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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2009-914
:
ANTHONY L. SEAWRIGHT, : DEBORAH K. TONGREN,
RESPONDENT : HEARING OFFICER

REPORT AND RECOMMENDATION
Issued March 11, 2010

I. FINDINGS OF FACT

A. Background.

1. This matter came before Deborah K. Tongren an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("*Division*") to serve as the Hearing Officer for this hearing in accordance with Ohio Revised Code ("*R.C.*") Chapter 119. The Division held the hearing on February 26, 2010 at 77 South High Street, 23rd Floor, in Columbus, Ohio.
2. The Division intends to deny Anthony L. Seawright's ("*Respondent*") 2009 loan officer license renewal application because the Division is unable find that Respondent's character and general fitness meet the renewal requirements set forth in R.C. §1322.041(A)(6) and (B)(3).
3. Todd Nist, Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Desiree T. Shannon, Esq., testified at the hearing. Neither Respondent nor any representative on her behalf appeared at the hearing. State's Exhibits A through F were introduced and the Hearing Officer admitted them into the record. The Hearing Officer closed the record at the conclusion of the hearing on February 26, 2010.

B. Jurisdiction and Procedural Matters.

4. On October 27, 2009, the Division issued a cover letter and the Notice of Intent to Deny Loan Officer License Renewal & Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2009 loan officer license renewal application. The Division sent the NOH to Respondent by certified mail, return receipt requested. *State's Exhibit A.*
5. On or about December 1, 2009, the U.S. Postal Service returned the mailing to the Division marked, "unclaimed." *State's Exhibit B.*
6. On December 7, 2009, the Division re-sent the NOH to Respondent by regular mail, accompanied by a certificate of mailing, as permitted by R.C. §119.07. *State's Exhibit B.*
7. Respondent requested a hearing on the matter. *Testimony of Ms. Shannon, Tr. at pg. 14.*
8. On December 17, 2009, the Division sent a letter to Respondent informing him that it had scheduled a hearing for February 9, 2010 at 9:30 a.m. *State's Exhibit A.*
9. On February 8, 2010, Respondent requested a continuance in order to provide the Division with additional documentation. The Hearing Officer granted Respondent's request and continued the hearing to February 26, 2010. *State's Exhibit C.*
10. On February 11, 2010, the Division sent a letter to Respondent informing him of the new date, time and place for the hearing. *State's Exhibit C.*
11. On February 26, 2010, the hearing commenced with only the Division in attendance.

C. Respondent's Activities.

12. Desiree T. Shannon, an attorney with the Division, reviews licensing applications of loan officers and mortgage brokers to verify their compliance with the Ohio Mortgage Broker Act. Ms. Shannon reviewed Respondent's loan officer file. *Testimony of Ms. Shannon, Tr. at pgs. 9-10.*

13. On April 27, 2009, Respondent submitted an on-line 2009 loan officer license renewal application to the Division. *State's Exhibit D.*
14. S.B. 185, effective January 1, 2007, requires loan officer applicants to submit a federal background check with their loan officer license applications. *R.C. §1322.031.*
14. Respondent failed to submit a federal background check with his 2009 loan officer license renewal application. *Testimony of Ms. Shannon, Tr. at pg. 11; State's Exhibit D.*
15. On May 22, 2009, the Division sent a letter to Respondent indicating that the Division had received his 2009 loan officer license renewal application. The letter informed Respondent that the Division had not received his Federal Bureau of Investigation ("FBI") background check results and provided Respondent with 14 days to respond. *State's Exhibit E.*
16. On July 17, 2009, the Division sent a second letter to Respondent indicating that the Division had yet to receive his FBI background check results. Respondent had 30 days to provide a response concerning the deficiency. *State's Exhibit F.*
17. As of February 26, 2010, Respondent had yet to respond to the Division's requests to submit FBI background check results.

II. CONCLUSIONS OF LAW

18. The Division has procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
19. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, R.C. Chapter 1322.
20. At all times relevant to this matter, Respondent held a loan officer license and was subject to the laws in R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
21. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner (1950)*, 59 Ohio L. Abs. 135, 98 N.E. 2d 60.

22. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.* (1987), 39 Ohio App.3d 15.
23. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87.
24. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.
25. R.C. §1322.041(A)(6) and (B)(3) states:

(A) Upon the conclusion of the investigation required under division (D) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan originator license to the applicant if the superintendent finds that the following conditions are met:

* * *

(6) The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code. The superintendent shall not use a credit score as the sole basis for a license denial.

* * *

(B) The license issued under division (A) of this section may be renewed annually on or before the thirty-first day of December if the superintendent finds that all of the following conditions are met:

* * *

(3) The applicant meets the conditions set forth in divisions (A)(2) to (8) of this section.

26. With respect to a loan officer license application, the superintendent of financial institutions shall request criminal record information from the FBI as part of the criminal records check. R.C. §1322.031(D)(1).
27. Respondent failed to submit a federal background check to the Division. The Division has insufficient information to determine whether Respondent's character and general fitness commands the confidence of the public to warrant the belief that the business will be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act and therefore, cannot renew Respondent's loan officer license. R.C. §1322.041(A)(6).
28. R.C. §1322.10(A)(1)(a) authorizes the Division to refuse to renew an applicant's mortgage loan officer license if the Division finds that the applicant has violated or failed to comply with any provision of R.C. §§1322.01 through 1322.12.
29. The Division has met its burden of proof for denying Respondent's 2009 loan officer license renewal application.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for denying Respondent's 2009 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a). Consequently, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's 2009 loan officer license renewal application.

Respectfully submitted,

Deborah K. Tongren
Hearing Officer