

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL  
INSTITUTIONS  
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IN RE: : CASE NO. 05-0232-LOD  
:   
KAREN FLYNN : Denise C. Lee, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued October 5, 2006

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I. FINDINGS OF FACT

A. Background

This matter came before D. Michael Quinn, an attorney licensed to practice law in Ohio, and 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 on March 9, 2006, at 77 South High Street, Columbus, Ohio, at the request of Respondent Karen Flynn ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal and Notice of Opportunity for a Hearing ("NOH"). On July 3, 2006 this case was reassigned to Denise C. Lee for the drafting of this Report and Recommendation.

The Division alleged that Ms. Flynn failed to complete at least six hours of continuing education during the 2004 calendar year as required by Ohio Revised Code Section 1322.052. For that reason alone, the Division contends that Ms. Flynn's 2005 loan officer license renewal application ("Renewal Application") should be denied.

Ohio Deputy Attorney General Matthew Lampke represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through K were admitted into the record. (Tr. at 71).

B. Jurisdiction and Procedural Matters

1. The Division issued the NOH to Respondent on December 23, 2005. The NOH was sent to Respondent by certified mail, return receipt requested, at 4391 Race Road in Cincinnati, Ohio 45211. The NOH was delivered to Respondent at the specified address on December 24, 2005. (State's Ex. A).
2. The Respondent requested an administrative hearing by returning the Hearing Request Form to the Division. By letter dated January 3, 2006, the Division notified Respondent that the hearing was scheduled for January 10, 2006. The

Division, on its own motion, continued the hearing until February 22, 2006 to allow Respondent time to prepare her case. By letter dated January 23, 2006, the Division notified Respondent the hearing was continued to March 9, 2006 (State's Ex. B).

3. Respondent received written notice of the date, time and place of the March 9, 2006 hearing.

**C. Respondent's 2005 Renewal Application**

4. On May 2, 2002, amendments to the Ohio Mortgage Broker Act became effective, requiring the Division to license mortgage loan officers. Ohio Revised Code Sections 1322.02(B) and 1322.041(B).
5. The Ohio Mortgage Broker Act provides for annual renewal of the loan officer license on or before the 30<sup>th</sup> day of April, under certain conditions, including, *inter alia*, that the loan officer licensee "has completed, during the immediately preceding calendar year, at least six hours of continuing education." R.C. Section 1322.041(B)(2).
6. On or about December 22, 2003, Respondent submitted a Loan Officer License Application to the Division. (State's Ex. J). The Division issued a loan officer license to Respondent on January 2, 2004, and Respondent worked as a loan officer for two mortgage broker companies during 2004. (Tr. at 17, 39, 72; State's Ex. J). The license issued to Respondent specified an expiration date of "April 30, 2004." (State's Ex. J).
7. Respondent worked for Premiere Service Mortgage Corporation ("Premiere") in Cincinnati from January 2004 until on or about March 7, 2004, and then became employed as a loan officer at Humphries Mortgage, Inc. ("Humphries"), also in Cincinnati, on or about March 8, 2004. (Tr. at 72, 87-88; State's Ex. F, G, J).
8. When Respondent ended her employment with Premiere on or about March 7, 2004, Premiere returned to the Division Respondent's 2004 loan officer license, bearing the expiration date of "April 30, 2004." (Tr. at 74; State's Ex. F). On or about March 5, 2004, Respondent submitted a Loan Officer License Transfer Application to the Division, with Humphries Mortgage, Inc. as the sponsoring mortgage broker company. (State's Ex. G). The Division then processed the transfer of Respondent's license to her new employer, Humphries, beginning on or about March 8, 2004. (Tr. at 55; State's Ex. G). The issued license again bore the expiration date of "April 30, 2004." (State's Ex. G).
9. On or about June 7, 2004, Respondent notified Humphries that she was leaving Humphries to become a mortgage loan underwriter with another employer, Ratestar, Inc. ("Ratestar"). (Tr. at 55, 88; State's Ex. H). In a letter dated June 11, 2004, Humphries notified the Division that Respondent ended her employment

with the company on June 7, 2004 and returned to the Division the original copy of Respondent's loan officer license, with the expiration date of "April 30, 2004." (Tr. at 55-56; State's Ex. H).

10. By letter dated August 19, 2004, Humphries again notified the Division that Respondent had quit the company on June 7, 2004. With this second notice, Humphries returned to the Division another original copy of Respondent's Mortgage Broker Loan Officer License, bearing an expiration date of "April 30, 2005" instead of the date of April 30, 2004 displayed on the earlier license. (Tr. at 56; State's Ex. I). Although the Division's witness, Administrative Assistant Riene Roszak, testified that State's Exhibit I showed that Respondent had "renewed" the license initially issued to Respondent on Jan. 2, 2004 in 2004 (Tr. at 56-57), the Division provided no evidence of a 2004 loan officer renewal application from Respondent and no Division notices or correspondence related to a 2004 renewal of Respondent's license.
11. Ms. Roszak, testified that it is the Division's practice automatically to place the loan officer's license in escrow when the license is returned to the Division with notification from a mortgage broker company that the loan officer's employment with the company has ended. (Tr. at 42; 62). The Division does not send a letter to the loan officer notifying the licensee that the license has been placed in escrow; however the loan officer is sent an Escrow Loan Officer Renewal Form in or about March, just before it is time for annual renewal of the license in April. (Tr. at 62, 64). Ms. Roszak testified that it is then the loan officer's responsibility to renew the license in escrow or to decide not to renew the license and to allow the license to expire. (Tr. at 42, 62). The only Escrow Loan Officer Renewal Form or invoice the Division presented as evidence during the hearing was State's Exhibit C, the "2005 Escrow Loan Officer Renewal Invoice."
12. After receiving Humphries' notice regarding Respondent's termination of employment in 2004, the Division automatically placed Respondent's license in escrow without notice to Respondent. (Tr. at 55-56, 58, 62, 64, 76). Respondent did not ask the Division to transfer her license to another mortgage broker company; nor did she request that her license be placed in escrow. (Tr. at 80). Respondent testified that she did not know the Division had placed her license in escrow until she received information from the Division about renewal of her license in escrow in or about April 2005. (Tr. at 90-91; State's Ex. C, E, K).
13. When Respondent left employment with Humphries in the summer of 2004 to work as a mortgage loan underwriter at Ratestar, she believed her loan officer license expired on April 30, 2004, as specified on the original copies of the license. (Tr. at 89; State's Ex. F, G, & H). She also believed she did not need a license for the remainder of 2004 because she was not working as a loan officer, but rather as a mortgage loan underwriter. (Tr. at 88-89). She further believed that she did not have to complete the CE by the end of 2004 "because . . . I was not going to be licensed as a loan officer." (Tr. at 85).

14. Respondent did not complete six hours of CE by December 31, 2004. (Tr. at 16-17, 39, 58, 72-73; State's Ex. E).
15. In or about March or April 2005, Respondent received, and submitted to the Division by April 18, 2005, her 2005 Escrow Loan Officer Renewal Application. (Tr. at 57, 64; State's Ex. C).
16. The Division also sent Respondent a letter dated July 20, 2005 regarding Respondent's "2005 renewal application for . . . escrow loan officer license." The letter stated, in pertinent part:

Attached . . . is a list of specific deficiencies related to your 2005 Escrow Loan Officer License Renewal Application. Because of these deficiencies, the Division is unable to renew your 2005 Escrow Loan Officer License. In order for the Division to renew your license, each deficiency must be resolved within 30 days of the date of this letter. You must submit evidence to the Division within the 30-day time limit to show that each deficiency has been corrected. . . . Failure to comply with all deadlines may result in denial of your renewal application.

(Tr. at 65; State's Ex. K). The Division's 2005 Escrow Loan Officer Renewal Deficiency Checklist indicated a "CE deficiency less than 6 hours by 12/31/04." (State's Ex. E).
17. On or about December 23, 2005, the Division issued the NOH specifying the Division's intent to deny Respondent's license solely based on Respondent's failure to "comply with R.C. 1322.052 by not completing at least six hours of continuing education during the 2004 calendar year." (State's Ex. A).
18. Ms. Roszak testified that when a loan officer's license is placed in escrow, the loan officer still is required to complete the continuing education requirement for the year. (Tr. at 17-18, 20, 56). The Division presented no evidence of a law, rule or written guidelines specifying the requirements of CE while the loan officer license is in escrow. (Tr. at 36).
19. On her December 2003 Loan Officer Application, Respondent attested that she had read the Ohio Mortgage Broker Act and the rules relating to the Act. (Tr. at 18; State's Ex. J).
20. On or about December 21, 2005, Respondent reapplied to the Division for a loan officer license under the sponsorship of mortgage broker company Lewis Hunt Enterprises dba Interactive Financial Corporation. (Tr. at 91; State's Ex. D).
21. Respondent has 14 years of experience as loan officer. (Tr. at 81).

## **II. CONCLUSIONS OF LAW**

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

The Division complied with the procedures set forth in R.C. Chapter 119, and jurisdiction over this matter has been established.

### **B. Proposed Denial of 2005 Renewal Application**

1. The Division of Financial Institutions is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, O.R.C. Chapter 1322.
2. Revised Code Section 1322.10(A)(1)(a) provides that the Superintendent of Financial Institutions may refuse to issue a license if there is a finding of a violation of or failure to comply with any provision of Sections 1322.01 to 1322.10 of the Revised Code.
3. Mortgage loan officers licensed by the Division must complete at least six hours of continuing education each calendar year. R.C. Section 1322.052. Compliance with this provision is a required condition that must be met for a loan officer license to be renewed pursuant to R.C. Section 1322.041(B)(2). R.C. Section 1322.10(A)(1)(a) also permits the Division to deny Respondent's Renewal Application for lack of compliance with R.C. Section 1322.041(B)(2).
4. The Division seeks to deny Respondent's 2005 Renewal Application solely based on its allegation that she did not complete the six hours of continuing education required by R.C. Section 1322.052 within the deadline for the year 2004.
5. The Division initially issued Respondent a loan officer license on January 2, 2004. Respondent did not complete six hours of CE by the end of calendar year 2004. The Division has demonstrated that Respondent did not comply with R.C. Section 1322.052. Therefore the Division may refuse to grant Respondent a license under R.C. Section 1322.10. However, the language in R.C. Section 1322.10 is discretionary not mandatory.
6. The undisputed evidence shows that Respondent worked as a loan officer in the industry for 14 years. Respondent qualifies as a loan officer in all respects except that she did not complete the required CE by the end of calendar year 2004 as alleged in the NOH.
7. Ohio Revised Code Section 1322.031 provides that a loan officer license must be returned to the Division when a loan officer leaves the employment of the sponsoring mortgage broker company. The licensee cannot operate as a licensed loan officer unless the loan officer license is transferred to another mortgage broker company.

8. R.C. Section 1322.031 further provides, that when a loan officer's employment ends with a mortgage broker company:

The licensee may request a transfer of the license to another mortgage broker by submitting a relocation application . . . to the superintendent or may request the superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow shall cease activity as a loan officer.

R.C. Section. 1322.031(E)(2) (emphasis added).

9. The Division did not follow the R.C. Section 1322.031(E)(2) process when it automatically placed Respondent's license in escrow without her knowledge and without notice to her when her employment with Humphries ended in 2004. Respondent did not write the Division asking that her license be placed in escrow. She also did not ask the Division to transfer her license to another mortgage broker company because she would not be working as loan officer. Because the Division did not follow the escrow procedure specified in R.C. Section 1322.031(E)(2), Respondent's license was in escrow without her knowledge. Respondent received notice of the escrow in or about March 2005, at the earliest, when the Division sent out the 2005 renewal documentats. This was about nine months after Respondent left employment with Humphries, well past the year-end deadline for the 2004 CE requirement and too late for Respondent to timely meet that requirement.
10. R.C. Section 1322.031(E)(2) makes no mention of the CE requirement when a loan officer license is in escrow. The Division introduced no evidence of other laws, rules or written guidelines to inform a licensee, who intends to become inactive, or who becomes inactive, of additional procedures for leaving the industry or of the requirements relating to CE once a license is placed in escrow. Respondent believed she did not have an active license at the end of 2004 and that she did not have to take the CE because she would not be working as a loan officer with her new employer, Ratestar. The evidence shows that Respondent did not receive notice from the Division until July 2005, at the earliest, that she was required to take the CE by the end of 2004, seven months after the time it would have been possible for her to meet the CE requirement of R.C. Section 1322.052 by the end of calendar year 2004.
11. Respondent's 2004 loan officer license was issued by the Division on January 2, 2004. The license specified the expiration date of April 30, 2004. This expiration date appeared on the license when Premiere returned it to the Division with its termination notice of March 8, 2004 (State's Ex. F), when it was transferred to Humphries on or about March 8, 2004 (State's Ex. G), and when Humphries returned it to the Division with the company's termination notice of June 11, 2004 (State's Ex. H). By August 19, 2004, when Humphries sent a second termination notice to the Division along with a different original copy of Respondent's license

that specified a new expiration date of April 30, 2005, Respondent had been working as a mortgage loan underwriter at Ratestar more than two months. The Division presented no evidence that Respondent had notice of the April 30, 2005 license expiration date anytime prior to the December 31, 2004 CE deadline. Respondent's belief that her license expired on April 30, 2004, the year she went to work as a mortgage underwriter at Ratestar, was reasonable.

12. The record does not show that Respondent, a loan officer with 14 years experience, willfully failed to comply with the CE requirement by the end of calendar year 2004. Instead, it shows that Respondent reasonably believed her license was cancelled or inactive in 2004 because her license bore the expiration date of April 30, 2004, she was not working as a loan officer after she left Humphries in 2004, she had not requested a transfer of the license to another mortgage broker, and she also had not requested that the Division hold her license in escrow. For these reasons, Respondent also believed she was not required to meet the CE requirement by the end of 2004. Her lack of understanding about the 2004 CE requirement is reasonable under circumstances in which she did not know her license was in escrow and where there is no evidence of a law, rule or written guidelines specifying the requirements of CE while the loan officer license is in escrow. The record further shows that the Division's automatic placement of Respondent's license in escrow in 2004, without notice to Respondent of the escrow until the Spring of 2005 and without receipt of a written request from Respondent to hold her license in escrow as specified in O.R.C. Section 1322.031, contributed to Respondent's confusion about the status of her license and the 2004 CE requirement.

### **III. RECOMMENDATION**

After careful consideration of the record made in this matter, it is respectfully recommended that the Superintendent of the Division of Financial Institutions permit Respondent to take the required 2004 CE hours within a reasonable period to be specified by the Division and that upon Respondent's completion of such requirement the Division thereafter GRANT Respondent Karen Flynn's Renewal Application for a loan officer license.

Respectfully submitted,

Denise C. Lee  
Administrative Hearing Officer  
October 5, 2006