

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

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**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Scott S. McCann**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0307-LOD**

**FINDINGS OF FACT**

1. On or about April 18, 2002, Scott S. McCann ("Respondent" herein) submitted an application (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code (a copy of which is attached and incorporated as Exhibit A herein).
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on August 17, 2004, at 77 South High Street, Columbus, Ohio. At the Hearing, Respondent was represented by Christopher J. Minnillo, Esq., and the Division was represented by Assistant Attorney General James M. Evans, Esq. and Mark Rhea, Esq., staff counsel for the Division.
4. As of the date of the Application, Respondent was employed by Brookstone Mortgage.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041, and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.041, and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

The Division and Respondent stipulated to admission of the Division's exhibits, including the Notice. (Tr. Page 11)

Respondent was the sole shareholder and president of T.P.O.T.T. Inc., dba Crew Mortgage and Funding. ("Crew Mortgage" herein; Tr. Pages 19, 56, 88) The Division revoked the mortgage broker certification of Crew Mortgage by Division Order dated February 19, 2002. (Order No. 01-MB-11) The action of the Division was subject to appeal to the Court of Common Pleas, Franklin County, Ohio, and the action of the Division revoking the mortgage broker certification of Crew Mortgage was affirmed by the Franklin County Court of Common Pleas in the case of T.P.O.T.T., Inc., Appellant v. Ohio Department of Commerce, Appellee, Case No. 02CV-2203 (Franklin County Court of Common Pleas, Franklin County, Ohio). The revocation action, and the appeal, are referred to herein as the "Crew Mortgage Revocation".

In the Notice, the Division has determined that Respondent's character and general fitness do not 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 the Ohio Mortgage Broker Act.

At the Hearing, Respondent presented his own testimony as well as that of two former mortgage loan customers and a loan wholesale representative in support of Respondent's general contention that Respondent's character and general fitness command the confidence of the public and warrant the belief that the business will be conducted by the Respondent in an honest and fair manner, consistent with Ohio Revised Code section 1322.041(A)(5). The witnesses testified generally as to positive relations with Respondent in conjunction with their respective business transactions.

The record in the Crew Mortgage Revocation, contained in State's Exhibit 3, is replete with reference to facts relating to Respondent's management of Crew Mortgage. The record includes reference to Respondent's knowledge of, and failure to take action to avoid or remedy, fraudulent activities of brokers employed by Crew Mortgage during the time periods relevant to that matter. The findings in the Crew Mortgage Revocation include; finding co-attribution of the actions of each of the referenced Crew Mortgage employees, including Respondent; finding that Respondent had actual knowledge of concerns regarding allegations pertaining to activities of

other subordinate Crew employees and "...did not act to correct them", resulting in a series of frauds being perpetrated on Crew customers; finding that Respondent and other Crew employees "took advantage of unsophisticated borrowers"; and finding that "...once on notice Crew Mortgage did not act to halt the scheme, which is tantamount to intent." (Tr. Pages 89, 90) The findings also conclude that the actions of Respondent constituted improper, fraudulent or dishonest dealings. See States Exhibit 3 contained in Exhibit B attached hereto and incorporated herein by reference.

In addition to the findings in the Crew Mortgage Revocation matter, Respondent testified at the Hearing that he was aware of drug addiction concerns involving an employee (one of the employees directly involved in much of the Crew Mortgage fraudulent activity), including the cost of the addiction, but did not terminate or suspend the employee or take action which would have mitigated or eliminated the ability of the employee to defraud Crew Mortgage customers. (Tr. Pages 80, 81, 82)

The record in the Crew Mortgage Revocation action speaks for itself. Importantly, the findings in the Crew Mortgage Revocation proceeding states that "Respondent (Crew Mortgage), through McCann, therefore is shown to have knowingly intended for the activities of Goldberg and Rivera to continue, presumably to its benefit (Crew Mortgage) and the benefit of its owner (Respondent)", and "Crew Mortgage, through McCann, had notice that these activities were taking place and did not act to correct them". (States Exhibit 3)

Respondent presented no substantive evidence or testimony at the Hearing to effectively contradict the findings pertaining to the role of Respondent in the Crew Mortgage matter as contained in the original Crew Mortgage Revocation action. In the instant matter, given the uncontroverted facts cited in the findings, it is not necessary to impute corporate knowledge to the Respondent given Respondent's actual knowledge. Based on the findings in the Crew Mortgage Revocation, which were not subject to formal review, modification or reversal in the Hearing, Respondent had direct actual knowledge of allegations relating to inappropriate behavior of Crew Mortgage employees and could have taken action to prevent further harm to Crew Mortgage customers but failed to do so. (States Exhibit 3)

Even without reference to the actual findings cited in the previous Crew Mortgage Revocation matter, the fact that Respondent was the President and sole shareholder of an organization in which such extensive and ongoing fraudulent behavior was able to be conducted over a period of time calls into question the adequacy of Respondent's character and fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with applicable law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the

General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Based on the foregoing, there is support for the Division's assertion that Respondent fails to meet the basic statutory criteria required by Ohio Revised Code section 1322.041(A)(5).

In light of the Crew Mortgage Revocation matter; the role of Respondent in the Crew Mortgage organization; the previous Crew Mortgage Revocation hearing, findings and appeal; and the limited objective evidence provided by Respondent to meet Respondent's statutory "character and general fitness" tests; Respondent has failed to provide evidence sufficient to overcome the Superintendent's findings under Ohio Revised Code section 1322.041(A)(5).

#### RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

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Jennifer Smith, Hearing Examiner

7 Oct. 04  
Date