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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:	:	CASE NO. M2008-218
	:	
CHESTER E. CENTERS,	:	LISA M. FINNEGAN
RESPONDENT.	:	HEARING OFFICER
	:	

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued November 30, 2009

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 July 23, July 24, August 31, and September 1, 2009 at 77 South High Street, 21st Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the allegations in the April 3, 2009 Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH"). In the NOH, the Division alleged that Chester E. Centers ("Respondent") engaged in conduct that constitutes improper, fraudulent or dishonest dealings in violation of R.C. § 1322.07(C). The Division intends to deny Respondent's loan officer license application for this reason and on the basis that Respondent's character and general fitness do not command the public confidence and warrant the belief that his business will be operated honestly, fairly, and in compliance with the purposes of the Ohio Mortgage Broker Act.

3. Matthew J. Lampke, Esq., Assistant Section Chief with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Amanda Baird, Esq. represented Respondent at the hearing. Teresa Ann Cowgill, Charles Dean Cowgill, Brad DePugh, and John Cronin testified on behalf of the Division. Adrienne Smith, Cheryl Jasper Wilson, Mayor Howard S. Zwelling, Esq., D. Michael Haddox, Esq., and James Robert Sharrer II, testified on behalf of Respondent. Lori A. Massey, Esq. was called as if on cross-examination in Respondent's case-in-chief.

4. The parties stipulated to the authenticity and admissibility of State's Exhibits A, B, and C. The Hearing Officer admitted into the record State's Exhibits A through J and

State's Exhibits L through Q without objection. The Hearing Officer admitted into the record State's Exhibit K over Respondent's objection that the Division failed to authenticate the document. The Hearing Officer also admitted Joint Exhibit 1 into the record.

5. The Hearing Officer admitted into the record Respondent's Exhibits 2, 7, and 9 without objection. The Hearing Officer admitted into the record Respondent's Exhibit 1 over the Division's objection that the document was incomplete and missing one page. The Hearing Office admitted into the record Respondent's Exhibit 3 over the Division's relevancy objection. The Hearing Office admitted into the record Respondent's Exhibits 5, 6, 8, 12, 13, 23, 25, 26, and 30 over the Division's objection that the documents were not authenticated. The Hearing Office admitted into the record Respondent's Exhibit 16 over the Division's objection that this exhibit was the same as State's Exhibit K. The Hearing Officer admitted into the record Respondent's Exhibit 31, an affidavit of Travis McIntyre, a character witness for Respondent, over the Division's objection that it was unable to cross-examine the affiant.

6. Respondent withdrew Respondent's Exhibits 4, 10, 14, 15, 17, 18, 19, 20, 21, 22, 24, 27, and 29. Respondent also withdrew Respondent's Exhibit 11 because it was the same exhibit as State's Exhibit J.

7. Pursuant to the agreement of the parties, the Division and Respondent filed their closing statements in writing on September 11, 2009. The Hearing Officer closed the record on September 11, 2009 at 5:00 p.m.

B. Jurisdiction and Procedural Matters

8. On April 3, 2009, the Division sent to Respondent the NOH specifying that the Division intended to deny Respondent's 2008 loan officer license application and that Respondent could request a hearing on the matter. *State's Exhibit A*.

9. The Division sent the NOH to Respondent by certified mail, return receipt requested. Respondent signed the certified mail card on April 4, 2009. *State's Exhibit A*.

10. Respondent timely requested a hearing on the matter. On April 10, 2009, the Division sent to Respondent a letter scheduling the hearing for April 20, 2009, and within the same notice, the Division continued the hearing on its own motion to May 20, 2009. *State's Exhibit B*.

11. On May 18, 2009, Respondent's counsel filed a Notice of Appearance for a Limited Purpose and a Motion for Stay, or in the alternative, a Continuance. Respondent moved for a stay pending the outcome of the case captioned, *Charles and Teresa Cowgill v. Palm Harbor Homes, Inc., Option One Mortgage Corporation, The Mortgage Firm, Chet Centers, and Wilmer E. Cochran dba Bill Cochran Real Estate Appraisals* ("Cowgill v. Palm Harbor"), an adversary proceeding in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division (Case No. 2:09-ap-2023).

12. Charles Dean Cowgill and Teresa Ann Cowgill, the complainants in the instant matter, filed the adversary proceeding against Respondent, among others, to recover damages in the matter of the sale, financing, and construction of a manufactured home. *Respondent's Exhibit 2*. The basis of Respondent's Motion for a Stay was that a determination in the instant proceeding would preempt and influence the trial court in the adversary proceeding because both proceedings involve the same facts. On May 20, 2009, the parties convened for the scheduled hearing on the instant matter at which time the Hearing Officer denied Respondent's Motion for a Stay but granted Respondent's Motion for a Continuance to allow Respondent's counsel time to prepare for the hearing on the NOH. *May 20, 2009 Transcript*.

13. By agreement of the parties, the Division rescheduled the hearing for July 23 and 24, 2009. The Division sent a letter dated May 21, 2009 notifying Respondent of the new hearing dates. *State's Exhibit C*.

14. The hearing on the instant matter proceeded as scheduled on July 23 and 24, 2009. Respondent renewed his motion for a stay of the proceeding pending the conclusion of discovery in *Cowgill v. Palm Harbor*, instead of pending the conclusion of that matter. The Hearing Officer denied the motion. Respondent also moved to dismiss the instant matter on the basis that the NOH did not provide adequate notice to Respondent of the allegations against him. *Tr. Vol. I at 215-225*. The Hearing Officer denied the motion. The hearing on the instant matter did not conclude by the end of the day on July 24, 2009. The parties agreed to reconvene the hearing on August 31 and September 1, 2009. *Tr. Vol. II at 256*. The hearing concluded on September 1, 2009.

C. Respondent's Loan Officer License

15. Respondent held a loan officer license issued by the Division from May 2, 2002 until April 30, 2007. Respondent did not apply to renew his loan officer license in April 2007. *Testimony of Respondent, Tr. Vol. II at 187-189; State's Exhibit M*.

16. On June 5, 2008, Respondent submitted a loan officer license application to the Division, which currently remains pending. *State's Exhibit A*.

D. The Division's Allegations

17. The Division alleged that Respondent's loan officer license renewal application should be denied because Respondent engaged in conduct that constitutes improper, fraudulent, or dishonest dealings in violation of R.C. § 1322.07 (C) and because Respondent's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. After four days of testimony and oral argument, the Hearing Officer was able to conclude that the Division based its allegations on the following three incidents of Respondent's conduct. *State's Exhibit A*.

18. On December 13, 2002, the Cowgills signed a mortgage loan application to finance their manufactured home ("Loan Application"). The Division alleged that Respondent also signed the Loan Application and backdated his signature to August 7, 2002. *State's Exhibit A*.

19. The Division alleged that Respondent failed to obtain authorization from the Cowgills prior to requesting their credit report in August 2002. *State's Exhibit A*.

20. Respondent "needed" a faulty appraisal report to support the loan amount sought in the Cowgills' loan application. *State's Exhibit A*

E. The Cowgills' Manufactured Home Purchase

21. From August 2000 to approximately October 2003, Respondent was employed by The Mortgage Firm, Inc., a mortgage broker located in Zanesville, Ohio. Respondent was the office manager and a loan originator. *Joint Exhibit I*. As a licensed loan officer at that time, Respondent assisted customers with obtaining mortgage loans through licensed lenders such as Option One. *Testimony of Respondent, Tr. Vol. II at 186-188; State's Exhibit M*.

22. In or around July 2002, Charles Dean Cowgill and Teresa Ann Cowgill resided at 50232 State Route 147 (Seneca Lake Road), Sarahsville, Ohio 43779 in a singlewide manufactured home. Mr. and Mrs. Cowgill were seeking to purchase a doublewide manufactured home to replace their singlewide manufactured home. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 158-160; Testimony of Charles Dean Cowgill, Tr. Vol. II at 59-60*.

23. The Cowgills shopped at various manufactured home dealers, all of whom refused the Cowgills credit because of the Cowgills' low credit rating. The Cowgills also shopped at Palm Harbor Homes ("Palm Harbor") in Zanesville, Ohio. Palm Harbor, a Texas corporation licensed to engage in business in the state of Ohio, was a retailer and manufacturer of manufactured homes. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 160-161; Testimony of Charles Dean Cowgill, Tr. Vol. II at 60-62*.

24. The Cowgills met with Palm Harbor salesperson Allan Ross on July 8, 2002, and filled out a credit application. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 171-172, 204; Testimony of Charles Dean Cowgill, Tr. Vol. II at 62-64, 106-107; State's Exhibit F; Respondent's Exhibit 9*.

25. By signing the credit application, the Cowgills authorized Palm Harbor "*** to furnish a copy of this credit application and your retail installment contract to any and all lenders or prospective lenders Palm Harbor deems appropriate, and to release any of your credit-related or income-related information to such lenders. ***You further authorize Palm Harbor and any lender to whom Palm Harbor provides this information, to check your credit record, request a credit report,*** verify your income and employment history, and obtain and use such other credit information as Palm Harbor or such lender deems

necessary to make a credit decision.” *State’s Exhibit F; Respondent’s Exhibit 9.* [emphasis added]

26. Several days after filling out the credit application, the Cowgills learned from an unidentified source at Palm Harbor that they did not qualify for financing a manufactured home. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 161-162; Testimony of Charles Dean Cowgill, Tr. Vol. II at 64.*

27. Later in July 2002, the Cowgills received a telephone call from Brad DePugh, the general manager of Palm Harbor, informing them that Palm Harbor could work out a financing arrangement if the Cowgills would accept a \$700.00 monthly mortgage payment. The Cowgills informed Mr. DePugh that they could not afford more than a \$500.00 monthly mortgage payment. *Testimony of Charles Dean Cowgill, Tr. Vol. II at 65, 119, 131; Respondent’s Exhibits 2, 7, 8.*

28. Mr. DePugh believed that Palm Harbor initially forwarded the Cowgills’ credit application to Conseco Finance Servicing Corporation (“Conseco”), a mortgage lender that specialized in manufactured home loans. *Testimony of Brad DePugh, Tr. Vol. I at 35, 70.*

29. Conseco pre-approved financing for the Cowgills on July 24, 2002 with a monthly payment of \$870.14. *Respondent’s Exhibit 30, Bates stamp no. 000078.*

30. In or around July 29, 2002, the Cowgills returned to Palm Harbor and signed a contract for a manufactured home. The Cowgills also supplied copies of recent pay stubs to Palm Harbor. *Respondent’s Exhibit 30, Bates stamp nos. 000046 and 000047; Respondent’s Exhibit 1, pgs. 2-3.*

31. The Cowgills denied that they signed a contract with Palm Harbor in July 2002 to order a manufactured home. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 163-164, 166-167; Testimony of Charles Dean Cowgill, Tr. Vol. II at 71.*

32. On or around August 6, 2002, Respondent received a telephone call from a Palm Harbor salesperson requesting that Respondent assist the Cowgills with obtaining financing for a manufactured home purchase. Respondent received the Cowgills’ Palm Harbor credit application and pay stubs from Palm Harbor by fax. *Testimony of Respondent, Tr. Vol. II at 191-193, 255; Tr. Vol. III at 73-74; Respondent’s Exhibit 1.*

33. It is unclear from the evidence why Palm Harbor sought financing assistance for the Cowgills from Respondent in early August when Conseco had already pre-approved the Cowgills for financing.

34. On or about August 6 or 7, 2002, Respondent telephoned Eric Schneider, a representative of Option One, to ascertain whether Option One financed manufactured homes. *Testimony of Respondent, Tr. Vol. III at 81-84.*

35. Respondent telephoned Mrs. Cowgill on August 7, 2002 to obtain additional information for the Cowgills' Loan Application. Respondent maintained that he received verbal permission from Mrs. Cowgill to obtain the Cowgills' credit report. *Testimony of Respondent, Tr. Vol. II at 190-192; Tr. Vol. III at 75, 79.* The Cowgills previously had signed a written release authorizing Palm Harbor, and any lender to whom Palm Harbor provided their information, to obtain the Cowgills' credit record. *State's Exhibit F; Respondent's Exhibit 9.* Respondent ordered the Cowgills' credit report at that time. *Testimony of Respondent, Tr. Vol. II at 207.*

36. During Respondent's telephone call with Mrs. Cowgill, Respondent obtained information such as the Cowgills' Caldwell Bank balance, their 401(K) retirement account balance, and the value of their household goods that he inserted onto their Loan Application. *Testimony of Respondent, Tr. Vol. III at 88-89.*

37. Respondent faxed the Cowgills' Loan Application and credit report to Mr. Schneider at Option One. *Testimony of Respondent, Tr. Vol. III at 81-84.* Respondent received a "Program Evaluation Form" from Mr. Schneider indicating the terms under which Option One would finance a manufactured home. *Respondent's Exhibit 13.*

38. Respondent believed that there were two alternatives for financing a new manufactured home with Option One. One alternative was a construction loan, which Option One did not approve for the Cowgills due to their poor credit history. The second alternative was an "end-loan," which meant that a lender would finance the Cowgills' new manufactured home as a refinance of the property after the Cowgills' old manufactured home was removed and the new manufactured home was placed on the Cowgills' property. *Testimony of Respondent, Tr. Vol. II at 193-194, 219; Tr. Vol. III at 159-160; Testimony of Brad DePugh, Tr. Vol. I at 82-84.*

39. Palm Harbor typically discouraged "end-loan" financing and allowed it only with the permission of Palm Harbor's regional manager. *Testimony of Cheryl Jasper Wilson, Tr. Vol. III at 194-195, Tr. Vol. IV at 25-26.* End-loan financing meant that Palm Harbor carried the burden of financing the construction of a home on the purchaser's property until the home was completed and the purchaser had executed documents to secure the financing. *Testimony of Brad DePugh, Tr. Vol. I at 82-84.*

40. The Cowgills understood from Brad DePugh that to obtain financing for their new manufactured home, they would have to convert the title of the land they owned to show that the manufactured home was permanently affixed to the land. *Testimony of Teresa Ann Cowgill, Tr. Vol. II at 13-14; Testimony of Charles Dean Cowgill, Tr. Vol. II at 114-115.*

41. On or about August 8, 2002, Respondent spoke with both Palm Harbor salesperson Allan Ross and general manager Brad DePugh and informed them that the only loan Option One would finance for the Cowgills was an "end-loan" and that the new manufactured home had to be in place on the Cowgills' property before the loan could close. *Testimony of Respondent, Tr. Vol. III at 91-92.*

42. Palm Harbor required approximately 3-4 months to build a manufactured home and install it on an owner's property. Therefore, Respondent did not meet with the Cowgills to expedite the loan application process. Instead, Respondent mailed the Loan Application, the Good Faith Estimate and other loan documents to the Cowgills. All of the documents except for the Loan Application and the Mortgage Brokerage Business Contract indicated that the documents were prepared on August 13, 2002. The Good Faith Estimate contained the Cowgills' estimated monthly payment of \$804.76. Respondent did not receive any signed documents back from the Cowgills. *Testimony of Respondent, Tr. Vol. II at 194, 196, 206; Tr. Vol. III at 90; State's Exhibit K.*

43. On August 14, 2002, Palm Harbor salesperson Allan Ross ordered a doublewide manufactured home for the Cowgills. The approximate delivery date of the home was October 20, 2002. *State's Exhibit E.*

44. The order for the doublewide manufactured home included a 4-block crawl space costing \$5,500.00, instead of a basement. *State's Exhibit G.*

45. On August 29, 2002, Nancy Burnett of McCarthy Real Estate conducted an appraisal of the Cowgills' property requested by Datacomp Appraisal Services for Conseco. Ms. Burnett conducted the appraisal under the hypothetical that a doublewide manufactured home had been affixed to the Cowgills' land and that the singlewide manufactured home had been removed. Ms. Burnett valued the Cowgills' land as improved by the doublewide manufactured home at \$93,000.00. *State's Exhibit P.*

46. Initial financing approval from a lender is not a guarantee of financing. The lender must verify the applicant's employment, income, and other information, and the applicant must be able to meet the terms and conditions of the loan. *Testimony of Brad DePugh, Tr. Vol. I at 131-132.*

47. Conseco did not approve the Cowgills' loan. *Testimony of Charles Dean Cowgill, Tr. Vol. II at 64, 106, 131; Testimony of Teresa Ann Cowgill, Tr. Vol. I at 167-168, 187; Testimony of Respondent, Tr. Vol. II at 255.* It is unclear from the evidence when Conseco denied the Cowgills' request for financing.

48. On October 15, 2002, the Cowgills signed a typed copy of the contract for their manufactured home order with Palm Harbor that they had first signed in July 2002. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 203-204; Testimony of Brad DePugh, Tr. Vol. I at 101-104; State's Exhibit D.*

49. As part of the purchase of their new manufactured home, the Cowgills traded in their old manufactured home. In or around late October 2002, Palm Harbor removed the Cowgills' old manufactured home and began the process of installing the Cowgills' new manufactured home by digging a crawl space and setting the piers upon which Palm Harbor would place the manufactured home. *Testimony of Charles Dean Cowgill, Tr. Vol. II at 71-72; Testimony of Teresa Ann Cowgill, Tr. Vol. I at 170.*

50. On November 26, 2002, Palm Harbor delivered the new manufactured home to the Cowgills' property. *State's Exhibits H and I*.

51. The Cowgills were unable to live on their property after Palm Harbor removed their old manufactured home in October 2002. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 170; Testimony of Charles Dean Cowgill, Tr. Vol. II at 132-133*. The Cowgills could not reside in their new manufactured home until Palm Harbor completed the installation process and until the closing to finance the purchase occurred. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 170-171*. It was not unusual for the process of setting the piers, installing the manufactured home, and the final trim out of carpet installation and other interior work to take 1-2 months. *Testimony of Brad DePugh, Tr. Vol. I at 62-66; 154-155*.

52. Mrs. Cowgill telephoned Adrienne Smith, Respondent's loan processor, numerous times during the installation process and expressed dissatisfaction that the new manufactured home was on her property but that she could not move into it. Ms. Smith recalled that she always transferred Mrs. Cowgill's telephone calls to Respondent. *Testimony of Adrienne Smith, Tr. Vol. III at 171-172, 185-186*. Due to Ms. Smith's recollection of Mrs. Cowgill's telephone calls, Ms. Smith was surprised that Mrs. Cowgill claimed to have never spoken to Respondent prior to the closing. *Testimony of Adrienne Smith, Tr. Vol. III at 181*.

53. In December 2002, Respondent received a telephone call from either Allan Ross or another Palm Harbor salesperson, informing Respondent that Palm Harbor had installed the Cowgills' manufactured home and that the final work on the home was almost completed. Respondent then instructed his processor to order an appraisal of the Cowgills' property from appraiser Bill Cochran of Bill Cochran Real Estate Appraisals, LLC. *Testimony of Respondent, Tr. Vol. III at 94-96*.

54. Respondent met with the Cowgills on December 13, 2002 at Palm Harbor. The Cowgills signed the Loan Application, the Good Faith Estimate, the Truth-in-Lending Disclosure, and other documentation. Respondent also obtained from the Cowgills their W-2's and their pay stubs to process the loan and obtain final approval from Option One. *Testimony of Respondent, Tr. Vol. II at 195, 198; Tr. Vol. III at 98-99*.

55. The Division contended that after the Cowgills signed the Loan Application on December 13, 2002, Respondent signed the Cowgills' Loan Application and the Mortgage Broker Business Contract and backdated his signature to August 7, 2002. *State's Exhibit A*.

56. The Truth-in-Lending Disclosure Statement signed by the Cowgills on December 13, 2002 disclosed that the Cowgills' loan contained a variable rate. The Good Faith Estimate signed by the Cowgills on December 13, 2002 contained notice that their initial principle and interest payments would be \$699.76 with a total initial monthly payment, including taxes and insurance, of \$804.76. *State's Exhibit K*.

57. The Cowgills denied meeting with Respondent on December 13, 2002. They also denied signing the Loan Application or any other documents on December 13, 2002. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 182-184, 197-200, 213; Testimony of Charles Dean Cowgill, Tr. Vol. II at 82-84; State's Exhibit K.*

58. On January 8, 2003, a Palm Harbor Walk Through Inspection Checklist was faxed from LDM Technologies, Mr. Cowgills' place of employment, to the Mortgage Firm, Respondent's place of employment. *Respondent's Exhibit 5; Testimony of Respondent, Tr. Vol. III at 14-15.*

59. The Cowgills' closing occurred on January 14, 2003 at Palm Harbor. Respondent and the Cowgills attended the closing. *Testimony of Respondent, Tr. Vol. III at 121-122; Testimony of Teresa Ann Cowgill, Tr. Vol. II at 53-54.*

60. The Cowgills were unhappy at the closing because their monthly payments were higher than they desired and they did not receive any cash back. The Cowgills believed that they had no choice but to proceed with the closing because their old manufactured home was gone and they already were living in the new manufactured home. The Cowgills knew they could not afford the monthly payments but understood from Respondent that they could return in one year and he would arrange to refinance their loan. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 179-181, 190; Tr. Vol. II at 49-52; Testimony of Charles Dean Cowgill, Tr. Vol. II at 75-76, 79.*

61. Respondent did not recall the Cowgills expressing any concerns about the amount of their mortgage payment at the closing. *Testimony of Respondent, Tr. Vol. II at 201-202; Tr. Vol. III at 122-123.*

62. The Cowgills returned one year later to refinance their property through Respondent. The Cowgills were unable to refinance because new appraisal reports indicated a lower value of their property. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 190; Testimony of Charles Dean Cowgill, Tr. Vol. II at 126; Testimony of Respondent, Tr. Vol. III at 161-162; State's Exhibit Q.* As a result of the variable rate mortgage, the Cowgills' mortgage payments increased to approximately \$1,000.00 per month. The Cowgills could not afford the payments and declared bankruptcy. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 185; Testimony of Charles Dean Cowgill, Tr. Vol. II at 86.*

F. The Loan Application

63. The Division placed into evidence the Cowgills' loan application documents marked as Exhibit K. Exhibit K includes one copy of the Cowgills' four-page Loan Application as well as a copy of the Good Faith Estimate, the Truth-in-Lending Disclosure Statement, the Mortgage Broker Business Contract, and other documents. *State's Exhibit K.*

64. The Cowgills' four-page Loan Application in State's Exhibit K contains two copies of page 3 of the Loan Application. One copy of page 3 of the Cowgills' Loan

Application contains Respondent's signature dated August 7, 2002 (page 4 of State's Exhibit K). The Division alleges that Respondent backdated his signature on this document to August 7, 2002. The second copy of page 3 of the Cowgills Loan Application does not contain Respondent's signature (page 3 of State's Exhibit K). The Cowgills' signatures, dated December 13, 2002, appear on both copies of page 3 of the Loan Application. *State's Exhibit K, pgs. 3 & 4.*

65. It is unclear why there are two copies of page 3 of the Cowgills' Loan Application in State's Exhibit K. The Division did not establish which copy of page 3 of the Cowgills' Loan Application was part of the original Loan Application submitted to Option One.

66. Respondent's Exhibit 16 is also a copy of the Cowgills' Loan Application and it does not contain two copies of page 3 of the Loan Application. Respondent's Exhibit 16 contains the page 3 of the Cowgills' Loan Application that contains Respondent's signature dated August 7, 2002. Respondent maintained that Respondent's Exhibit 16 is the actual Loan Application that he printed for purposes of sending to the Cowgills. *Respondent's Exhibit 16; Testimony of Respondent, Tr. Vol. III at 89-90.*

67. Respondent denied backdating the Cowgills' Loan Application. Respondent believed that he signed the Loan Application on August 7, 2002. *Testimony of Respondent, Tr. Vol. III at 82.* Respondent did not know why his signature appeared on one copy of page 3 of the Cowgills' Loan Application and not on the second copy of page 3 in State's Exhibit K. Respondent may have produced two sets of originals on August 7, 2002 and then signed only one set on August 7, 2002. *State's Exhibit K; Testimony of Respondent, Tr. Vol. II at 205-207, 246-247; Tr. Vol. III at 81-82.*

68. Respondent believed that he also signed the Mortgage Broker Business Contract on August 7, 2002. *Testimony of Respondent, Tr. Vol. II at 206-207.*

69. The Hearing Officer finds that there is no conclusive evidence that Respondent backdated the Cowgills' Loan Application and the Mortgage Brokerage Business Contract.

G. The Credit Report

70. At the hearing, the Cowgills denied speaking with Respondent in August 2002 or giving Respondent permission to obtain their credit report. The Cowgills asserted that they never met or spoke with Respondent until January 14, 2003. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 172-174; Testimony of Charles Dean Cowgill, Tr. Vol. II at 80-81.*

71. The Cowgills' testimony in this matter conflicted with their prior written statements. *Respondent's Exhibits 2, 7, 8.*

72. In the complaints filed by the Cowgills with the Division and with the Ohio Attorney General's Office, as well as the Substitute Adversary Complaint filed on their behalf in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, both Mr. and Mrs. Cowgill indicated that they spoke with Respondent in August 2002. *Respondent's Exhibits 2, 7, 8.*

73. The Hearing Officer finds that Respondent did speak with Mrs. Cowgill in August 2002 and received verbal permission to obtain the Cowgills' credit report. Respondent also received written permission to obtain the Cowgills' credit report through the release that the Cowgills signed with Palm Harbor. *State's Exhibit F; Respondent's Exhibit 9.*

H. The Appraisal

74. As part of the loan application process, Respondent ordered an appraisal of the Cowgills' property from appraiser Bill Cochran. *Testimony of Respondent, Tr. Vol. II at 208-209.*

75. On December 20, 2002, Bill Cochran issued an appraisal report for the new doublewide manufactured home on the Cowgills property. Mr. Cochran appraised the Cowgills' property at \$120,000.00. *State's Exhibit O.*

76. On December 22, 2002, Respondent received Mr. Cochran's appraisal of the Cowgills' property. The appraisal contained a lower value than Respondent originally estimated. A lower appraised value meant that the Cowgills could not borrow as much money as they had planned to finance their manufactured home, pay off various debts, and receive cash back at the closing. *Testimony of Respondent, Tr. Vol. II at p. 214-216; Tr. Vol. III at 102-107.*

77. Mr. Cochran's appraisal report contained some inconsistencies. The report indicated on page 6 that the Cowgills' new doublewide manufactured home had a full basement whereas on page 7, the appraisal report indicated that there was not a full basement. *State's Exhibit O; Testimony of Respondent, Tr. Vol. III at 12-13.*

78. The Cowgills' new manufactured home did not have a full basement. *Testimony of Teresa Ann Cowgill, Tr. Vol. I at 187; Testimony of Charles Dean Cowgill, Tr. Vol. II at 87, 94-95.*

79. The Division alleged that Mr. Cochran's attribution of value for a full basement in the appraisal report when there was not a full basement meant that a reasonable mind could conclude that the appraisal report was "over-inflated." *Testimony of John Cronin, Tr. Vol. III at 56.*

80. Respondent did not notice the inconsistencies in Mr. Cochran's appraisal report at the time he reviewed it for the Cowgills' loan application. *Testimony of Respondent, Tr. Vol. III at 21, 130.*

81. Option One engaged appraiser Deborah M. Meyer to conduct a review appraisal of Mr. Cochran's appraisal. *Testimony of Respondent, Tr. Vol. III at 123-124*. The review appraisal valued the Cowgills' property at \$109,000.00, in contrast to Mr. Cochran's appraised value of \$120,000.00. *Testimony of Respondent, Tr. Vol. III at 124-125*.

82. The review appraisal also incorrectly contained a valuation of the Cowgills' property based on a full basement. *Testimony of Respondent, Tr. Vol. III at 125-126*.

83. Respondent requested that Mr. Cochran file a rebuttal justifying his appraisal. *Testimony of Respondent, Tr. Vol. III at 140-143*.

84. After receiving Mr. Cochran's rebuttal, Option One approved Mr. Cochran's valuation of the Cowgills' property. *Testimony of Respondent, Tr. Vol. III at 126-127*.

85. Division investigator Cronin admitted that did not find any direct evidence that Respondent attempted to influence Mr. Cochran's judgment regarding the appraised value of the Cowgills' property. *Testimony of John Cronin, Tr. Vol. III at 30*.

86. The Hearing Officer finds no evidence that Respondent "needed" a faulty appraisal report or that he somehow influenced Mr. Cochran's appraisal report of the Cowgills' new manufactured home.

I. Respondent's Character References

87. Four witnesses testified at the hearing regarding Respondent's character. Three of those witnesses were Howard S. Zwelling, Esq. the mayor of Zanesville, Ohio, D. Michael Haddox, Esq., the prosecuting attorney for Muskingum County, Ohio, and James R. Sharrer II, the president of Varsity Title Services, a title insurance company located in Zanesville, Ohio. Mayor Zwelling, Mr. Haddox, and Mr. Sharrer have known Respondent for many years and are familiar with Respondent's reputation in the community as an honest and trustworthy person. *Testimony of Mayor Howard S. Zwelling, Tr. Vol. II at 140-145; Testimony of D. Michael Haddox, Tr. Vol. II at 179-182; Testimony of James R. Sharrer II, Tr. Vol. II at 151-170*.

88. Adrienne Smith, also known as Adrienne Batross and Adrienne Bone, worked as a loan processor for Respondent at the Mortgage Firm from approximately May 2002 to October 2003. *Testimony of Adrienne Smith, Tr. Vol. III at 166-167*. Ms. Smith attested that Respondent was very honest, very ethical, and good with his customers. *Testimony of Adrienne Smith, Tr. Vol. III at 181*.

89. Respondent also submitted a written character reference from Travis McIntyre. Mr. McIntyre traveled to Columbus from Zanesville to testify in the instant matter on August 31, 2009, however time did not permit Respondent to call Mr. McIntyre as a witness on that date. Respondent was unable to return the next day to testify and submitted his testimony in the form of an affidavit. *Respondent's Exhibit 31*. Because Mr.

McIntyre was not available for cross-examination, the Hearing Officer did not give his affidavit the same weight as the testimony of witnesses who appeared at the hearing.

90. Travis McIntyre is the Vice President of First City Bank in Columbus, Ohio. Mr. McIntyre has known Respondent for over ten years and worked for Respondent as a loan originator in the 1990's for two years. Mr. McIntyre attested to Respondent's reputation for honesty and integrity. *Respondent's Exhibit 31*.

II. CONCLUSIONS OF LAW

A. Jurisdiction

91. The Division has complied with the procedural requirements of R.C. Chapter 119 and has established jurisdiction over this matter.

B. Proposed Denial of Respondent's License Application

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

93. Respondent was a loan officer licensed with the Division from 2002 to 2007. Respondent applied for a loan officer license in 2008.

94. R.C. § 1322.07 (C) states that no mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under R.C. §§ 1322.01 to 1322.12 shall engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

95. R.C. § 1322.041(A) enumerates six conditions to be met for the Superintendent of the Division to issue a loan officer license. One of those conditions, as set forth in R.C. § 1322.041(A)(6), requires that 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."

96. R.C. § 1322.10(A)(1)(a) authorizes the Division to deny a loan officer license application for failure to comply with any provision of R.C. §§ 1322.01 through 1322.12.

97. The Division did not establish that Respondent engaged in conduct that constituted improper, fraudulent, or dishonest dealings in connection with the Cowgills' loan application in violation of R.C. § 1322.07 (C).

98. The Division did not establish that Respondent engaged in conduct that constituted improper, fraudulent, or dishonest dealings in connection with the Cowgills' credit report in violation of R.C. § 1322.07 (C).

99. The Division did not establish that Respondent engaged in conduct that constituted improper, fraudulent, or dishonest dealings in connection with the Cowgills' appraisal report in violation of R.C. § 1322.07 (C).

100. The Division did not establish that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of R.C. §§ 1322.01 to 1322.12 in violation of R.C. § 1322.041(A)(6).

101. For the foregoing reasons, the Division does not have sufficient evidence to deny Respondent's loan officer license 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 not established a sufficient evidentiary basis for denying Respondent's loan officer license application pursuant to R.C. § 1322.10(A)(1)(a). Therefore, the Hearing Officer respectfully recommends that the Division grant Respondent's loan officer license application.

Respectfully submitted,

Lisa M. Finnegan
Administrative Hearing Officer
November 30, 2009