

**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**  
**Division of Financial Institutions**  
**Consumer Finance**

In the matter of:	)	Case No. 04-0262-LOD
	)	
<b>JOHN C. NOLL</b>	)	<b><u>DIVISION ORDER</u></b>
838 Park Avenue	)	
Newport, Kentucky 41071	)	<b>Denial of Loan Officer License Application</b>
	)	

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On July 8, 2002, John C. Noll ("Respondent") submitted a loan officer license application ("Application") to the Division of Financial Institutions ("Division"). On February 12, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119. on June 1, 2004.

The hearing officer filed her written report and recommendation with the Division on September 15, 2004, recommending that the "Superintendent of the Division of Financial Institutions consider the Application withdrawn and in need of no further action." In the alternative, she recommended that the Superintendent "refuse to issue a loan officer license to Respondent pursuant to R.C. 1322.041 and 1322.10 because Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5)." A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent. Respondent timely filed objections.

In accordance with R.C. §119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony, the exhibits, the Respondent's brief regarding the effect of withdrawal of loan officer license application, the post hearing brief filed by the Attorney General's Office, and Respondent's Objections to the Administrative Hearing Officer's Report and Recommendation. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

- The Division notes that Respondent argues in his Objections that he did not receive "an opportunity to establish his compliance with statutory requirements and defend against the allegations of the Division." *See Respondent's Objections*, page 2. He is incorrect.

Respondent was given an opportunity to be heard in the Notice that was issued on February 12, 2004. *See State's Exhibit 1*, pages 2-4. Respondent accepted the opportunity to challenge the Division's allegation and requested a hearing to do so. *See State's Exhibit 1*, page 6. The hearing was held on July 16, 2004. Respondent chose not to come to the hearing and "establish his compliance

with statutory requirements and defend against the allegations of the Division.” Instead, Respondent attempted to withdraw his application, in order to evade scrutiny of his character, honesty, and truthfulness. The hearing proceeded before the hearing officer, and evidence was presented to support the Division’s allegations. The Division afforded Respondent the opportunity to be heard, and he chose not to appear at the hearing that he requested.

- The Division modifies paragraph 4 under “Findings of Fact, Jurisdiction and Procedural Matters,” on page 2 of the Report and Recommendation.

The reference to the transcript of the proceedings at pages six and seven is not a reference to a transcription of the telephone conference that took place on June 1, 2004. The record does not indicate that the telephone conference was transcribed and therefore “on the record.” Instead, the reference to the transcript of the proceedings at pages six and seven is a reference to the hearing officer’s description of what occurred during the telephone conference.

- The Division disapproves and rejects paragraphs 4 and 5, under “Conclusions of Law, Jurisdiction and Procedural Matters,” on pages 4 and 5 of the Report and Recommendation.

The hearing officer does not cite any legal authority to support her “conclusion of law” that Respondent has in fact withdrawn his application, and that the Division has “obtained all of the relief sought in its NOH.” In fact, the hearing officer inappropriately cites to a Report and Recommendation that was written by another hearing officer. No Report and Recommendation can be considered as “precedent” unless and until it is approved by the agency. R.C. 119.09 allows an agency to approve, modify, or disapprove any recommendation of a hearing officer. Therefore, until approved, the report and recommendation is merely a recommendation; it is not the decision of the Division, and should not be considered precedent.

Both the Respondent and the Attorney General’s Office briefed the matter of the effect of Respondent’s attempt at withdrawing his application after the Division issued a Notice of Intent to Deny Loan Officer License and Notice of Opportunity for Hearing. Although there may be no explicit authority for the Division to deny withdrawal of an application,<sup>1</sup> there most assuredly is implied authority.

The Division is broadly empowered to investigate and adjudicate charges of violations of the Ohio Mortgage Broker Act, impose disciplinary sanctions, refuse to renew licenses, and revoke licenses. *See R.C. 1322.10*. The regulation

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<sup>1</sup> Counsel for Respondent argued that, in order for the Division to deny the withdrawal of an application, it should have a rule similar to the one the Division of Securities has, found in O.A.C. 1301:6-3-15.1(I)(2). This argument is flawed. Rules cannot grant agencies authority that they do not have under the statutes; rather, rules expound the powers already granted by statute.

of registrants and licensees under the Ohio Mortgage Broker Act is for the purpose of protecting the public. The licensing of professionals is recognized as falling within a state's broad police powers for the protection of the general welfare.

The statutory authority to issue or deny a license necessarily implies the discretionary authority to deny leave to withdraw a license application. After all, a licensee may not evade disciplinary action merely by resigning or allowing a license to expire. Otherwise, the licensee could apply for admission in another jurisdiction, or subsequently reapply in the same jurisdiction, and maintain that he or she has never been disciplined for professional misconduct. This would defeat the underlying purposes of the regulatory scheme to protect the public and maintain the integrity of the profession. The Division agrees with the Assistant Attorney General, that this is a situation that is capable of repetition yet evading review; this is not a moot issue as suggested by counsel for Respondent.

The state's interest is no less urgent in the case of an applicant for a license. The Division's authority to investigate an applicant's background is every bit as broad as its authority to investigate a licensee. *See R.C. 1322.031(B)*. When that investigation discloses grounds for denial on the basis of false or fraudulent representations, or questions whether the applicant's character and general fitness command the confidence of the public and questions whether the applicant could operate his or her business honestly and fairly in compliance with the Ohio Mortgage Broker Act, the safety of the public and the integrity of the profession may, in the Division's discretion, be better served by issuing a formal ruling, so that a decision of record would be available in this or any other jurisdiction where the applicant might subsequently apply. Allowing an applicant to avoid scrutiny of his or her background, training, experience, character, honesty, truthfulness, and/or morals by simply withdrawing the application at his or her convenience would ill serve the public safety in this state and the other state licensing jurisdictions.

Respondent submitted himself to the Division's jurisdiction when he filed an application for a loan officer license. On February 12, 2004, the Division instituted formal proceedings to deny Respondent's application. On or about March 11, 2004, Respondent requested a hearing. On June 1, 2004, the date of the hearing that was requested by Respondent, Respondent faxed a Notice of Withdrawal of Application to the Division. For the above-stated reasons, the Division will not entertain Respondent's request to withdraw his application.

- The Division disapproves paragraphs 6, 7, and 8, under "Conclusions of Law, Jurisdiction and Procedural Matters," on page 5 of the Report and Recommendation.

Pursuant to R.C. 119.09, it is the hearing officer's responsibility to submit to the agency "a written report of his findings of fact and conclusions of law and a

recommendation of the action to be taken by the agency.” As mentioned above, there should be no reliance on another hearing officer’s Report and Recommendation when the Division has issued no Final Order.<sup>2</sup> The hearing officer has failed to cite any statutory or administrative authority that states the Division must allow the Respondent to withdraw his application. In paragraphs 6, 7, and 8, the hearing officer makes no conclusion of law regarding the Respondent’s request to withdraw his application. Instead, the hearing officer attempts to establish Division policy concerning requests for application withdrawals. The hearing officer has no authority to do so. For the reasons stated above, as well as the reasons given for disapproving paragraphs 4 and 5, the hearing officer’s recommendation that “the Division consider the application withdrawn and in need of no further action” is expressly denied.

- The Division disapproves the first sentence of the “Recommendation” on page 8 of the Report and Recommendation. As mentioned above, the Division does not accept Respondent’s attempt to withdraw his application.

Upon consideration of the hearing officer’s report and recommendation, the Division modifies the Recommendation as indicated above. Accordingly, Respondent’s application for a loan officer license is hereby denied.

### **NOTICE OF RIGHT TO APPEAL**

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.

Signed and sealed this 1st day of November, 2004.

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**ROBERT M. GRIESER**

Deputy Superintendent for Consumer Finance  
Division of Financial Institutions  
Ohio Department of Commerce

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<sup>2</sup> The hearing officer refers to a Report and Recommendation issued in Case Number 04-0007-MBD, *In re: Nancy J. George d.b.a. Ohio Mortgage Company*. The hearing officer in the *George* case notes that there is no direct statutory or administrative authority that addresses withdrawal of an application, and that the Division has no regulations with regard to the withdrawal of applications. That hearing officer is correct that the Division of Securities promulgated a rule to amplify R.C. 1707.151. However, these are the facts adduced by the hearing officer, and not conclusions of law.