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DIVISION OF FINANCIAL
INSTITUTIONS

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

2003 MAY 12 AM 11:46

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

CHRISTINA M. GAVIN

CASE NO. 02-LO-D-49

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JANE S. ARATA**

Issued MAY 8, 2003

I. FINDINGS OF FACT

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119 of the Ohio Revised Code (hereinafter "R.C."). The hearing was held at 11:00 a.m. on February 20, 2003, at 77 South High Street, 22nd Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Christina M. Gavin (hereinafter "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing (hereinafter "NOH"). The Division alleges that Respondent pleaded guilty to theft in June of 1991, pleaded guilty to sexual battery in May of 1997, pleaded guilty to driving with a prohibited blood alcohol content in June of 1998, and pleaded guilty to driving under the influence of drugs/alcohol on two separate occasions in September 1998.

The Division further alleges that Respondent therefore is not eligible for a loan officer license under the Ohio Mortgage Broker Act, Ohio Revised Code Chapter 1322 because:

1. Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she will not commit such an offense again. R.C. 1322.041(A)(3);

2. 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. R.C. 1322.041(A)(5); and that

3. The public would be best served and that the purpose of the Ohio Mortgage Broker Act would be realized if Respondent is denied a license to act as a loan officer in the State of Ohio.

The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Paula Paoletti. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 13 and Respondent's Exhibits A - S were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on October 2, 2002. Respondent requested a hearing on October 25, 2002 that the Division scheduled for November 4, 2002, within the requirements of R.C. Chapter 119. The Division continued the original date of the hearing indefinitely and then, on January 17, 2003, continued the hearing to February 20, 2003.

C. PROPOSED ISSUANCE OF ORDER TO CEASE AND DESIST

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 36.)(Hereinafter references to pages of the Hearing Transcript will be referred to as "TR at {page(s)} ").
3. A new statutory requirement became effective on May 2, 2002, which, for the first time, mandated that Mortgage Loan Officers become licensed. (2001 Senate Bill 76.)
4. On March 25, 2002, the Division received a Loan Officer Application from Respondent. (State's Exhibit 1; TR at 18.)
5. Respondent answered "Yes" to question number 5 on the application which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft" (State's Exhibit 1; TR at 19.)

6. The evidence put forth by Respondent included her own testimony. Respondent pleaded guilty to misdemeanor theft in June of 1991. (State's Exhibit 7; TR at 20.) Respondent's explanation of the theft conviction was that she had used a friend's automatic teller machine card with the friend's permission to withdraw money for the friend to purchase drugs. (TR at 31.)
7. According to Respondent, the friend pressed charges to keep the friend's husband from finding out that she had relapsed. The friend, at the time also Respondent's Alcoholics Anonymous sponsor, was using drugs and alcohol again. (TR at 37-38.)
8. Respondent testified that she has never committed theft before or since then and turned her life around after she received counseling and treatment for alcohol abuse. (TR at 32, 49, 52.)
9. In May of 1997, the Respondent pleaded guilty to sexual battery, a third degree felony, and was designated as a sexually oriented offender. (State's Exhibit 8; TR at 21-22.) As a result of that conviction, she is required to register as a sexually oriented offender for a period of ten years. (State's Exhibit 9; TR at 22.)
10. Respondent explained that the sexual battery charge arose from a situation in which she had an inappropriate consensual relationship with a former client for whom she had been a counselor. (TR at 33-34; 45-47.) Respondent was no longer a counselor for the client when this took place. The former client lived in a minimum security facility and Respondent was a counselor there at the time. Respondent knew at the time that what she was doing was unethical but did not know that it was illegal. (TR at 34-35; 45-47.) Respondent stated that ignorance of that the law is not an excuse and has paid a very heavy price for her behavior. She expressed great remorse about the incident. (TR at 34-35, 43.)
11. Respondent pleaded guilty to driving with a prohibited blood alcohol content in June of 1998, and pleaded guilty to driving under the influence of alcohol on two separate occasions in September 1998. (State's Exhibits 11, 12, 13; TR at 23-24, 26.) These convictions were in violation of the conditions of her probation for the sexual battery charge. (State's Exhibit 10; TR at 23.)
12. Her second driving under the influence arrest in July of 1998, occurred when she was driving after her license had been suspended and not when driving to work as permitted by the work release provision of the suspension. (TR at 50.)

13. Respondent has received treatment for the abuse of alcohol since those convictions. (TR at 52-54.)
14. The Respondent was truthful on her application and at the hearing about her past problems and criminal convictions. Respondent's explanations of the past offenses were credible. She admitted that she did not make wise decisions and expressed remorse for her decisions. She testified that she has turned her life around and is currently capable of making good decisions. (TR at 49, 52-54, 69-70.)
15. Matthew Brammer, an Account Executive for Commonwealth United testified as a witness for the Respondent. (TR at 75-92.) Mr. Brammer, who has been in the mortgage loan business since 1997, does business with between 500-600 licensed mortgage loan officers and has done business with Respondent for the past three years. (TR at 77, 83.)
16. Mr. Brammer stated that Respondent is an excellent mortgage loan officer. Based on his experience with Respondent in the past three years, he testified that she is ethical and trustworthy. (TR at 78-80.)
17. Mr. Brammer has not received any customer complaints about Respondent and is not aware of any customer complaints about her in the industry. (TR at 79, 82, 89.)
18. Mr. Brammer stated that Respondent always sought to do what was best for the borrower and was not simply interested in the amount of commissions or the amount that could be made on a deal. (TR at 81.)
19. Jodi Bowser, Respondent's former boss and currently the owner of Coastal Home Mortgage in Florida, testified on the Respondent's behalf. (TR at 92-120.) Ms. Bowser, who has been in the mortgage loan business since 1994, testified that she was co-founder of Crown Equity Group, the company that currently employs Respondent as a mortgage loan officer. (TR at 93-94.)
20. Ms. Bowser promoted Respondent to the sales manager position that Respondent currently holds because Respondent was the most qualified of all the people at Crown Equity Group. Ms. Bowser testified that Respondent has a great work ethic and has the respect of all of her peers and customers. (TR at 99-101.)
21. Ms. Bowser also testified that Respondent is honest and trustworthy. Ms. Bowser has not received any customer complaints about Respondent. (TR at 104, 105.)

22. Additionally, Ms. Bowser testified about a survey that had been conducted by Cotrina Russell, an employee of Crown Equity Group. The survey results were authenticated by an affidavit from Cotrina Russell who conducted the survey by telephone. The results contained Ms. Russell's written notations indicating the question responses of the people she spoke with along with any additional comments that they made. (Respondent's Exhibits Q and R; TR at 105-112.).
23. Respondent introduced several letters of reference from other individuals. Except for Exhibit F, a letter from Matthew Brammer who also testified and introduced his letter, none of the other letters were the subject of testimony from or authenticated by their respective authors at the hearing. (Respondent's Exhibits A through E, G through M, and O.)
24. Respondent's explanations of her past criminal offenses were credible and her acceptance of responsibility for her past mistakes complete. She has no doubt been down a rough road during part of her life, a part that she and others testified is well in the past. While any one can say that, it is my opinion based upon observing the demeanor and credibility of the Respondent and the two character witnesses who testified on her behalf, that she is well beyond her past mistakes.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with R.C. Chapter 119.

B. LICENSE APPLICATION

2. In June of 1991, Respondent pleaded guilty to theft, an offense specifically referred to in R.C. 1322.041(A)(3).
3. Since the theft offense has been proven by the Division, the Respondent must now prove, by a preponderance of the evidence, that the Respondent's "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
4. The survey results, the compilation of information collected by Cotrina Russell, who wrote down the comments of people that that she spoke to

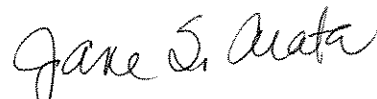
on the phone, as introduced by her affidavit and testimony from another third person, do not have the indicia of trustworthiness to be given weight as evidence in this matter. The hearing officer appreciates that work that went into these surveys, but without having those individuals at the hearing to testify, those documents offered as evidence of what those individuals experienced and believe constitutes hearsay within hearsay for which there is no applicable exception to the hearsay rule. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits Q and R were not afforded any weight by this hearing officer.

5. Furthermore, the letters of reference from other individuals, with the exception of Exhibit F, a letter from Matthew Brammer who authenticated his letter by testimony, were not authenticated by or the subject of testimony from their respective authors at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits A through E, G through M, and O were not afforded any weight by this hearing officer.
6. Respondent has proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she will commit the criminal offenses of which she was convicted again.
7. Respondent's character and general fitness command the confidence of the public and warrant the belief that her mortgage loan officer business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

III. RECOMMENDATION

Respondent has done her best to move forward, accepted help from others, and now enjoys a good reputation among her peers and customers in the mortgage brokerage industry. Consequently, I recommend to the Superintendent of the Division of Financial Institutions that a loan officer's license be issued to Christina M. Gavin pursuant to R.C. 1322.041.

Respectfully submitted,



Jane S. Arata
Hearing Officer
May 8, 2003

Docket No. 03-DFI-007