

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 05-0001-MBR  
: :  
SHERRY JOHNSON : JANE S. ARATA, HEARING OFFICER  
d.b.a. ELITE HOME MORTGAGE :

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued May 24, 2006

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I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata an attorney licensed to practice law in Ohio who was duly 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 April 25, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Sherry Johnson ("Respondent") to consider the allegations in the Division's Notice of Intent to Revoke Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("NOH"). The NOH alleges that the Division seeks to revoke Respondent's mortgage broker certificate of registration pursuant to R.C. 1322.10(A)(1)(b) because she pleaded guilty to wire fraud in 2005.

Timothy Loughry, an Assistant Attorney General for the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. John Neal represented the Respondent at the hearing. At the hearing, State's Exhibits 1-A, 1-B, 2, 3, and 4, and Respondent's Exhibit A were admitted into the record. After the hearing, Respondent's counsel moved to have two letters admitted into the record in this case. On May 11, 2006, the Hearing Officer initiated a conference call with counsel to discuss that issue. The Division's objections based upon timeliness, hearsay and relevancy were made at the appropriate time. Those objections were overruled, the documents involved marked as Respondent's Exhibit B by the Hearing Officer, and admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 30, 2006. Respondent's hearing request was received by the Division on February 6, 2006. The Division scheduled the hearing for February 23, 2006, and continued it until April 25, 2006, on its own motion. The Respondent's unopposed request to continue the April 25, 2006 to a later time that same day was granted. The Respondent received the NOH by certified mail and received written notice of the date, time, and location for each scheduled hearing date. (State's Exhibits 2 and 3.)

**C. Respondent's Mortgage Broker Certificate of Registration.**

1. Respondent is an Ohio mortgage broker currently doing business as Elite Home Mortgage who has held an Ohio mortgage broker certificate of registration for over two years. Her most recent Ohio mortgage broker certificate of registration expired on April 30, 2006. (State's Exhibit 1-B, Hearing Transcript ("TR") at 27-28.)
2. Respondent pleaded guilty to wire fraud in the United States District Court for the Northern District of Ohio, Western Division, in May of 2005. Plea Agreement in U.S. v. Sherry Johnson, Case No. 3:05CR715 (N.D. Ohio), State's Exhibit 4; TR at 29-31.) Based upon this guilty plea, the Division sought to revoke Respondent's mortgage broker certificate of registration. (State's Exhibit 2.)
3. The Plea Agreement, in relevant part, states that:
  1. Defendant [Sherry Johnson] agrees to plead guilty to the Information in this case, because in fact she is guilty as charged in the Information.

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5. The parties agree to recommend that the Court impose a sentence within the range determined pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below based upon readily provable facts. The government will not request a sentence higher than the advisory Sentencing Guidelines range and the defendant will not request a sentence lower than the advisory Sentencing Guidelines.

- a. Sherry Johnson was a loan officer and manager at Firelands Mortgage, Inc.;

b. While a loan officer in or about March, 2000, she handled the mortgage application for David and Sheila Hineline;

c. In order to qualify David and Sheila Hineline for a loan, customers for whom Sherry Johnson was the loan officer, a series of false documents were created by others within the office, and submitted via facsimile by Sherry Johnson to the Lender, Mortgage Express, and that Sherry Johnson signed off on said documents and submitted them knowing the information contained in therein was false, to wit: the documents which falsely indicated that the Hinelines had sold an antique sewing machine for \$9,000. The facsimile was transmitted by interstate wires from Ohio to Illinois.

(State's Exhibit 4.)

4. Respondent testified that parts of the above stipulation in the Plea Agreement were not accurate. Specifically, she testified that the stipulations that she was a manager at Firelands Mortgage, Inc. ("Firelands") and that she transmitted false documents to the lender by facsimile were inaccurate. Respondent testified that she started the Hinelines' loan file but handed it over before the false documents were faxed to the lender. She also testified that she has unsuccessfully attempted to rectify this situation. (TR at 29-41,166-68.)
5. The record contains no evidence indicating that the Plea Agreement has been modified or changed since it was filed and adopted by the court in that matter. Therefore, the Hearing Officer finds that great weight should be given to the stipulations in the Plea Agreement regardless of Respondent's claims of inaccuracy. If efforts to change the stipulations in the Plea Agreement through the appropriate federal process are successful, the changes made could be considered at that time.
6. Respondent worked on the Hinelines' loan file in March of 2000. She voluntarily brought that loan file to the Division in December of 2000 after she left Firelands. Respondent also cooperated with federal agents investigating Firelands' owner Roberta Littleman and testified against her in federal court. (State's Exhibits 1-A and 4; Respondent's Exhibits A and B; TR at 36.)
7. On April 10, 2006, Respondent was sentenced to two years probation and ordered to pay a \$100 fine based upon her 2005 guilty plea to wire fraud. (Respondent's Exhibit A.)

**D. Respondent's Reputation and Character.**

8. Before she became a loan officer, Respondent was a waitress at a country club. She has worked in the mortgage industry since 1999. Respondent started out at Firelands Mortgage and was a loan officer there for two years. Firelands' owner Roberta Littleman hired her and was responsible for training her as a loan officer. Respondent had concerns about how Ms. Littleman operated Firelands and handled loans. Despite concerns about the Hinelines' loan in March of 2000, she continued to work for Firelands until December of that year. It was at that time that she brought her concerns and several loan files to the Division. (TR at 34-36, 155-62; State's Exhibit 1-A.)
9. Respondent also worked as a loan officer for another mortgage broker before Ohio's loan officer licensing requirements went into effect in 2002. She then obtained her Ohio mortgage broker certificate of registration and began doing business as Elite Home Mortgage. (TR at 27-29, 163; State's Exhibits 1-A and 1-B.)
10. Several character witnesses who know Respondent professionally and socially testified at the hearing. They are favorably impressed with her character and abilities in the mortgage lending industry. They described Respondent as honest, reliable, knowledgeable, and someone who does what is best for her customers. Despite their favorable testimony, most of them were not fully aware of the nature of Respondent's criminal conviction. When asked, Respondent was not sure if she had disclosed it to them. The lack of disclosure reflects negatively on Respondent's honesty in her business dealings.
11. Respondent submitted two reference letters sent to the Division praising her cooperation in the federal investigation from those familiar with her activities in that arena. Her cooperation with law enforcement and assistance in the prosecution of Ms. Littleman reflect favorably on her character. Respondent's counsel identified the reference letters but the authors of those letters did not testify and were not available for cross-examination by the Division at the hearing. Especially in a case involving a recent fraud conviction, it is important for the Division to have an opportunity to cross-examine character witnesses and ascertain how well they know the Respondent.
12. Therefore, the reference letters were admitted into the record but were given less weight than they might have been given if the authors had testified regarding the bases for their opinions as well as been available for cross-examination. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters contained in Respondent's Exhibit B were reviewed and given some weight but not the weight they might have been given if their authors had testified at the hearing. Any difficulties appearing to testify posed could have been remedied by arranging for telephone testimony.

### **III. CONCLUSIONS OF LAW**

#### **A. Jurisdiction and Procedural Matters.**

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

#### **B. Respondent's Mortgage Broker Certificate of Registration.**

1. The Division is the state agency responsible for the licensing and regulation of mortgage brokers and loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.10(A)(1)(b) permits the Division to revoke a mortgage broker certificate of registration if it finds that the registrant has been convicted of or pleaded guilty to any criminal offense involving fraud. Ohio Revised Code Section 1322.10(E) requires any such revocation to be permanent.
3. Respondent is a "registrant" as that term is defined in R.C. 1322.01(J). Respondent's mortgage broker certificate of registration expired on April 30, 2006. The expiration of Respondent's mortgage broker certificate of registration does not affect these proceedings or the validity of any order issued after the hearing. R.C. 119.091. "The failure of any agency to hold an adjudication hearing before the expiration of a license shall not terminate the request for a hearing and shall not invalidate any order entered by the agency after holding the hearing." R.C. 119.091.
4. Respondent pleaded guilty to wire fraud in the United States District Court for the Northern District of Ohio, Western Division, in May of 2005 pursuant to a Plea Agreement that contains the following stipulation:

In order to qualify David and Sheila Hine for a loan, customers for whom Sherry Johnson was the loan officer, a series of false documents were created by others within the office, and submitted via facsimile by Sherry Johnson to the Lender, Mortgage Express, and that Sherry Johnson signed off on said documents and submitted them knowing the information contained therein was false, to wit: the documents which falsely indicated that the Hine's had sold an antique sewing machine for \$9,000. The facsimile was transmitted by interstate wires from Ohio to Illinois.

This document evidences a guilty plea to a criminal offense involving fraud based upon Respondent's submission of false documents to a lender while operating as a loan officer in the mortgage lending industry. Regardless of Ms. Johnson's

attempts to minimize her involvement and change the Plea Agreement, the Plea Agreement remains unmodified. It alone provides sufficient evidence in support of revoking her mortgage broker certificate of registration.

5. The evidence of Respondent's good character was taken into consideration. It was outweighed by the serious concerns raised by her guilty plea to a criminal offense involving fraud and the underlying events. The ability to handle mortgage loans with integrity and in compliance with the law is highly relevant to one's ability to be a mortgage broker.
6. While Respondent's cooperation with law enforcement and assistance in the prosecution of Ms. Littleman reflect favorably on her character, they do not outweigh the serious concerns raised by her recent guilty plea to a criminal offense involving fraud.
7. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by revoking a mortgage broker certificate of registration when a registrant has recently plead guilty to a criminal offense involving fraud. Mortgage brokers have access to confidential personal and financial information and play a critical role in the financing process for a home, the most valuable asset owned by most individuals. It is extremely important to protect the integrity of the loan process and proceed with caution when concerns regarding a registrant exist.

### **III. RECOMMENDATION**

Given Respondent's recent guilty plea to a criminal offense involving fraud, I respectfully recommend that Respondent's mortgage broker certificate of registration be revoked pursuant to R.C. 1322.10(A)(1)(b).

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
May 24, 2006