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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2006-9993310
:
ERNEST J. BRAMBERT : SARAH W. CREEDON,
: HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued March 12, 2007

I. FINDINGS OF FACT

A. Background.

This matter was heard by Sarah W. Creedon, an attorney licensed to practice law in Ohio, who was appointed by the Ohio 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 hearing was held on February 6, 2007, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Ernest J. Brambert ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for a Hearing ("NOH").

The NOH alleges that Respondent did not complete the six hours of continuing education required by R.C. 1322.052 within the deadline for the year 2005. Therefore, the Division asserts that Respondent's 2006 escrow loan officer renewal application should be denied.

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Jason Wright attended the hearing as the Division's representative and testified at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through E were admitted into the record. Respondent's Exhibit 1 was admitted into the record. All citations to the Ohio Mortgage Broker Act in this Report and Recommendation are to the Ohio Mortgage Broker Act effective prior to January 1, 2007, unless otherwise noted.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on December 11, 2006. The NOH was sent to Respondent by certified mail, return receipt request, at 3234 Bach Avenue, Cincinnati, Ohio, 45209. The NOH was delivered to Respondent at the specified address. (State's Exhibit A.)

2. The Respondent requested an administrative hearing by returning the Hearing Request Form to the Division. The Division received Respondent's request for a hearing on January 3, 2007. (State's Exhibit B.)
3. The Division initially scheduled the hearing for January 16, 2007, but continued the hearing, on its own motion, to February 6, 2007. The Division sent a letter by regular mail dated January 4, 2007 to Respondent at 3234 Bach Avenue, Cincinnati, Ohio, 45209 notifying Respondent of the date, time, and place for the scheduled hearings in this matter. (State's Exhibit C.)
4. The Respondent received the NOH by certified mail and received notice of the date, time, and location for each scheduled hearing date in this case.

C. Respondent's 2006 Renewal Application.

5. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division and complete at least six hours of continuing education ("CE") each calendar year. R.C. 1322.02(B) and 1322.052.
6. The Respondent was issued a loan officer license by the Division in 2002, 2003, 2004, and 2005. The 2005 license issued to Respondent specified an expiration date of April 30, 2006. (State's Exhibit A; Hearing Transcript ("Tr.") at 30-31.)
7. In or around June of 2004, Respondent became employed as a loan officer at AmeriState Bancorp ("AmeriState") in Cincinnati, Ohio. He worked for AmeriState until approximately October of 2005. (Tr. at 44-45.)
8. In or around October of 2005, Respondent terminated his employment with AmeriState and went to work for Charter One Bank in Cincinnati, Ohio. Charter One Bank is a chartered bank, where loan officer licensing requirements do not apply, and as such, Respondent was not required to hold a loan officer license. When Respondent ended his employment with AmeriState and went to work for Charter One Bank, his 2005 loan officer license was placed in escrow. (State's Exhibit D; Tr. at 16, 46.)
9. Respondent completed the necessary CE requirements for the calendar years 2002, 2003, and 2004. Respondent is aware of the annual CE requirements. During the approximately ten months that Respondent worked for AmeriState in 2005, Respondent did not complete any CE requirements for the 2005 calendar year. Respondent testified that he would customarily complete the necessary CE requirements for a particular year during the last month or two of that calendar year. Respondent would have completed the CE requirements for 2005 had he continued to work for AmeriState because he would have known that he was required to do so. (State's Exhibit E; Tr. at 30-31, 45-46.)
10. Respondent was unsure about the proper procedure to follow regarding his loan officer license when he terminated his employment with AmeriState and went to work for

Charter One Bank. Respondent did not know whether he was required to complete the CE requirements for 2005 due to the change in his employment. (Tr. at 36-39.)

11. In November of 2005, Respondent twice attempted to contact the Division seeking guidance concerning the status of his loan officer license due to the change in his employment. He left messages on voicemail, but never received a return call. (Respondent's Exhibit 1; Tr. at 37.)
12. In or around March of 2006, Respondent received a written notice from the Division that the Division had no records of Respondent having completed his CE requirements for 2005. Shortly thereafter, Respondent received another letter from the Division which explained the process for Respondent to become in compliance with the CE requirements. (Respondent's Exhibit 1.)
13. In or around May of 2006, Respondent called the Division and spoke with Riene Albin, a Division employee whose job responsibilities include monitoring the CE requirements for licensed loan officers. Respondent testified that based on his conversation with Ms. Albin, Respondent was led to believe that a payment of \$200 would resolve the situation concerning his 2005 CE requirements. (State's Exhibit E; Respondent's Exhibit 1; and Tr. at 34.)
14. On or about May 22, 2006, Respondent submitted his 2006 Escrow Loan Officer Renewal Application ("Renewal Application") to the Division. Respondent submitted \$200 to the Division, which included a \$100 application fee and a \$100 late fee. (State's Exhibit D; Respondent's Exhibit 1; Tr. at 34.)
15. As indicated above, on December 11, 2006, the Division issued the NOH specifying the Division's intent to deny Respondent's Renewal Application based solely on Respondent's failure to comply with R.C. 1322.052 by not completing at least six hours of CE during the 2005 calendar year. (State's Exhibit A.)
16. At the hearing, the Division admitted into evidence an affidavit of Riene Albin. Ms. Albin indicated in her affidavit that she personally reviewed the Division's paper and electronic records of continuing education. Ms. Albin indicated that the Division has no record showing that Respondent completed six hours of CE during the 2005 calendar year. In her affidavit, Ms. Albin also stated that the Division did not enter into any agreement with Respondent regarding his 2005 CE requirements. (State's Exhibit E; Tr. at 19.)
17. Ms. Albin was not present at the hearing. She did not testify at the hearing, and she was not subject to cross-examination by Respondent.
18. Jason Wright, an employee in the Consumer Finance Legal Section of the Division, testified at the hearing. Mr. Wright testified about the six hour CE requirements under R.C. 1322.052. He also testified that loan officers are required to be familiar with the Ohio Mortgage Broker Act. He further testified that he was not aware of any statutory

exception for the CE requirements for an individual who has his or her loan officer license in escrow. (Tr. at 14-16.)

19. At the hearing, the Division presented no evidence of a law, rule, or written guideline specifying the applicable CE requirements while a loan officer license is in escrow.
20. The Hearing Officer finds that the Division has established that it has no records indicating that the Respondent completed the required six hours of CE for 2005.
21. Respondent was aware of the CE requirements. Respondent fulfilled the CE obligations in 2002, 2003, and 2004. Respondent did not know what needed to be done concerning his CE requirements when he left employment with AmeriState in October 2005 and his license was placed in escrow. Respondent admitted at the hearing that he did not complete six hours of CE during the 2005 calendar year.
22. The Hearing Officer finds that Respondent did not complete the required six hours of continuing education within the deadline for the year 2005.
23. Respondent has worked as a loan officer since 1990. (Respondent's Exhibit 1.)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

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

B. Proposed Denial of 2006 Renewal Application.

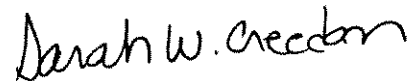
2. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
3. Ohio Revised Code Section 1322.10(A)(1)(a) provides that the superintendent of the division of financial institutions may refuse to issue or renew a license if there is a finding of a violation of or failure to comply with any provision of Section 1322.01 to 1322.12 of the Revised Code.
4. Mortgage loan officers licensed by the Division must complete at least six hours of continuing education each calendar year. R.C. 1322.052. Compliance with this provision is a required condition that must be met for a loan officer license to be renewed pursuant to R.C. 1322.041(B)(2). Ohio Revised Code Section 1322.10(A)(1)(a) also permits the Division to deny Respondent's Renewal Application for lack of compliance with R.C. 1322.041(B)(2).

5. The Division seeks to deny Respondent's 2006 Renewal Application based on its allegation that he did not complete the six hours of CE required by R.C. 1322.052 within the deadline for the year 2005.
6. The Hearing Officer finds and concludes that Respondent did not complete six hours of CE by the end of calendar year 2005. The Division has demonstrated that Respondent did not comply with R.C. 1322.052. Therefore, the Division may refuse to grant Respondent a license under R.C. 1322.10. However, the language in R.C. 1322.10 is discretionary not mandatory.
7. The Division has established that the Respondent violated R.C. 1322.052 and has not met the CE requirements for license renewal set forth in R.C. 1322.041(B)(2). Therefore, there is a sufficient evidentiary basis for denying Respondent's Renewal Application pursuant to R.C. 1322.10(A)(1)(a) for lack of compliance with R.C. 1322.041(B)(2).
8. The evidence shows that Respondent has worked as a loan officer in the industry since 1990. The evidence suggests that Respondent qualifies as a loan officer in all respects except that he did not complete the required CE by the end of calendar year 2005 as alleged in the NOH.
9. Ohio Revised Code Section 1322.031 provides that a loan officer license must be returned to the Division when a loan officer leaves the employment of the sponsoring mortgage broker company.
10. Ohio Revised Code Section 1322.031 makes no mention of the CE requirements when a loan officer license is in escrow. The Division introduced no evidence of other laws, rules, or written guidelines to inform a licensee, who intends to become inactive, or who becomes inactive, of additional procedures for leaving the industry or of any applicable CE requirement once a license is placed in escrow.
11. The evidence does not show that Respondent, a loan officer with approximately 16 years experience, willfully failed to comply with the CE requirements by the end of calendar year 2005. Instead, the evidence shows that Respondent successfully completed the CE requirements for the 2002, 2003, and 2004 calendar years and that he did not know that he had to complete the CE requirements for 2005 because his license was placed in escrow when he went to work for Charter One Bank in October of 2005. His lack of understanding about his 2005 CE requirements was reasonable in light of the circumstances, particularly where the evidence shows that there was no law, rule or written guideline specifying the CE requirements for when a loan officer license is in escrow. Respondent called the Division twice in November 2005 for guidance on this issue and left voicemail messages, but he was unable to make contact with anyone from the Division. The evidence shows that Respondent did not receive notice from the Division until March 2006, at the earliest, that he was required to take the CE by the end of 2005, three months after the time it would have been possible for him to meet the CE requirements of R.C. 1322.052 by the end of calendar year 2005.

III. RECOMMENDATION

The Division has established a sufficient evidentiary basis for denying Respondent's Renewal Application pursuant to R.C. 1322.10(A)(1)(a) for lack of compliance with R.C. 1322.041(B)(2). However, after careful consideration of the evidence in this case, it is respectfully recommended that the Superintendent of the Division of Financial Institutions permit Respondent to take the required 2005 CE hours within a reasonable period to be specified by the Division and that upon Respondent's completion of such requirement the Division thereafter grant Respondent's Renewal Application for a loan officer license.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sarah W. Creedon". The signature is written in a cursive, flowing style.

Sarah W. Creedon
Administrative Hearing Officer
March 12, 2007