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The hearing was scheduled by the Division at the request of Respondent Samir D. Dalank of Oregon, Ohio (hereinafter "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"), that was issued to Respondent on or about May 8, 2006. The Division issued the NOH to Respondent on the basis that Respondent has a 2005 Theft conviction. The Division alleges that based upon Respondent's theft conviction, Respondent has not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities. The Division further alleges that Respondent's conviction demonstrates that Respondent's character and general fitness do not 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 the Ohio Mortgage Broker Act.

The hearing was held at 9:30 a.m. on August 15, 2006, in Room 1908 at 77 South High Street, Columbus, Ohio. The Division, represented by Assistant Attorney General Laura A. Meechan, appeared at the hearing and presented its case. Witness for the Division was staff attorney Anthony D. Siciliano. Neither Respondent nor any representative, including counsel, appeared even though the start of the hearing was delayed until 9:46 a.m. At the hearing, State's Exhibits A through E were admitted into the record without objection, as discussed in the transcript (hereinafter "Tr.").

B. Loan Officer License Application

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to Revised Code Chapter 1322.
2. Respondent applied for an Ohio Mortgage Loan Officer License by submitting a signed, sworn and attested to Loan Officer License Application ("Application") and fingerprint card on or about February 2, 2006. Midwest Mortgage Investments, Ltd. is listed as the sponsoring Mortgage Broker. (State Ex. D)
3. Within the Application Respondent checked the "yes" box to Question 6 which asked:

Have you been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

(State Ex. A)

4. Respondent indicated on the Application that the Theft conviction arose because of a misunderstanding between himself and his uncle regarding when he could borrow his uncle's vehicle. Respondent's uncle reported the vehicle stolen when Respondent took it without asking. (State Ex. B)
5. On March 17, 2006 the Division sent Respondent a letter requesting a detailed explanation of the facts that lead to his Theft conviction and a certified copy of the journal entry evidencing the conviction and sentence. Respondent did not comply with the Division's request. The Division obtained a certified copy of the journal entry directly from the Perrysburg Municipal Court. (State Ex. B; Tr. at 15)

6. On February 24, 2005 Respondent was found guilty of Theft, a first degree misdemeanor, in the Perrysburg Municipal Court. Respondent was given a 90 day suspended jail sentence and placed on probation for two years. He was assessed a fine of \$250.00 plus court costs and ordered to pay restitution in the amount of \$1193.63 by May 31, 2005. (State Ex. C)
7. The Division issued its NOH against Respondent on May 8, 2006. (State Ex. D)
8. Respondent received the NOH via certified mail return receipt on May 10, 2006 and requested a hearing. (State Ex. D & E)
9. By letter dated May 19, 2006, the Division scheduled the hearing for May 30, 2006 and continued the hearing on its own motion to August 15, 2006. The letter was addressed to the same delivery address where Respondent received the NOH. (State Ex. E)
10. Respondent did not appear for the scheduled hearing in person or through counsel or request a continuance of the August 15, 2006 hearing from the hearing officer nor did he submit any written document setting forth his positions, arguments or contentions as permitted by Revised Code §119.07. (Tr. at 6)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters

1. Ohio Revised Code §119.07 requires the Division to notify Respondent of his right to request a hearing. The Division complied with §119.07 by notifying Respondent of his right to a hearing in the NOH which was properly served upon Respondent by certified mail.
2. The Division further complied with §119.07 by notifying Respondent, when he requested a hearing, of the time, date, and place of the hearing once the date was set. The Division's May 19, 2006 letter scheduling the requested hearing was sent to the Respondent by regular mail at the address he supplied to the Division and where he had received previous written communications from the Division. Ohio Revised Code §119.07 does not require the notice of the hearing to be sent by certified mail. The use of regular mail was appropriate in this case. McCoy v. Bureau of Unemployment Compensation, 81 Ohio App. 158, 161, 77 N.E.2d 76, 78 (1947).

3. Respondent received proper notice of the hearing therefore it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988).

B. Loan Officer License Application

1. Respondent was convicted of theft in 2005 which is a conviction specifically enumerated in Revised Code §1322.031(A)(2) and may provide a basis for Respondent's application for a license to be denied under Revised Code §1322.041(A)(3) as the same incorporates the terms of Revised Code §1322.031(A)(2).
2. Revised Code §1322.041(A)(3) provides that if Respondent has been convicted of any criminal offense involving certain named offenses, including theft, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
3. The Division also charged that Respondent's character and general fitness do not 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 the Ohio Mortgage Broker Act. Revised Code §1322.041(A)(5).
4. Respondent did not offer any proof that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, or to prove there is no basis in fact for believing that Respondent will commit such an offense again or that Respondent'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 the Ohio Mortgage Broker Act.
5. Respondent has not met his burden to overcome the Division's evidence in order to obtain a Loan Officer License.

III. RECOMMENDATION

The Division has proven that Respondent is guilty of a theft offense. As Respondent did not appear and, in fact, did not present any evidence at all, there must be a finding for the Division in this case. The recommendation to the Superintendent of Financial Institutions is to deny a mortgage loan officer's license to Samir D. Dalank.

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
December 28, 2006
Docket No. M2005-999590