

STATE OF OHIO
DEPARTMENT OF COMMERCE

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IN THE MATTER OF: : DIVISION OF FINANCIAL
: INSITUTIONS
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Robert P. Gillespie : Case No. 04-0339-LOD
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REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH

Issued August 14, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:00 P.M. on June 22, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Robert P. Gillespie (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon Respondent's failure to comply with the 2002 CE requirements and is thereby ineligible to renew his license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Dan Jones. Respondent appeared Pro se.

At the hearing, State's Exhibits 1,2,4,5 and 6 were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on April 1, 2004. The Respondent on April 29, 2004 requested a hearing. The Division scheduled the hearing for May 10, 2004. The Division, upon its own motion continued the hearing to June 22, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Ex. 2).
2. Respondent is an individual who has applied for Renewal of Loan Officer License with the Ohio Department of Commerce, Division of Financial Institutions. (Tr. p. 7; Ex.1).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers complete Continuing Education requirements (hereinafter CE). (Senate Bill 76, 2001).
4. On or about August 21, 2003, the Division sent a letter to Respondent regarding his failure to meet CE renewal requirements. (Tr.p.7; Ex.1). The Division also sent the Settlement Agreement provided, which Respondent could have entered into and paid a fine and promise to take the required CE's by the date provided in the Settlement Agreement. (Tr. 7; Ex.1).
5. Respondent did not sign the Settlement Agreement. (Tr. p. 7).
6. Respondent was sent the NOH. (Tr. p.7; Ex.2).
7. Respondent requested a hearing (Tr.p.9;Ex. 4)
5. Respondent appeared Pro se.
9. Respondent testified that in November of 2002 he made application to become a loan officer. (Tr.p 10).
10. Respondent found out in January of 2003 that he had passed the back ground checks and began actually writing loans. (Tr.p. 11).
11. Respondent stated he was not aware that his actual start date was December 23, 2002. (Tr.p.11).

12. Respondent further testified that in April of 2003 he received a letter from the Division of Financial Institutes regarding continuing education classes and Respondent gave the letter to his broker. (Tr. p.11).
13. Respondent contacted a CE course called "Legal Schmegal" and talked to a Glen Littlejohn who gave respondent the impression that if he took 12 hours of CE respondent could apply 6 hours to the 2002 year. (Tr.pp11-13).
14. Respondent testified that he took two different courses in 2003 to make up the 6 hours of CE he needed for 2002 and 6 hours he needed for the 2003 year. (Tr. p.14).
15. Respondent stated he did not sign the settlement agreement because he thought that it was inaccurate because he was not a loan officer in 2002 and before he was going to sign a settlement agreement and pay a \$250.00 fine he wanted to make sure he understood what was going on. (Tr. pp. 14-15).
16. Though Respondent actually was licensed on December 23, 2003 he did not actually have knowledge that he was licensed until January, 2003. (Tr. pp. 15-16).
17. The Hearing Officer noted on the record that the letter received by the Respondent from the Division of Financial Institutions says "Do not call the Division" (Tr.p.16).
18. Respondent further testified that by the time he did actually have telephone contact with the Division he was advised by Amanda Axtell that the Settlement Offer was off the table and his only recourse was to come to a hearing (Tr. p.12).
19. Respondent stated that in 2003 he tried to comply and took 12 CE hours instead of only 6 for the 2003 year. (Tr. p.17).

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. Ohio Revised Code Section 1322.041(B) empowers the Department of Financial Institutions (hereinafter DFI) to renew an applicant's loan officer license if DFI finds among other things, that the applicant has complied with

R.C. 1322.052 by completing a minimum of six (6) hours of approved CE the prior calendar year.

3. Ohio Revised Section 1322.10(A)(1)(a) authorizes DFI to refuse to renew an applicant's loan officer license if DFI finds that the applicant has violate "or failed to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted".
4. Ohio Revised Section 1322.041(A) provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

(5) The applicant's 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.

5. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make any false or misleading statements of a material fact or any omission or statements required by state law, or false promises regarding a material fact through advertising or other means, or engage in a continued course of misrepresentations;

6. Because the Respondent did not comply with the 2002 CE requirements the Division finds Respondent's character and general fitness do not command the confidence of the public and therefore the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
7. Respondent did appear at the Hearing that Respondent had requested.

DISCUSSION

1. The State presented Riene Roszak, employee with the Department of Commerce, Division of Financial Institutions, CE coordinator. (Tr.pp. 5-8). Ms. Roszak verified the authenticity of each document that the State presented in its case against Respondent (Tr. pp. 5-19; Ex.'s 1,2,4,5,6).
2. The Respondent submitted an Application to be a Loan Officer (Tr.p. 7; Ex. 1).
3. The Respondent did not comply with the 2002 CE requirement nor did he enter into a Settlement Agreement with the State complying with the requirement (Tr.p.7;Ex. 2).
4. Respondent had the burden of proof to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker Act.
6. Respondent did appear at the Hearing that Respondent requested.
7. Respondent testified that in November of 2002 he made application to become a loan officer. (Tr.p 10).
8. Respondent found out in January of 2003 that he had passed the back ground checks and began actually writing loans. (Tr.p. 11).
9. Respondent stated he was not aware that his actual start date was December 23, 2002. (Tr.p.11).
10. Respondent further testified that in April of 2003 he received a letter from the Division of Financial Institutes regarding continuing education classes and Respondent gave the letter to his broker. (Tr. p.11).
11. Respondent contacted a CE course called "Legal Schmegal" and talked to a Glen Littlejohn who gave respondent the impression that if he took 12 hours of CE respondent could apply 6 hours to the 2002 year. (Tr.pp11-13).
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14. Though Respondent actually was licensed on December 23, 2003 he did not actually have knowledge that he was licensed until January, 2003. (Tr. pp. 15-16).
15. The Hearing Officer noted on record that the letter received by the Respondent from the Division of Financial Institutions says "Do not call the Division" (Tr.p.16).
16. Respondent further testified that by the time he did actually have telephone contact with the Division he was advised by Amanda Axtell that the Settlement Offer was off the table he his only recourse was to come to a hearing (Tr. p.12).
17. Respondent stated that in 2003 he tried to comply and took 12 CE hours instead of only 6 for the 2003 year. (Tr. p.17).
18. Based upon the Respondent's testimony at the Hearing the Respondent requested, his character and general fitness do command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,

Julie M. Lynch
Hearing Officer
August 13, 2004

MAGUIRE & SCHNEIDER, L.L.P. ATTORNEYS AT LAW

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August 29, 2004

Ms. Amanda Axtell
Dept. of Commerce
Division of Financial Institutions
77 S. High St. - 21st Flr.
Cols. OH 43215-6120

RE: Robert P. Gillespie
Case No.-04-0339-LOD

Dear Ms. Axtell:

Enclosed please find the revised Report and Recommendation for the above captioned case. I inadvertently denied this loan application though the Report suggested that the license be granted. I apologize for any disruption this may cause you.

Sincerely,

Julie M. Lynch
Hearing Examiner