Bob Taft
Governor

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

Lt. Governor Jennette Bradley
Director

In the matter of:	)	Case No. 02-0124-LOD
	)	
Edward Jon Benko	)	**DIVISION REMAND ORDER**
9029 E. Mississippi Avenue, Suite M303	)	
Denver, Colorado 80247	)	**Denial of Loan Officer License Application**
	)	

DIVISION ORDER

On or about March 14, 2002, Edward Jon Benko ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his 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 May 5, 2004.

The Hearing Officer filed her written Report and Recommendation with the Division on July 7, 2004, recommending "the Division provide proper notice to the Respondent of his right to a hearing in the matter statutorily required by R.C. 119.07 and establish compliance with the jurisdictional prerequisites set forth in R.C. Chapter 119." 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 July 8, 2004. A copy of the Report and Recommendation is attached hereto and incorporated herein. Respondent received the previously mentioned Report and Recommendation and letter on July 12, 2004. Respondent has not filed any objections.

Upon consideration of the hearing officer's Report and Recommendation and all evidence admitted at the hearing, the Division hereby modifies and/or rejects certain paragraphs in the Hearing Officer's Report and Recommendation as follows. Paragraphs of the Report and Recommendation not specifically addressed below are approved.

- The Division modifies paragraph I(B)(7), on page 3, to read as follows: Respondent participated in the hearing that was held on May 5, 2004. Respondent made an opening statement (TR at 15). Respondent testified in the narrative (TR at 17-18), responded to the questions of the Hearing Officer (TR at 18-32), and produced Respondent's Exhibits A and B.

  Despite not receiving certified mail service of the NOH, the Respondent testified that he wanted the matter to be resolved. He stated that he did not want to waive any rights that he had and did not expressly waive his right to

certified mail service of the NOH. Despite this declaration, he participated at the hearing and admitted evidence. When the issue of the NOH arose towards the end of the hearing, Respondent acknowledged the following:

- That he appeared at the hearing voluntarily;
- That he waived his right to counsel at the beginning of the hearing;
- That Attorney Blumenthal most likely forwarded a copy of the NOH to him;
- That he himself had requested the hearing through State's Exhibit 10;
- That the reason he requested a hearing was because he knew that there was a denial of his loan officer application issued;
- That he had no problem having the Hearing Officer deciding the case;
- That towards the end of the hearing he started to "second guess" his earlier decision to waive counsel.

(TR at 74-77)

- The Division modifies paragraph I(B)(9), on page 3, to read as follows: Originally, the record was to be kept open until May 19, 2004, for the limited purpose of the Respondent providing signed copies of Respondent's Exhibits A and B, and until June 2, 2004, for the Division to object to Respondent's Exhibits A and B. However, the Hearing Officer later determined that the Respondent and the Division would have until June 2, 2004, to provide legal briefs on the issue raised *sua sponte* by the Hearing Officer: whether the lack of certified mail service of the NOH precluded the Hearing Officer from having jurisdiction over the case. Respondent indicated that he had difficulty understanding this legal issue and the Hearing Officer attempted to explain processes and procedures, which are addressed in the Transcript at pages 78 through 82. The Hearing Officer added that the record would be kept open until June 2, 2004, "for submission of additional documents and briefs" and "anything additional for the record." (TR at 78-79)

- The Division modifies paragraph I(B)(11), on page 3, to read as follows: The Respondent did not file a brief regarding the jurisdictional issue and did not indicate that he wished to have additional evidence considered or add legal representation to the process. The Hearing Officer finds that the Respondent was notified of his right to counsel in the NOH and at the outset of the hearing.

- The Division modifies paragraph II(A)(3), on page 4, to read as follows: R.C. 119.06 states "No adjudication order of an agency shall be valid unless the agency is specifically authorized by law to make such order." It also states "No adjudication shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code."

- The Division modifies paragraph II(A)(4), on page 4, to read as follows: An "adjudication" is defined by R.C. 119.01(D) as "the determination by the

highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature."

- The Division deletes/rejects paragraph II(A)(5), on page 4, as it is now repetitive of the modified paragraph II(A)(3), as stated above.

- The Division modifies paragraph II(A)(6), on page 4, to clarify the definition of jurisdiction: The Division's authority and jurisdiction over the subject matter only exits as authorized by law. There are two types of jurisdiction, subject matter and personal. Subject matter jurisdiction is the jurisdiction of a court (generally) over the subject, type, or cause of action of a case that allows the court to issue a binding judgment. Personal jurisdiction is the jurisdiction granted a court (generally) over the parties before it that allows it to issue a binding judgment.

  Chapter 1322. of the Ohio Revised Code regulates loan officers in the State of Ohio. R.C. 1322.02(B) states that no person shall act as a loan officer without first having obtained a license from the Superintendent of Financial Institutions (which, pursuant to R.C. 1322.01(K), includes the Deputy Superintendent for Consumer Finance). The Superintendent investigates all applicants for a loan officer license. *See* R.C. 1322.031(B). The Superintendent must grant a loan officer license if an applicant meets statutory requirements. *See* R.C. 1322.041(A). After notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code, the Superintendent may refuse to issue a loan officer license if he finds either (A) a violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or (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. *See* R.C. 1322.10(A). Therefore, the Division has subject matter jurisdiction to refuse to issue (deny) a loan officer license.

  The Division obtains jurisdiction over an applicant once a NOH is served upon the individual. However, as discussed below, an applicant can waive service of the NOH, actual receipt of a NOH, and even their right to a hearing. This can be done either explicitly or implicitly.

- The Division rejects paragraph II(A)(7), on page 5. R.C. 119.07 states in part "the agency shall give notice to the party informing him of his right to a hearing. Notice shall be given by registered mail, return receipt requested...A copy of the notice shall be mailed to attorneys or other representatives of record representing the party...When any notice sent by registered mail, as required by Sections 119.01 to 119.13 of the Revised Code, is returned

because of failure of delivery, the agency either shall make personal delivery of the notice by an employee of the agency or shall cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located…" Respondent is the "party" entitled to receive the notice of the right to a hearing by certified mail, as his interests are the subject of an adjudication by an agency. *See* R.C. 119.01(G).

- The Division rejects paragraph II(A)(9), on page 5. R.C. 119.07 states in part "The failure of an agency to give the notices for any hearing required by section 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing." However, the Hearing Officer is incorrect in relying upon *Columbus v. Silker* (10th Dist. 1986), 30 Ohio App.3d 74, and applying it to the case before her.

  In *Silker*, the Registrar of the Bureau of Motor Vehicles notified Silker, via certified mail, that his privilege to drive a motor vehicle in Ohio had been cancelled. The certified letter was returned a "not deliverable as addressed, unable to forward," and no other steps were taken to contact Silker. *Id.* at 75. The Appellate Court found that "The failure of the Registrar of the Bureau of Motor Vehicles to comply with the requirements of R.C. 119.06 and 119.07 invalidates the bureau's order canceling defendant's Ohio driver's license." *Id.* at 76.

  The *Silker* case differs because the document in question was an "adjudication order" and not a "notice of intent to deny loan officer application." The Division's NOH is not an adjudication as defined in paragraph II(A)(4), above. Further, the Court noted in the *Silker* case "There is no indication in the Bureau of Motor Vehicles file that notice of a right to a hearing was given to defendant, or that the notice was published in a newspaper after the certified mail was returned undelivered." *Id.* The *Silker* court's decision focused on the fact that an order was issued against Silker without his knowledge, and that he was not given an opportunity to be heard. This is not the case before the Hearing Officer, as the Division had not issued an adjudication order in Respondent's case. Unlike in *Silker*, the Division's file does indicate that Respondent was notified of his right to a hearing—in fact, State's Exhibit 10, Respondent's appearance at the hearing on May 5, 2004, and Respondent's testimony at the hearing indicates that Respondent was notified of his right to a hearing.

  The *Silker* case does not control in Respondent's case, because Silker was never provided notice of allegations before him and an opportunity to be heard. As evidences above, Respondent was provided a notice of the Division's intent to deny him a loan officer license, and he took advantage of his opportunity to be heard.

- The Division rejects paragraph II(A)(10), on page 5. A valid adjudication order cannot be issued unless a party is provided notice of the charges and an opportunity to be heard on those charges. The Hearing Officer's application of *Slone v. Ohio Bd. Of Embalmers & Funeral Directors* (8th Dist. 1995), 107 Ohio App.3d 628, is misplaced. She is correct that a challenge to subject matter jurisdiction can be raised at any time. *Id.* at 630. However, there is no similarity between *Slone* and the Respondent's case.

  The claim in *Slone* was that "the Board failed to personally serve appellant with notice of its revocation order as required by R.C. 119.09..." Although the Board mailed the adjudication order to Slone's counsel by certified mail, along with a notice of Slone's right to appeal pursuant to R.C. 119.12, the Board did not mail a similar notice to Slone. The Appellate Court found "[t]he failure of [the Board] to serve [Slone] notice of the decision was a violation of due process and deprived appellant of this right to an effective appeal." (citations omitted) *Id.* at 632. This was based upon R.C. 119.09, which states in part "After such [adjudication] order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party."

  First and foremost, *Slone* differs from Respondent's case in that it deals with an adjudication order and not a NOH. Further, its decision is based upon R.C. 119.09 and not R.C. 119.07. The language in the two statutes may be similar, but each statute serves a different purpose. The Hearing Officer confused the purpose of R.C. 119.09, as stated in the *Slone* Court, and the purpose of R.C. 119.07. In *Beckside v. Ohio Liquor Control Commission* (10th Dist. 2004), 2004 Ohio 1009, the Appellate Court stated "[t]he purpose of R.C. 119.07 is to give sufficient notice such that the defending party can adequately prepare a defense." *Id.* at Paragraph 20. Respondent knew what the allegations against him were, and presented a defense. His defense was presented at the hearing, which he requested.

- The Division rejects paragraph II(A)(11), on page 6. The Hearing Officer's reliance upon *Franklin County Bd. Of Comm'rs. v. SERB* (10th Dist. 1989), 64 Ohio App.3d 113, (hereinafter "SERB") is misplaced. This case, too, deals with a decision (adjudication order) that was not served by certified mail in accordance with R.C. 119.09. *Id.* at 114. The Appellate Court found

  > The notice required by R.C. 119.09 does more than inform an affected party of its appeal rights, it is the required notification of the agency's decision and in absence of such statutory notice the affected party is not bound by such order. As noted by the Ohio Supreme Court in *Sun Refining*

> *& Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, 309, failure to comply with R.C. 119.09 results in a violation of due process. To conclude otherwise would, in many instances, deprive a party of an effective appeal while at the same time require compliance with an agency's order.

Id. at 117-118.

Once again, the *SERB* case differs from the case before the Hearing Officer. This case is not applicable, as it does not deal with a NOH—it deals with the failure to send a party an adjudication order by certified mail, and how it affects the party's right to appeal. There is no case law found by the Division which indicates that the language in R.C. 119.07 and R.C. 119.09 are to be read *in pari materia*, nor that the failure to issue a NOH by certified mail denies the Division jurisdiction to hear the subject matter of a loan officer application denial.

- The Division rejects paragraph II(A)(12), on page 6. A hearing officer cannot rule on the constitutionality of a statute or rule. Similarly, the Hearing Officer in this case exceeded her authority, as she cannot act as a court of higher authority and decide that two separate Courts of Appeal decisions "suffer from the same fatal defect—they assume that R.C. 119.07 only refers to a method of service relevant to obtaining personal jurisdiction and it does not." The Superintendent does not believe that he is "misguided" in relying upon both *Jefferson Cty. Child Support Agency v. Harris* (7th Dist. 2003), 2003 Ohio 496, and *Fogt v. Ohio State Racing Commission* (2nd Dist. 1965), 3 Ohio App.2d 423. In fact, the Superintendent finds both *Harris* and *Fogt* to be persuasive, and adopts these courts' rationale that R.C. 119.07 refers to a method of service relevant to obtaining personal jurisdiction.

  In *Fogt*, the Racing Commission appealed the trial court's determination to invalidate the Racing Commission's order because "the notice issued in the present case was defective in that it did not meet the requirements of Section 119.07, Revised Code, and the record amply supports the trial court's conclusion that the notice of hearing was defective." *Id.* at 424. The Court of Appeals reversed the trial court decision because

  > It is equally clear from the record that the appellee appeared in person before the Racing Commission; that he expressly indicated he wanted to proceed without a lawyer; that he specifically waived any defects in the notice of the alleged violation of Rule 259.01; and that he specifically consented to an amendment of the original citation to include an alleged violation of Rule 264.

> After agreeing to proceed with the hearing, the appellee was estopped from thereafter denying the validity of the commission's order on the ground that the notice issued to him was defective.

Id. at 424-425. The Court of Appeals determined that R.C. 119.07 dealt with personal jurisdiction, and a respondent's notice of allegations against him. The Court restated the familiar premise that

> Although parties to an action may not agree or consent to jurisdiction of the subject matter, it is fundamental that jurisdiction over the person may be waived...It has frequently been said that knowledge is not notice, but knowledge, coupled with facts showing an express waiver and consent, precludes any subsequent objection to the form of the notice. Indeed, the absurd consequences of any alternative conclusion are manifest in view of the sole purpose of the required notice.

Id. at 425.

In addition, the Tenth District Court of Appeals has adopted this rationale, that procedural requirements concerning notices deal with personal jurisdiction. *See Hoge v. Liquor Control Comm.* (10th Dist. 1969), 18 Ohio App.2d 255, 257.

In *Harris*, the Appellant argued "the trial court erred when it refused to adopt the administrative order because of a violation of procedural due process...due to the fact that the CSEA sent Harris notice of the hearing via regular mail instead of registered mail." *Harris*, *supra*, at Paragraph 10. The Court overruled the trial court, and stated

> Pursuant to R.C. 119.07, the CSEA should have sent notice of the hearing via registered mail, return receipt requested. "The failure of an agency to give the notices for any hearing * * * in the manner provided in this section shall invalidate any order entered pursuant to the hearing." R.C. 119.07. The purpose of this notice is to give the parties involved adequate notice to enable them to prepare for the hearing. *Sohi v. Ohio State Dental Bd.* (1998), 130 Ohio App.3d 414, 422, 720 N.E.2d 187. However, Ohio courts have consistently held that administrative orders following a hearing may be valid even though notice of the hearing did not comply with R.C. 119.07. See *Fogt v. Ohio State Racing Commission* (1965), 3 Ohio App.2d 423, 32 O.O.2d 546, 210 N.E.2d 730; *Shearer v. State Medical Bd.* (1950), 91 Ohio App. 277, 280, 44 O.O. 480, 97 N.E.2d 688; *Prinz v. State Counselor and Social Worker Bd.* (Jan. 21, 2000), 1st Dist. No. C-990200 [2000 Ohio App. LEXIS 116]; *Kenney v. South Range Local*

> *School District* (Mar. 23, 1983), 7th Dist. No. 82 CA 35 [1983 Ohio App. LEXIS 14170].
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> In order for an administrative order to be valid without proper notice under R.C. 119.07, the record must demonstrate that the defendant had actual notice of the proceedings against him. *Prinz* at 5. Once a defendant has received actual notice of the proceedings, he may waive asserting the lack of notice as a defense, as any objection to jurisdiction over the person may be waived. *Fogt* at 425, citing 1 Ohio Jurisprudence 2d 489, Section 89.
>
> We recognize that in *Prinz*, *Fogt*, and *Fenney*, the defendant appeared at the hearing and that appearance demonstrated he received actual notice of the proceedings against him while in this case Harris did not appear at the hearing. However, this case does not hinge on whether Harris did or did not appear at the hearing. The testimony at the hearing demonstrates that he actually received notice of the hearing. Before the hearing, Harris contacted the CSEA by telephone to inform it of his inability to attend and talked to the CSEA about the possible consequences of the hearing. Furthermore, Harris never objected to the form of service at any stage in the proceedings. Given these facts, we conclude Harris has waived any objection to the form of notice and, therefore, that the form of notice does not provide a basis for invalidating the administrative order. The CSEA's first assignment of error is meritorious.

Id. at Paragraphs 11, 12, and 13.

The *Fogt* case differs somewhat from the Respondent's case. The *Fogt* case deals with the form of the notice, not the delivery of the notice. However, as the Hearing Officer correctly indicated, the *Fogt* case determined that R.C. 119.09 dealt with personal jurisdiction and not subject matter jurisdiction. Just as someone can waive notice of the allegations against them, one can also waive service, or the type of service, of the NOH.

The *Harris* case is similar to the Respondent's case; neither Harris nor the Respondent was served by certified mail. The *Harris* case cited to appellate decisions in several other districts, all of which asserted "administrative orders following a hearing may be valid even though notice of the hearing did not comply with R.C. 119.07." (citations omitted) *Harris* at Paragraph 11.

The record here clearly indicates that the Division attempted to serve Respondent by certified mail at his address of record, and that the mail was returned as "Unclaimed." The record also indicates, through State's Exhibit 8, dated December 5, 2002, that

Attorney Michael R. Blumenthal acted in a representative capacity for Respondent. Accordingly, the Division mailed him as well as Respondent a copy of the NOH. It is clear that The Division attempted to comply with R.C. 119.07.

If Respondent did not request a hearing, the Division could not have proceeded with an adjudicatory order because it did not have personal jurisdiction over Respondent, as there would be no indication that he had notice of the allegations against him, nor an opportunity to be heard. However, Respondent requested a hearing. *See* State's Exhibit 10. Respondent attended the hearing he requested. Respondent participated in the hearing that he requested. By doing so, he waived the certified mail service requirement of R.C. 119.09.

- The Division rejects paragraph II(A)(13), on page 7, for the reasons stated above and below, that R.C. 119.07 does not pertain to subject matter jurisdiction.

- The Division rejects paragraph II(A)(14), on page 7, for the reasons stated above and below, that R.C. 119.07 does not pertain to subject matter jurisdiction. As to the Hearing Officer's concerns about due process, the Superintendent refers to *Goldman v. The State Medical Board of Ohio* (10th Dist. 1998), unreported, Case No. 98AP-238, 1998 Ohio App. LEXIS 4918

> The fundamental requirement of procedural due process is notice and the *opportunity* to be heard. *Korn v. Ohio State Medical Board* (1988), 61 Ohio App. 3d 677, 684, 573 N.E.2d 1100, citing *Luff v. State* (1927), 117 Ohio St. 102, 157 N.E. 388. Such opportunity is subject to waiver. *Boddie v. Connecticut* (1971), 401 U.S. 371, 378-379, 28 L. Ed. 2d 113, 91 S. Ct. 780. (emphasis in original)

There is no doubt that Respondent received notice—he admitted so in his testimony. Respondent not only received an opportunity to be heard, but also requested a hearing and participated in the hearing. Respondent's due process rights were not violated.

- The Division rejects paragraph II(A)(15), on page 7. As mentioned above, the *Slone* case dealt with service of an adjudication order pursuant to R.C. 119.09, and not service of a NOH pursuant to R.C. 119.07.

Further, regardless of Respondent's contentions to the contrary (TR at 40-41), the record indicates that Mr. Blumenthal was legal counsel for Respondent until April 1, 2004. On December 5, 2002, Mr. Blumenthal clearly acted in a representative capacity for Respondent by responding to a letter the Division sent to Respondent. Mr. Blumenthal did not notify the Division until April 1, 2004, nearly sixteen months later, that he was not representing the Respondent. *See* State's Exhibit 14. In fact, Mr. Blumenthal received three mailings from the Division (State's Exhibits 12 and 13, and TR at 75 discussion about State's Exhibit 9) during that sixteen-month period. In addition, State's Exhibit 11 indicates that Respondent was told that the Division's

records indicated Mr. Blumenthal was his attorney, and Respondent did not state otherwise until May 5, 2004, at the hearing he requested.

- The Division rejects paragraph II(A)(16), on page 7. As mentioned above, the case cited by the Hearing Officer, *Silker*, dealt with an individual who had an adjudication order issued against him without an opportunity to be heard. That fact pattern is not similar to Respondent's case.

  R.C. 119.06 does indicate that no adjudication order of an agency shall be valid unless an opportunity for a hearing is afforded. However, not only did Respondent receive an opportunity to be heard, but also he specifically requested a hearing and participated in the hearing he requested.

  The Hearing Officer's reliance on *Chirila v. Ohio State Chiropractic Board* (10th Dist. 2001), 145 Ohio App.3d 589, is misplaced. The *Chirila* case did not address the delivery of the notice sent to Chirila. The *Chirila* case focused on whether the Chiropractic Board's "Notice of Opportunity for Hearing was vague and ambiguous in that it merely states that a hearing must be requested within thirty days rather than indicating that a hearing request must be received within thirty days." *Id.* at 592. This case was reviewed to determine if the Chiropractic Board's notice denied Chirila any of his due process rights. The Court stated

  > the failure of an agency to provide notice in the manner specified in R.C. 119.07 invalidates any subsequent order issued by the agency. R.C. 119.07. Thus, to comport with due process requirements, R.C. Chapter 119 requires effective notice and a meaningful opportunity to be heard.

  Id. at 594. The Court decided that the Chiropractic Board did not issue an effective notice to Chirila, as it failed to state that his request for a hearing needed to be received no later that thirty days after the notice was issued. The *Chirila* Court's final decision was "[b]ecause we find that appellee's notice did not comply with due process, appellee's order revoking appellant's license is void under R.C. 119.06 and 119.07." *Id.* at 596. This is in contrast to Respondent's case, where his due process rights were not violated.

  Similarly, the Hearing Officer's reliance on *Bryant Health Center, Inc. v. Ohio Dept. of Job & Family Serv.* (10th Dist. 2004), 2004 Ohio 45, is misplaced. *Bryant Health Center* addressed the same issue as *Chirila*: did the NOH comply with due process? *Bryant Health Center* at Paragraph 8. As mentioned above, there is no indication that Respondent's due process rights were violated.

- The Division rejects paragraph II(A)(17), on page 8. As mentioned above, the requirements found in R.C. 119.07 are procedural in nature. R.C. 119.07 protects an individual's due process rights. Due process requires that an individual be provided notice of the allegations against him and an opportunity to be heard regarding those

allegations. Respondent acknowledged under oath that he received a copy of the NOH (TR at 57-58, 74-75). Respondent acknowledged that he himself requested a hearing (TR at 58, 74). Respondent participated at the hearing, and submitted documents into evidence. The Division did not violate Respondent's due process rights.

Compliance with R.C. 119.07 gives the Division personal jurisdiction over an individual. However, an individual can waive the requirements of R.C. 119.07 that are procedural in nature. This waiver can be done either explicitly or implicitly. Although Respondent was not served by certified mail, he did receive the Division's NOH. By requesting a hearing, he waived any challenge he may have had as to how the NOH was served upon him. The Division obtained personal jurisdiction over Respondent when Respondent requested a hearing. Although Respondent stated that he would not waive "any legal right(s)" that he may have (TR at 77), his actions state otherwise.

- The Division rejects paragraph II(A)(18), on page 8. The Hearing Officer's legal conclusion that the Division does not have subject matter jurisdiction is incorrect. The case law cited by the Hearing Officer does not support her contentions.

  As indicated by the *Fogt* Court, it is absurd to believe that, after Respondent requests a hearing, appears at a hearing, and participates at a hearing, that the Division would lack jurisdiction to issue a decision on the matter. The Division has both subject matter jurisdiction and personal jurisdiction to determine whether or not to deny Respondent's application for a loan officer license.

- The Division rejects the Hearing Officer's Recommendation, found on page 8. As mentioned above, Respondent received notice and an opportunity to be heard. By requesting a hearing, and participating at a hearing, he waived any challenge he may have had as to how the NOH was served upon him.

The Division remands this matter back to the Hearing Officer, so that she may arrive at a decision based upon the merits of the case.

As the Division has not issued an adjudication order as described in Chapter 119. of the Ohio Revised Code, this is not an appealable order under R.C. 119.12.

Once a new Report and Recommendation is issued based upon the merits of the case, the Division will send the new Report and Recommendation to Respondent in accordance with R.C. 119.09. Respondent shall have 10 days from the date of receipt of the new Report and Recommendation to file with the Division any objections to the new Report and Recommendation.

Signed and sealed this 10th day of August 2004.

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

CERTIFIED MAIL 7002 2030 0002 6801 6333