

2009 DEC -2 AM 8:56

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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|-----------------------|---|--------------------|
| IN THE MATTER OF:     | : | CASE NO. M2009-738 |
|                       | : |                    |
| KIMBERLYN M. STUCKEY, | : |                    |
|                       | : | LISA M. FINNEGAN   |
| RESPONDENT.           | : | HEARING OFFICER    |
|                       | : |                    |

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued December 2, 2009

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**I. FINDINGS OF FACT**

**A. Background**

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, 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 Division held the hearing on November 4, 2009 at 77 South High Street, 23<sup>rd</sup> Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the October 7, 2009 Order of Summary Suspension, Notice of Intent to Deny Renewal, and Notice of Hearing ("NOH"). The Division alleged that Kimberlyn M. Stuckey ("Respondent") violated R.C. § 1322.052 because she failed to complete at least six hours of approved continuing education during the 2008 calendar year.

3. Theodore L. Klecker, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Jacqueline S. Mallett, Esq. testified on behalf of the Division. Neither Respondent nor anyone on her behalf appeared at the hearing. The Division introduced and the Hearing Officer admitted State's Exhibits A through F into the record at the hearing.

**B. Jurisdiction and Procedural Matters**

4. On October 7, 2009, the Division issued the NOH suspending Respondent's loan officer license pursuant to R.C. § 1322.10(F)(2) because Respondent failed to fulfill her continuing education requirement for calendar year 2008. In the NOH, the Division also

indicated that it sought to deny Respondent's loan officer license renewal application. The Division set the matter for hearing on November 4, 2009.

5. The Division sent the NOH to Respondent by certified mail, return receipt requested, at Respondent's address of record with the Division. The Division obtained service on October 9, 2009. *State's Exhibits A and B; Testimony of Jacqueline S. Mallett, Transcript ("Tr.") at pp. 9-10.*

6. Respondent did not contact the Hearing Officer, the Attorney General's Office, or the Division concerning the November 4, 2009 hearing. *Tr. at 6-7.*

7. The Division held the hearing on the date, time, and at the address as specified in the NOH sent to Respondent.

**C. Respondent's Loan Officer License**

8. Respondent held loan officer license number LO.034093.000 in calendar years 2007 and 2008. *State's Exhibit C.*

9. In October 2007, Respondent's employer, United Capital Mortgage of Ohio, Inc., terminated Respondent's employment and returned Respondent's loan officer license to the Division. *State's Exhibit C.*

10. Upon receipt of the termination notice and Respondent's loan officer license, the Division placed Respondent's loan officer license into escrow. *Testimony of Jacqueline S. Mallett, Tr. at 11-12.*

11. On May 29, 2008, Respondent renewed her loan officer license. *State's Exhibit D.* On June 16, 2008, the Division sent Respondent a letter acknowledging that Respondent had renewed her loan officer license in escrow. The Division's letter also advised Respondent that loan officers are required to complete all continuing education requirements of the Ohio Mortgage Broker Act regardless of whether their licenses are in escrow. *State's Exhibit F.*

12. Jacqueline S. Mallett, Esq., an attorney examiner with the Division, testified at the hearing. Ms. Mallett reviews the files of loan officers and mortgage brokers to verify their compliance with the annual continuing education requirement of R.C. § 1322.052. Ms. Mallett reviewed Respondent's continuing education file. *Testimony of Jacqueline S. Mallett, Tr. at 8-9.*

13. At the hearing, the Division introduced a printout of Respondent's continuing education file maintained by the Division. The printout showed that Respondent did not complete the required six hours of continuing education during the 2008 calendar year. Respondent did complete six hours of continuing education in 2009, but continuing education completed in 2009 cannot be applied to 2008 unless Respondent were to request

this and pay a fine of \$500.00 *State's Exhibit E; Testimony of Jacqueline S. Mallett, Tr. at 13.*

14. On May 29, 2009, Respondent applied to renew her loan officer license. *State's Exhibit D; Testimony of Jacqueline S. Mallett, Tr. at 12-13.*

15. The Division is seeking to deny Respondent's loan officer license renewal application because she did not complete her required six hours of continuing education during the 2008 calendar year. *State's Exhibit A.*

## **II. CONCLUSIONS OF LAW**

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

17. The Division is responsible for the licensing and regulation of loan officers and mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

18. R.C. § 1322.052 requires that mortgage loan officers licensed by the Division complete six hours of continuing education courses during each calendar year.

19. Ohio Administrative Code ("Ohio Adm.Code") 1301:8-7-08(C)(3)(b) states that a license in escrow does not exempt the licensee from the continuing education requirements of R.C. § 1322.052 and Ohio Adm.Code 1301:8-7-18.

20. R.C. § 1322.10(F)(2) requires the Division to suspend, without a prior hearing, the license of a licensee who has failed to fulfill the continuing education requirements of R.C. § 1322.052. The suspension remains in effect until the licensee completes the required continuing education and pays a fine of \$500.00 to the treasurer of state to the credit of the consumer finance fund.

21. R.C. § 1322.10(A)(1)(a) authorizes the Division to deny a loan officer license renewal application for lack of compliance with any provisions of R.C §§ 1322.01 through 1322.12.

22. The Division has established that Respondent is in violation of R.C. § 1322.052 because Respondent failed to complete six hours of continuing education courses during the 2008 calendar year. The fact that Respondent's loan officer license was in escrow in 2008 did not waive her obligation to complete six hours of continuing education. Ohio Adm.Code 1301:8-7-08(C)(3)(b). Therefore, sufficient evidence exists to continue the suspension of Respondent's license pursuant to R.C. § 1322.10(F)(2) and to deny Respondent's loan officer license renewal application pursuant to R.C. § 1322.10(A)(1)(a).

### **III. RECOMMENDATION**

Based upon the evidence submitted into the record for this case, the Division has established that Respondent did not complete the statutorily required six hours of continuing education during the 2008 calendar year. The Division has provided a sufficient evidentiary basis to continue the suspension of Respondent's loan officer license pursuant to R.C. § 1322.10(F)(2), and to deny Respondent's loan officer license renewal application pursuant to R.C. § 1322.10(A)(1)(a), for Respondent's failure to comply with R.C. § 1322.052. Therefore, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's loan officer renewal application.

Respectfully submitted,

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Lisa M. Finnegan  
Administrative Hearing Officer  
December 2, 2009