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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. M2009-829
:
CITYVIEW MORTGAGE, LTD, : LISA M. FINNEGAN
RESPONDENT. : HEARING OFFICER
:

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued November 20, 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 October 23, 2009 at 77 South High Street, 23rd Floor, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the September 23, 2009 Order of Summary Suspension, Notice of Intent to Deny Renewal & Notice of Hearing ("NOH"). The Division alleged that Cityview Mortgage, LTD. ("Respondent") failed to maintain its surety bond as required by R.C. §§ 1322.05(A) and (F).

3. Dennis P. Smith, Jr., Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Stephen E. DeFrank, Jr., Esq. testified on behalf of the Division. Neither Respondent nor anyone on its behalf appeared at the hearing. The Hearing Officer admitted into the record State's Exhibits A through G. The Hearing Officer closed the record at the conclusion of the hearing.

B. Jurisdiction and Procedural Matters

4. Respondent is a company that holds a certificate of registration to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. Respondent's mortgage broker certificate of registration number is MB.803212. *State's Exhibits C and D.*

5. Respondent's last known address of record with the Division is 25620 Center Ridge Road, Westlake, Ohio 44145. *State's Exhibits C and G; Testimony of Stephen E. DeFrank, Jr., Tr. at 10, 13.*

6. On September 23, 2009, the Division issued the NOH suspending Respondent's mortgage broker certificate of registration pursuant to R.C. § 1322.10(F)(1)(b) because Respondent failed to keep a bond in violation of R.C. §§ 1322.05(A) and (F). The NOH also informed Respondent of the Division's intent to deny Respondent's certificate of registration renewal application. The NOH notified Respondent that the Division had scheduled a hearing on the matter for October 23, 2009. *State's Exhibit A.*

7. The Division sent the NOH to Respondent's operations manager by certified mail, return receipt requested. The Division obtained service on September 25, 2009. *State's Exhibit B; Testimony of Testimony of Stephen E. DeFrank, Jr., Tr. at 10-11.*

8. Respondent did not contact the Hearing Officer, the Attorney General's Office, or the Division concerning the October 23, 2009 hearing. *Tr. at 6.*

9. The Division held the hearing on the date, time, and place specified in the NOH.

C. Respondent's Activities

10. Mortgage brokers must renew their certificate of registration with the Division on or before April 30 of every calendar year. Respondent submitted its certificate of registration renewal to the Division on or around June 1, 2009. *State's Exhibit E; Testimony of Stephen E. DeFrank, Jr., Tr. at 11-12.*

11. In order to renew its certificate of registration with the Division, a mortgage broker must maintain a surety bond in effect at all times. *Testimony of Stephen E. DeFrank, Jr., Tr. at 11-12.*

12. In June 2008, Respondent supplied the Division with evidence of a surety bond. Respondent's surety bond was with Ohio Farmer's Insurance Company. The surety bond was effective from May 1, 2008 through April 30, 2009. *State's Exhibit F; Testimony of Stephen E. DeFrank, Jr., at 12.*

13. The Division did not receive any evidence that Respondent obtained a new surety bond after its bond with Ohio Farmer's Insurance Company expired. *Testimony of Stephen E. DeFrank, Jr., Tr. at 12-13.*

II. CONCLUSIONS OF LAW

14. The Division has procedurally complied with R.C. Chapter 119 and has established jurisdiction over this matter.

15. The Division is responsible for administering and enforcing the Ohio Mortgage Broker Act, codified in R.C. Chapter 1322. In accordance therewith, the Division is accountable for the registration of residential mortgage brokers.

16. R.C. § 1322.05(A) states that:

No registrant shall conduct business in this state, unless the registrant has obtained and maintains in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state. The bond shall be in favor of the superintendent of financial institutions and in the penal sum of at least fifty thousand dollars and an additional penal sum of ten thousand dollars for each location, in excess of one, at which the registrant conducts business. The term of the bond shall coincide with the term of registration. A copy of the bond shall be filed with the superintendent. The bond shall be for the exclusive benefit of any buyer injured by a violation by an employee, licensee, or registrant of any provision of sections 1322.01 to 1322.12 of the Revised Code. The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. [Emphasis added].

17. R.C. § 1322.05(F) states that “[n]o registrant shall fail to comply with this section. Any registrant that fails to comply with this section shall cease all mortgage broker activity in this state until the registrant complies with this section.”

18. R.C. § 1322.10(F)(1)(b) states that to protect the public interest, the superintendent may, without a prior hearing, suspend the certificate of registration of a registrant who violates R.C. § 1322.05(F).

19. R.C. § 1322.04(B)(4) states that the certificate of registration issued by the Division may be renewed annually on or before April 30 if the Superintendent of the Division finds that certain conditions are met including that the applicant’s certificate of registration is not subject to an order of suspension or revocation by the Superintendent.

20. R.C. § 1322.10(A)(1)(a) states that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent of the Division may suspend, revoke, or refuse to renew a certificate of registration or license if the superintendent finds a violation of or failure to comply with any provision of R.C. §§ 1322.01 to 1322.12.

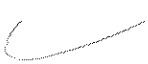
21. The Division suspended Respondent’s certificate of registration pursuant to R.C. § 1322.10(F)(1)(b) for Respondent’s failure to maintain a surety bond required by R.C. §§ 1322.05(A) and 1322.05(F). The Division now seeks to continue the suspension and to deny Respondent’s renewal application because of Respondent’s failure to maintain a surety bond.

22. The Division has established that Respondent failed to maintain a surety bond in violation of R.C. §§ 1322.05(A) and 1322.05(F). Therefore, sufficient evidence exists to continue the suspension of Respondent's mortgage broker certificate of registration and to deny Respondent's renewal 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 established a sufficient evidentiary basis for continuing the suspension of Respondent's mortgage broker certificate of registration and for denying Respondent's certificate of registration renewal application pursuant to R.C. § 1322.10(A)(1)(a), for failure to comply with R.C. §§ 1322.05(A) and (F). Therefore, the Hearing Officer respectfully recommends that the Division continue the suspension of Respondent's mortgage broker certificate of registration and deny Respondent's renewal application.

Respectfully submitted,



Lisa M. Finnegan
Administrative Hearing Officer
November 20, 2009