

Rec'd 6-14-04

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

In re: Todd L. Clark

:

Case No. 04-0165-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Todd L. Clark not be granted. The Division conducted an investigation and found:

- a. In or around 1998, in the Grant District Court of Kentucky, Mr. Clark was convicted of possession of marijuana and possession of drug paraphernalia;
- b. On or around February 14, 2003, Mr. Clark attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- c. On or around February 25, 2003, Mr. Clark provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Clark'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 as set forth in Revised Code Section 1322.041(A)(5);
- b. Mr. Clark violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- c. Mr. Clark violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and
- d. Mr. Clark violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Clark's address for service is 3541 Concord Drive, Erlanger, Kentucky 41018. The Respondent is employed by 1st Bancorp Mortgage, 200 Techne Center Drive, #101, Milford, Ohio 45150.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 6).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 4).

6. On February 20, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 5).

7. On February 23, 2004, the Division wrote to the Respondent setting a hearing for 9:00 a.m. on March 1, 2004 and simultaneously continuing that hearing until Friday, April 2, 2004 at 3:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 6).

8. The hearing was held beginning at 3:36 p.m. on Friday, April 2, 2004. In attendance was Daniel P. Jones, Assistant Attorney General of Ohio in the Executive Agency Section.

9. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On February 14, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

Have you, or has any company for which you have been an officer, or more than 5% owner or director ever been convicted of **any criminal offense** including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities? Exclude minor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances that give rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

3. In response to Question 5, the Respondent answered "No".

4. On April 17, 2003, the Division wrote to the Respondent indicating that a background check had disclosed that on September 27, 1995, the Respondent was charged by the Madison Police with one count of D.U.I. and on March 18, 1998, the Grant Police charged the

Respondent with one count of possession of marijuana and one count of drug paraphernalia.
(Exhibit 2)

5. The Respondent was asked to provide a detailed explanation of the facts and circumstances which gave rise to each charge and to provide a journal entry from the appropriate court. (*Id.*)

6. In response, the Respondent wrote to the Division as follows:

I am writing this letter in regards to my mortgage loan officer license from the State of Ohio. These are the events that happened on each of these incidents.

On September 27th, 1995 I was arrested for driving under the influence of alcohol. I was 18 years old and in my first month of college attending Eastern Kentucky University. I was drinking alcohol at a party that night with some friends when we decided to leave the party. I decided to drive knowing that my dorm room was very close and I was the only one with a car. A decision I would soon regret. I was pulled over for going through a traffic light, as it turned red. The arresting officer came to the car and then smelled alcohol on me. I was given a sobriety test, which the officer said I failed. I was then arrested. In my case the judge had dropped my DUI to a reckless driving charge, which I then paid all fees serving no jail time. I regret the fact of what I did very much, and was very young and immature.

The other arrest came on March 18th, 1998, while me and three of my friends were on our way to Lexington, KY. I was pulled over because the arresting officer said a truck driver had called in a possible DUI. I was not drinking at all. The officer then smelled marijuana and asked me to step out of the vehicle, which I did. He then searched the car and found a small amount of marijuana in the ashtray. My friend with me had a pack of cigarette papers, which he left in the car when they were made to get out. The papers are considered paraphernalia when found with marijuana. Being the driver, and having friends that won't confess, I was stuck with the charge. Again a bad decision on my part and in my life. I was influenced badly when I was younger as a lot of people are at that stage in their life. I have now grown up and became much more responsible of a person. I have not been in any kind of trouble since, and five years have past since my impaired judgments. Everyone goes through hard times; I just hope my judgments do not haunt me for my license. Thank you.

8. The Respondent also submitted copies of court documents involving both convictions.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant has been convicted 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.

2. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (5) The applicant'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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

- (A) 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 law, or make any substantial misrepresentations in any registration or license application;
- (B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;
- (C) Engage in conduct that constitutes improper, fraudulent or dishonest dealings[.]

4. Because the Respondent has been convicted of a drug offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be

operated fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent did not attend the hearing in this matter and no one attended on his behalf. The Hearing Officer and the Assistant Attorney General waited more than 30 minutes before starting the hearing. (Tr. 6).

2. In the record before the Hearing Officer is evidence that the Respondent was convicted of possession of marijuana and possession of drug paraphernalia. Also in the record is evidence that the Respondent failed to answer Question 5 correctly.

3. Based on the record before him, the Hearing Officer finds that the Division has met its burden in this matter in that the Respondent has failed to meet his burden. The Respondent has not met his burden to show that his activities and employment records since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit such an offense again. The Division has established through the criminal conviction that there is doubt as to the Respondent's character and general fitness and whether they 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 Respondent has not challenged that evidence.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
June 9, 2004