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SERVE NOTICE OF JUDGMENT
PURSUANT TO CIVIL RULE 58(B)

**IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO**

TERRY W. MAY,)	
)	
Appellant,)	CASE NO. 16CV89237
)	
-vs-)	
)	
OHIO DEPT. OF COMMERCE,)	
)	
)	
Appellee.)	<u>ENTRY GRANTING</u>
)	<u>PERMANENT JUDGMENT ON</u>
)	<u>MAGISTRATE'S DECISION</u>
)	

A Magistrate's Decision having been filed herein on **September 6, 2017** and no objections to the Decision having been filed within fourteen (14) days from that date, the Court **ORDERS** the Decision adopted as a permanent judgment of this Court.



11/15/2017

JUDGE DONALD E. ODA, II

C: Rachel Huston, Esq.
James Matre, Esq.

Filed in Warren County on 09/06/2017 3:26:43 PM

**IN THE COURT OF COMMON PLEAS
STATE OF OHIO, COUNTY OF WARREN
GENERAL DIVISION**

TERRY W. MAY,	:	
Appellant	:	CASE NO. 16 CV 89237
v.	:	
OHIO DEPT. OF COMMERCE,	:	<u>MAGISTRATE'S DECISION</u>
Appellee	:	
	:	

Pending before the Court is a timely appeal taken by Appellant Terry May from an October 28, 2016 decision by the Ohio Department of Commerce, Division of Financial Institutions, to refuse to renew his Mortgage Loan Originator License. This matter was set for an oral hearing on April 24, 2017. The record in this action consists in a transcript of administrative proceedings and an audio recording of the July 7, 2016 hearing, which this Magistrate listened to.¹ For the reasons that follow, the decision of the Department of Commerce is affirmed.

Mr. May was a mortgage loan originator, who took a break from the business in early 2009. He allowed his license to lapse at the end of April 2009, and did not complete required continuing education credits for 2009, as he was required to do by R.C. 1322.052. When he decided to return to the mortgage loan business in

¹ The recording quality is very poor—the Hearing Officer, apparently sitting far from the microphone, is unintelligible. However, the witnesses, with some effort, could be understood.

2015, he was informed he needed to obtain those credits and to pay a fine for his noncompliance with the statutory education requirements in 2009. A Settlement Agreement was entered into by May and the Department of Commerce on May 4, 2015. In connection with this, May was informed this event would be considered a disciplinary proceeding, and that he would need to disclose it on any future applications for license renewal with the Department. The Department uploaded the Settlement Agreement to update May's file in 2015, and then issued May a new license for 2015.

When May filed for another license renewal on January 21, 2016, he failed to update two pertinent questions on his application form: K6 specifically asked, "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities? Question K9 asked, "has any State . . . agency . . . ever . . . entered an order concerning you in connection with any license or registration?" May had previously answered "No" to these questions, but since the May 4, 2015 Settlement Agreement was required to answer "Yes." He did not make those changes in January 2016, and attested that the information he provided in the application was accurate and complete. The parties apparently agree that it was not.

The same application form warns, "If an Applicant has made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied." R.C. 1321.532 governs the renewal of mortgage loan originator licenses, and requires compliance with R.C. 1321.51 to 1321.60 as a precondition to license renewal. R.C. 1321.59(E) states, "No registrant or licensee shall 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 or federal law, or make and any substantial misrepresentation in the registration or license application, to engage in lending secured by real estate." The parties also apparently agree that the Department does have the authority to deny a license renewal if an applicant has misrepresented or omitted a material fact on his application.

Lori Massey was the Consumer Finance attorney for the Division of Financial Institutions of the Department of Commerce who reviewed May's application. She emailed May on March 4, 2016 bringing the errors to his attention. May wrote back the same day, apologizing for the mistake and saying he thought the matter was already a part of his record. He asked Ms. Massey to tell him what he needed to do. On March 7, 2016, Massey responded, "you will have to disclose the disciplinary action taken by the Division which resolved your non-compliance and permitted it to issue you a new license."

On May 5, 2016, the Ohio Department of Commerce, Division of Financial Institutions, Consumer Finance Section issued May a Notice of Intent to Refuse to Renew Mortgage Loan Originator License and Notice of Opportunity for a Hearing. May timely requested a hearing, which was held before Richard E. Brown on July 7, 2016. The Department led the testimony of one witness, Lori Massey. May was represented by counsel, and testified on his own behalf.

At the hearing, May and Massey differed on one point: May testified he did make the required changes to his application on March 8, 2016, and that he attempted to upload a copy of the Settlement Agreement. May ostensibly understood that the changes were successfully made. Massey testified that an examination of May's online application as late as July 7, 2016 revealed no changes had been made, and no copy of the May 4, 2015 Settlement Agreement had been uploaded as an attachment to the 2016 renewal application.

The Hearing Officer found "Even though Respondent attempted on March 8, 2016 to change one of his incorrect answers in his MU4, this effort was unsuccessful, as the NMLS portal still shows the old, incorrect MU4 answers. Respondent has, therefore, failed to demonstrate by a preponderance of the evidence that he has 'fully complied' with 1321.59(E) and his license cannot be renewed." Though the hearing officer apparently found May's testimony credible,

he concluded that May was not eligible for a renewal of his license under R.C. 1321.532, and upheld the decision of the Department to refuse to renew that license.

The decision of the Department of Commerce, Division of Financial Institutions, may be affirmed by this Court if the Court finds, "upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section."² "In connection with this standard of review, this court has stated that 'an agency's findings of fact are presumed to be correct and must be deferred to by a reviewing court unless that court determines that the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest on improper inferences, or are otherwise unsupportable.'"³ Furthermore, while "a Court of Common Pleas 'must give due deference to the administrative resolution of evidentiary conflicts,' [d]ue deference * * * does not contemplate uncritical acquiescence to administrative

² R.C. 119.12(M)

³ *VFW Post 8586 v. Ohio Liquor Control Comm'n*, 83 Ohio St.3d 79, 81

findings.”⁴ With respect to questions of law, however, “the court is to exercise independent judgment.”⁵

The Department of Commerce takes a stronger position in this appeal than Ms. Massey was inclined to take, based upon her correspondence with May and her testimony at the July 7, 2016 hearing: Ms. Massey represented that if May had timely amended his application, his license would have been renewed. The Department appears now to be taking the position that May’s original omission of the disciplinary proceeding in January 2016 made him incurably ineligible to receive a license. This Magistrate is inclined to agree with Ms. Massey that an explanation for the omission and a timely correction could cure defects in an application for a license renewal. Unfortunately, it is uncontroverted that the public records as late as July 2016 did not reflect that May made the necessary changes. The Hearing Officer found that May attempted corrections, but was not successful. May could not demonstrate that he was successful. He did not, as a result, meet eligibility requirements for renewal of a license.

This Magistrate concludes that the Hearing Officer’s determination is well supported by the evidence and is in accordance with law, and accordingly recommends that the October 28, 2016 decision of the Department of Commerce, Division of Financial Institutions be affirmed.

⁴ *Hinton Adult Care*, *supra*, at par. 17

⁵ *Id.*, at 82. See also *Hinton Adult Care Facility v. Ohio Dept. of Mental Health and Addiction Servs.*, Fourth Dist. No. 16CA3566, 2017-Ohio-4113, par. 19

It is so ordered.

Page Crossley Tate

MAGISTRATE CROSSLEY TATE

Notice to Parties

A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions, whether or not specifically designated as a finding of fact or conclusion of law, unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARREN COUNTY, OHIO
COMMON PLEAS COURT

BY

Heidi Howeman
DEPUTY