

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Timothy D. Kazzee**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0005-LOR**

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS  
2004 NOV -9 AM 7:58

**FINDINGS OF FACT**

1. Timothy D. Kazzee ("Respondent" herein), as of the date of this hearing (the "Hearing" herein) held a license as a loan officer pursuant to Chapter 1322 of the Ohio Revised Code (the "License" herein) issued by the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein).
2. On or about August 28, 2003, and again on or about April 5, 2004, the Division notified Respondent that it intended to revoke Respondent's License (the "First Notice" and the "Second Notice", respectively; sometimes collectively the "Notices" herein). Copies of the Notices are attached and incorporated in Exhibit A herein. The Notices charged that Respondent failed to meet certain designated requirements for continued licensing contained in Section 1322 of the Ohio Revised Code, and cited the circumstances as described in the Notices. The First Notice, as well as a letter from the Division to Respondent dated June 3, 2004 (the "Offer Letter"), also notified Respondent of the pending revocation action, and provided an opportunity for Respondent to enter into certain written settlement agreements with the Division, which would, subject to execution and delivery by the Respondent and full compliance with the terms thereof by Respondent, evidence settlement of the revocation action matters referenced in the Notices and the Offer Letter. A copy of the Offer Letter is likewise attached and incorporated in Exhibit A.
3. Respondent executed the settlement agreement attached to the First Notice and, in response to the Second Notice, Respondent requested a hearing by letter dated April 7, 2004. In response to that request, the Hearing took place at the Vern Riffe Center for Government and the Arts on August 18, 2004. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorney Emily Smith, Esq

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for revoking the License of the Respondent based on the provisions of Sections 1322.052 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to revoke Respondent's License as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.052 and 1322.10 of the Ohio Revised Code for the revocation of Respondent's License, and the record of the Hearing supports that revocation.

## **DISCUSSION**

Section 1322.10(A)(1)(a) of the Ohio Revised Code states that the Superintendent of the Division (the "Superintendent") may revoke a loan officer license if the Superintendent finds that there have been violations of Ohio Revised Code sections 1322.01 to 1322.12, or relevant rules adopted under those sections, or violations of any other law applicable to the business conducted under a certificate of registration, by the licensee.

At the Hearing, the Division stipulated to admission of Respondent's Exhibits A through M and Respondent stipulated to admission of State's Exhibits 1 through 7. (Tr. Pages 36, 37)

The testimony presented at the Hearing reflected that Respondent failed to comply with applicable continuing education requirements for the year 2002. (Tr. Pages 16, 17, 21) The evidence also reflected that Respondent was notified by the First Notice of his failure to comply and that, in response to the First Notice and rather than proceed with a hearing under Chapter 119 of the Ohio Revised Code, Respondent entered into a certain settlement agreement (the "First Agreement"; a copy of which is attached in Exhibit B) the terms of which required, *inter alia*; that Respondent pay to the Division a fine or penalty in the amount of \$250.00 by September 30, 2003; an admission by Respondent of failure to comply with the continuing education requirements required by Ohio law for continued licensing as a loan officer under Chapter 1322 of the Ohio Revised Code; and a requirement that the executed First Agreement be received by the Division not later than September 30, 2003.

The file stamp on the First Agreement indicates that it was not received by the Division until October 1, 2003, and there was no evidence that Respondent submitted payment of the agreed penalty to the Division at any time. (Tr. Pages 23, 24)

Therefore, Respondent failed to comply with the terms and conditions of the First Agreement. The First Agreement provided *inter alia* that failure by Respondent to comply with the terms and conditions contained therein could result rejection of the First Agreement by the Division and initiation of formal revocation proceedings by the Division.

The testimony and evidence also showed that, in light of Respondent's failure to comply with the terms of the First Agreement, Respondent was served with the Second Notice, and Respondent requested a hearing by letter dated April 7, 2004. (Respondent's Exhibit A)

In the Offer Letter dated June 3, 2004, the Division provided Respondent with a second opportunity to enter into a settlement agreement in lieu of proceeding with the revocation action (the "Second Agreement") and which required payment of a fine in two installments of \$250.00 each. Respondent failed to execute and deliver the Second Agreement and failed to submit payment of either installment of the fine. (Tr. Pages 34, 35, 38, 39, 41, 42, 43)

As a result of Respondent's rejection of the Second Agreement, the matter was scheduled for hearing. (Tr. Pages 42, 43)

No evidence was presented by Respondent to explain or to contradict the allegations of the Division relating to Respondent's failure to comply with the continuing education requirements contained in Chapter 1322 of the Ohio Revised Code, as set forth in the Notices. The only relevant testimony presented by Respondent was purported confusion over certain dates and the initial date of the hearing, which was rescheduled by mutual consent of the Division and the Respondent for August 18, 2004, and Respondent's conscious decision to reject the Second Agreement in favor of proceeding with a hearing. (Tr. Pages 34, 35, 39, 41, 42, 43)

Respondent admitted in the First Agreement that Respondent failed to comply with the continuing education requirements contained in Chapter 1322 of the Ohio Revised Code with respect to 2002, and there was no evidence presented that Respondent in fact complied with certain terms and conditions of the First Agreement, including payment of the agreed fine. Further, Respondent failed to accept the terms of the Offer Letter to execute and comply with the term of the Second Agreement. Therefore, the allegations contained in the First Notice as well as the Second Notice remain outstanding and have not been waived or settled by the Division.

Respondent has failed to provide evidence to contradict or to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.07 and 1322.10 as set forth in the Notices.

### **RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the License of the Respondent be revoked.

Respectfully submitted,

  
Jeffery E. Smith, Hearing Examiner

4 Nov. 04  
Date