

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2008-458
:
RICHARD B. DISO, : DELORES EVANS
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 14, 2010

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, 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 the Ohio Administrative Code and Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on April 21, 2009 and April 28, 2010 at 77 South High Street, Columbus, Ohio.

The Division held the hearing to consider the allegation that Richard B. Diso ("Respondent") had unsatisfied civil judgments entered against him. The Division intends to deny Respondent's 2008 loan officer license renewal application.

Todd Nist, Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori Massey, Esq., testified on behalf of the Division. Respondent appeared at the April 21, 2009 hearing. Glen Littlejohn, Esq., represented Respondent at the hearing. The parties stipulated to the admission of State's Exhibits 1, 2, 3, 4, 5, 6, 7, and 11. State's Exhibits 1 through 11 and Respondent's Exhibits A, B, C, E, F, G, and H were admitted into the record. Respondent's Exhibit D was proffered into the record. The Hearing Officer closed the record at the conclusion of the hearing on April 28, 2010.

B. Jurisdiction and Procedural Matters

1. On January 9, 2009, the Division issued a Notice of Intent to Deny Loan Officer License Renewal Application and Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2008 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a). Respondent had 30 days to request a hearing. The Division sent the NOH to Respondent by certified mail,

return receipt requested. Service was perfected on January 12, 2009. *State's Exhibit 1*

2. On January 13, 2009, the Division received Respondent's hearing request. *State's Exhibit 2*
3. On January 16, 2009, the Division sent a hearing notice to Respondent informing him that an administrative hearing had been scheduled for February 25, 2009. On February 25, 2009, the Hearing Officer granted Respondent's request for a continuance of the hearing. The hearing was rescheduled to April 21, 2009. *State's Exhibit 3*
4. On April 21, 2009, the hearing commenced with all parties in attendance, but it did not conclude that day. The parties agreed to reconvene the hearing on June 30, 2009.
5. On June 29, 2009, Respondent filed for relief pursuant to Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court, Southern District of Ohio. In light of the bankruptcy filing, the Hearing Officer postponed the June 30, 2009 hearing.
6. On July 27, 2009, the Hearing Officer stayed the matter until after the resolution of Respondent's bankruptcy matter.
7. On October 14, 2009, the United States Bankruptcy Court, Southern District of Ohio discharged Respondent from bankruptcy. *Respondent's Exhibit A; Respondent's Exhibit B*
8. On March 10, 2010, the Hearing Officer issued an order reconvening the hearing on April 28, 2010. *State's Exhibit 11*
9. On April 28, 2010, the hearing reconvened with Assistant Attorney General Nist, Ms. Massey, and Mr. Littlejohn (by telephone) in attendance.

C. Division's Allegations

10. The NOH contained the following statements:

As a result of the findings listed above, the Division has determined that:

1. Respondent's actions, as described in paragraphs D, E, F, show 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. See R.C. 1322.041(A)(6) and Ohio Admin. Code 1301: 8-7-21(H).

2. Because Respondent did not meet the conditions for renewal outlined in R.C. 1322.041(A)(6) and (B)(3), the Division has the authority to refuse to renew Respondent's loan officer license. See R.C. 1322.10(A)(1)(a).

D. Respondent's Activities

11. Respondent held a loan officer license (# 021773) between June 15, 2004 and April 30, 2008. *State's Exhibit 7*. In April 2008, Respondent was employed with Lighthouse Mortgage Services ("Lighthouse"). Donald Dozer was the owner of Lighthouse. *Testimony of Respondent*
12. Lori Massey, an attorney examiner with the Division, reviews the files of loan officers and mortgage brokers to verify their compliance with R.C. Chapter 1322. Ms. Massey reviewed Respondent's loan officer file. *Testimony of Ms. Massey*
13. On October 30, 2007, in *Discover Bank v. Richard B. Diso* (Case No. 07CVH080978), the Delaware County Common Pleas Court issued a Journal Entry rendering a default judgment "**** in favor of the Plaintiff and against said Defendant in the principal sum of \$17539.74 plus accrued interest of \$0.00 through date of judgment, plus interest thereafter on the principal balance at the rate of 19.800% percent per annum and costs." *State's Exhibit 5, page 2*
14. On December 7, 2007, in *FIA Card Services A/K/A Bank of America v. Richard B. Diso* (Case No. 07CVH-08-946), the Delaware County Common Pleas Court issued a default judgment "**** in Favor of the Plaintiff and against said Defendant in the principal sum of \$23,820.14 together with accrued interest from January 25, 2007 at the rate of 10% and court costs." *State's Exhibit 5, page 3*
15. On March 12, 2008, the Division received a Mortgage Broker/Loan Officer Notification of Judgment form and a letter from Respondent. The form reflects that there was a credit card default judgment against Respondent. In a letter accompanying the form, Respondent stated:

This letter is in regards to a law the Republican party passed in 2005. The law allowed credit card companies to raise interest rates on card holders even though I was never late on any of my credit cards. My rates have increased as much as 32%. At the time this law went into affect, I just had surgery and later complications from the surgery. Making my normal minimum payments was not a problem. However, when rates shot up on all of my accounts, I was forced too use my IRA account funds to keep up with the

outrageous payments. Eventually I emptied the account and called the companies and asked them to lower my payments. They refused and I went into default on all credit cards. Enclosed you will find my credit reports showing my perfect payment history on all my accounts and when the late payments started in 2006. I wrote and had conversations with Senator Sherrod Brown's staff, {letter enclosed} and currently [sic] working with Senator Voinovich's office to rectify this matter. I should not have to forfeit my licenses due to the greed of politicians and no fault of my own. The collection agencies will not take reasonable payments and I refuse to pay the entire amount of penalties and late fees and still have a bad credit rating. That is un American and I will fight it forever. I am asking you not to revoke my licenses. This will only further destroy my life. I live a cash only lifestyle, which is very difficult and almost impossible in a bad market. I will continue to harass the Republican party into changing the law and working to get me out of this situation.

State's Exhibit 6

16. On March 18, 2008, in *Capital One Bank v. Richard B. Diso* (Case No. 07CVH121499), the Delaware County Common Pleas Court issued a Journal Entry rendering default judgment "**** in favor of the Plaintiff and against said Defendant in the principal sum of \$12935.53 plus accrued interest of \$3200.95 through February 28, 2008, plus interest thereafter on the principal balance at the rate of 24.990% percent per annum and costs." *State's Exhibit 5, page 5*
17. On or around April 24, 2008, the Division received Respondent's 2008 loan officer license renewal application. In response to question # 4 on the application, Respondent answered "YES." Question # 4 reads "Do you have any unpaid civil judgments against you? If yes, a certified copy of the judgment entry and proof of payment history MUST be mailed to the Division or the application will not be processed." *State's Exhibit 4; State's Exhibit 10; Testimony of Ms. Massey*
18. On August 7, 2008, Ms. Massey sent a letter to Respondent. In the letter, Ms. Massey stated:

Your loan officer license application has been forwarded to the Consumer Finance Legal Section for investigation. In compliance with the Division's investigation, and in order to further review your application, you are required to submit the following with respect to the civil judgments entered against you in Case No. 07-CVH-121499, Case No. 07-

CVH-08946 and Case No. 07-CVH-080978, Delaware County, Ohio: 1. A certified copy of the journal entry which evidences each civil judgments; 2. A copy of any payment plans entered or proof of payment history since the entry of the civil judgments; and 3. Three letters of reference, from people who can attest to your character and general fitness to remain a loan officer. If you fail to submit all of the requested documentation within 90 days of the date of this letter, your application will be withdrawn. Please address your mailing to my attention at the above-listed address.

State's Exhibit 8

19. On November 5, 2008, the Division received a response from Respondent, which included a letter, copies of the judgment entries and certificates of judgment, and three letters of recommendation.¹ *State's Exhibit 5; State's Exhibit 9; Testimony of Ms. Massey.* In the letter, Respondent stated:

In Spring of 2006, interest rates on all my credit cards soared as high as 30%. Up to that point, I had not been late on any cards. I had called all the credit card companies to ask them why my rates were raised and they responded we are allowed by law to raise them. At the time I just had surgery and complications from it. I explained this to the card companies and told them I could make the payments at the original interest rates, but not at the higher rate. They told me they would not lower the rates. I kept making the outrageous payments, taking money from my IRA until it was gone. I then defaulted on the credit cards. I called my elected officials, letters enclosed, and asked them under what law was this allowed? To this day none of them has helped me or knew the laws. Imagine, lawmakers not knowing the law. One reason why this country is so screwed up. Currently I am not making any payments and have no plans on making payments until I get answers on the law that allows credit cards companies to raise my rates. I am talking with several law firms to represent me fighting these judgments. I have 18 plus years as a residential loan officer and never [sic] been in legal or moral trouble. I plan on doing this years to come. Taking away my licenses will destroy my life. I can give you my resume' and you can check my past employment. I will continue to fight this and eventually win. Please contact me if further information is

¹ Ms. Massey noted that there were other documents that the Division also received that were not included in State's Exhibit 5. *Testimony of Ms. Massey*

needed. I will work with the State. But I am pursuing legal action.

State's Exhibit 5

20. On January 9, 2009, the Division issued the NOH. *State's Exhibit 1*
21. The Division contended that: 1) Respondent, at the time the NOH was issued, had three unsatisfied civil judgments entered against him and 2) he refused to pay the judgments. The Division asserted that Respondent's character and fitness do not command the confidence of the public to warrant the belief that his business would be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. *Testimony of Ms. Massey*
22. On October 14, 2009, in *In re Richard B. Diso* (Case No. 2:09-bk-57335), the United States Bankruptcy Court, Southern District of Ohio discharged Respondent's unsatisfied judgments that are in question. *Respondent's Exhibit A; Respondent's Exhibit B*
23. On April 28, 2010, pursuant to R.C. Chapter 119, Respondent submitted a written statement and objections to the NOH. *Respondent's Exhibit H*
24. On April 28, 2010, Respondent also submitted six additional letters of recommendation noting his professionalism in the mortgage industry. *Respondent's Exhibit G*
25. Respondent introduced three pages from his Schedule F that he filed in his bankruptcy action.² Schedule F listed Respondent's creditors and debts. The document indicated that Respondent's debts, which were discharged in the bankruptcy, totaled over \$100,000.00. *Respondent's Exhibit B*
26. Respondent's lack of financial responsibility does not command the confidence of the public to warrant the belief that his business would be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

II. CONCLUSIONS OF LAW

27. The Division has procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
28. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, R.C. Chapter 1322.

² A Schedule F (Creditors Holding Unsecured Nonpriority Claims form) is part of Respondent's bankruptcy documents.

29. 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.
30. 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.
31. 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
32. 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.
33. 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.
34. R.C. §1322.041(A)(6) 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. (Emphasis added)

35. Ohio Administrative Code 1301:8-7-21(H) states:

In determining "character and general fitness" as those terms are used to in division (A)(10) of section 1322.04 of the Revised Code and division (A)(6) of section 1322.041 of the Revised Code, the superintendent of the division of

financial institutions **shall consider**, inter alia, whether the applicant, registrant or licensee:

* * *

(H) Has failed to fully satisfy any judgment or award issued by any court of competent jurisdiction, or any administrative fine imposed by any state or federal regulatory body.
[Emphasis added]

36. R.C. §1322.10(A)(1)(a) authorizes the Division to deny a mortgage loan officer license for lack of compliance with any provision of R.C. §§1322.01 through 1322.12.
37. Respondent accumulated over \$100,000.00 in debt, which (was discharged in bankruptcy) demonstrates Respondent's lack of financial responsibility to command the confidence of the public to warrant the belief that his business would be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. *R.C. 1322.041(A)(10)*
38. The Division has met its burden of proof for denying Respondent's 2008 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 2008 loan officer license renewal application pursuant to R.C. §1322.10(A)(1)(a). Therefore, the Hearing Officer respectfully recommends that the Division deny Respondent's 2008 loan officer license renewal application.

Respectfully submitted,



Delores Evans
Hearing Officer
May 14, 2010