respondent by certified mail. Andrea Riggs signed the certified mail receipt on Respondent's behalf on January 8, 2005, with the certified mail receipt being received by the Division on January 10, 2005. (State's Exhibit #7)
2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny

Respondent a license. This form was received by the Division on February 1, 2005 (State's Exhibit #8)

3. By letter of February 2, 2005, the Division notified Respondent that the requested hearing was to be held on February 10, 2005. In that letter, however, the Division continued the hearing on its own motion to February 16, 2005 at 2:30 p.m. (State's Exhibit #9)
4. Respondent requested a continuance of the hearing and, by letter of February 18, 2005, the hearing was rescheduled for March 22, 2005 at 9:00 a.m. (State's Exhibit #10)
5. Respondent attended the hearing and represented herself *pro se*. (Tr. p. 7)

**C. Respondent's Loan Officer Application and Criminal Conviction**

1. On November 4, 2003, the Division issued a Mortgage Broker Loan Officer License to Respondent. (State's Exhibit #15)

By letter of November 14, 2003, the Division notified Respondent that he was required to complete six (6) hours of continuing education on or before December 31, 2003, and that Division records indicated that Respondent had completed zero hours toward that requirement. (State's Exhibit #1)

2. The Division's representative, Ms. Roszak, testified that the Division's position is that Respondent was required to submit proof of completion of continuing education hours for the year 2003 even though he was licensed late in that calendar year. (Tr. pp 11-12, 38-39)
3. The Division records indicated that Respondent did not complete the required hours of continuing education for 2003. (Tr. p. 12)
4. Respondent testified that he understood that he was required to complete continuing education but professed confusion about whether he was actually licensed in 2003, prior to actually passing an examination. (Tr. pp. 24-25)
5. The Division submitted two settlement offers to Respondent, the latest being due for return on September 2, 2004. The agreements required Respondent to complete the necessary continuing education hours and pay a fine for

noncompliance. The Division's representative testified that neither copy of the settlement agreement was signed, returned or complied with by Respondent. (State's Exhibits #4, #5, Tr. pp. 13-15)

6. Respondent offered no testimony or evidence indicating that he had completed continuing education hours for the year 2003.

## **II. Conclusions of Law**

### **A. Jurisdictional and Procedural Matters**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for on behalf of the Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

### **B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show he is entitled to a license.

4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (B) provides that a loan officer license may be renewed annually if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) On and 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 1322.052 of the Revised Code.

6. R. C. Section 1322.052 states that:

On and after January 1, 2002, each licensee and each person designated under division (A)(3) of section 1322.03 of the Revised Code to act as operations manager for a mortgage broker business 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 or program of study approved by the superintendent of financial institutions.


7. Respondent testified and offered no claim or proof that he completed continuing education for 2003. The Division's records indicate that Respondent has not completed continuing education for 2003. Respondent failed to respond to settlement offers from the Division, which included a requirement that Respondent complete continuing education hours for 2003. Respondent offered some testimony about being confused as to whether he was licensed in 2003, but the issue date on his license is clear. Given the evidence and complete lack of explanation, or any effort to become compliant after the fact, the

Superintendent is completely justified in refusing to renew Respondent's license. In fact, the Superintendent has no other option.

8. As a side note, the record contains much evidence and testimony about Respondent's legal problems, be they criminal, civil or traffic related. None of the information is relevant to the charge contained in the Notice of Opportunity for Hearing. For that reason, it is irrelevant to the decision herein and was not considered in my deliberation.
9. The Division has met its burden of proof to show that Respondent has not complied with Revised Code Sections 1322.041 (B) or 1322.052.
10. Respondent has not presented evidence of sufficient weight to meet his burden of proof that he is entitled to license renewal.

## II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Steven H. Leffel be found to have **not met** the prerequisites set forth in Revised Code Sections 1322.041 (B) and 1322.052, and that the Superintendent of Financial Institutions **deny** Respondent's application for a Loan Officers License Renewal.

  
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William R. Damschroder, Esq.  
Hearing Officer

9/2/05  
Date