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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:	:	CASE NO. M2009-901
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JEREMY P. MONTGOMERY,	:	DELORES EVANS
RESPONDENT	:	HEARING OFFICER

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

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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 March 16, 2010 at 77 South High Street, 23<sup>rd</sup> Floor, in Columbus, Ohio.

The Division intends to deny Jeremy P. Montgomery's ("Respondent") 2009 loan officer license renewal application because the Division is unable to find that Respondent's character and general fitness meet the renewal requirements set forth in R.C. §1322.041(A)(6) and (B)(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. Steven DeFrank, an attorney with the Division attended the hearing. Respondent waived his right to counsel and appeared at the hearing *pro se*. The parties stipulated to the admission of State's Exhibits 1 through 7 and to Respondent's Exhibits A, B, and C. The Hearing Officer closed the record at the conclusion of the hearing on March 16, 2010.

B. Jurisdiction and Procedural Matters

1. On October 27, 2009, the Division issued a 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. 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 or before October 28, 2009. *State's Exhibit 1*

2. On November 24, 2009, the Division received Respondent's hearing request. *State's Exhibit 2*
3. On November 25, 2009, the Division sent a hearing notice to Respondent by regular mail. The Division rescheduled the hearing to January 7, 2010. *State's Exhibit 3*
4. On January 6, 2010, the Hearing Officer granted the Division's motion for continuance to allow Respondent ample time to submit pertinent documents to the Division. The new hearing date was scheduled for March 16, 2010. *State's Exhibit 3*
5. On March 16, 2010, the hearing commenced with all parties in attendance.

**C. Respondent's Activities**

6. On July 26, 2004, the Division issued a loan officer license to Respondent. Respondent's loan officer license expired on April 30, 2009. *State's Exhibit 6*
7. On May 29, 2009, Respondent submitted an on-line 2009 loan officer license renewal application to the Division. *State's Exhibit 7*
8. S.B. 185, effective January 1, 2007, requires loan officer applicants to submit a FBI background check with their loan officer license applications, including renewals. *R.C. §1322.031*
9. Respondent failed to submit a FBI background check with his 2009 loan officer license renewal application. *State's Exhibit 4*
10. On July 1, 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 FBI background check results and provided Respondent with 14 days to respond. *State's Exhibit 4*
11. On July 21, 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 5*
12. On January 7, 2010, Peter Tobin, Superintendent of the Ohio Bureau of Criminal Identification and Investigation in the Ohio Attorney General's Office, sent a letter to Respondent. In the letter, Mr. Tobin stated: "[T]he Ohio Bureau of Criminal Identification and Investigation (BC&I) has completed a criminal history record

check on the applicant listed below. Based upon information furnished by your agency, BC&I has NO CRIMINAL HISTORY RECORD on file for \*\*\*" Respondent. *Respondent's Exhibit B*

13. On March 10, 2010, Respondent sent an e-mail to Desiree Shannon, a Consumer Finance Attorney with the Division. In the e-mail, Respondent stated: "[M]y background check is attached. Please email me if there is anything else I need to do." *Respondent's Exhibit A*
14. On March 11, 2010, Ms. Shannon sent an e-mail to Respondent. In the e-mail, Ms. Shannon stated: "Unfortunately, as I believed I explained to you previously, the Division cannot accept background checks directly from applicants. We can only accept background checks from the Bureau of Criminal Identification and Investigation. We have not received your report from them yet, but if you have received it yourself, I can only surmise it is on its way. You may want to verify this on your end. Until the Division receives it, however, your March 16<sup>th</sup> hearing date still stands." *Respondent's Exhibit A*
15. On March 15, 2010, Respondent placed an order with BC&I to forward his background check results directly to the Division. *Respondent's Exhibit C*
16. As of the hearing, the Division still had not received Respondent's FBI background check results. The Division does not have all the pertinent information to make a finding that Respondent is of good character and has the ability and fitness to engage in the mortgage business.

## II. CONCLUSIONS OF LAW

17. The Division has procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
18. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, R.C. Chapter 1322.
19. 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.
20. 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.*
21. 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*

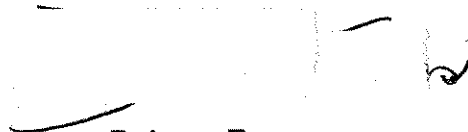
22. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87
23. Reliable 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.
24. 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.
25. With respect to a loan officer license application, the superintendent of financial institutions shall request criminal record information from the FBI be obtained as part of the criminal records check and any fee shall be paid by the applicant. R.C. §1322.031(B)(1)

26. Respondent submitted a BC&I background check to the Division, but not a FBI background check. The Division does not have sufficient 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 can not renew Respondent's loan officer license. R.C. §1322.041(A)(6)
27. 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.
28. The Division has met its burden of proof to deny 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,



Delores Evans  
Hearing Officer  
April 14, 2010