

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL
INSTITUTIONS

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Ralph W. Green

Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0138-LOD

FINDINGS OF FACT

1. On or about July 15, 2002, Ralph W. Green ("Respondent" herein) submitted an application (the "Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibits A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on July 26, 2004. At the Hearing, the Division was represented by Assistant Attorney General Monica Rausch, Esq., and Respondent appeared *pro se*.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice subject to certain changes. (Tr. Pages 19, 20, 21)
5. As of the date of the Application, Respondent was employed as a loan officer by Biltmore Mortgage Company.

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 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 deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Pages 19, 20, 21)

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the loan officer license if the applicant proves to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record includes convictions of robbery and theft, which unfortunately reflect the very kind of criminal offenses the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2).

The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual, which have occurred since the facts that gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the criminal record of Respondent as described in the Notice (Tr. Pages 19, 20, 21), and the Respondent presented only his own

testimony in support of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and that Respondent's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly.

Applicable law, as set forth in the referenced provisions of the Ohio Revised Code, clearly requires the Respondent in this instance to prove, by a "preponderance of the evidence", that he meets the statutory criteria necessary to overcome the "automatic disqualifier" provisions set forth in Ohio Revised Code section 1322.041(A)(3), and reserves to the Superintendent appropriate discretion in the licensing decision.

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Other than his own testimony, Respondent did not present any other evidence or testimony in support of the statutory factors considered under Ohio Revised Code sections 1322.041(A)(3) and 1322.041(A)(5).

The robbery and theft convictions occurred almost thirty years ago, and the lack of subsequent similar convictions does not appear to evidence a pattern of criminal behavior which would otherwise give cause for concern that Respondent would commit similar offenses in the future. However, it is disconcerting and troubling that the convictions were not disclosed in the Application and included serious offenses involving robbery, theft, and a weapons offense.

Respondent admitted that he failed to disclose the criminal convictions in response to question 5 of the Application, testifying generally that the omission was "...an inadvertent act...", and that he believed that "...felonies should drop off after seven years..." (Tr. Page 12). Respondent's position with respect to his answer to question 5 of the Application seems somewhat inconsistent, in that it is unclear whether the incorrect response to question 5 of the Application was truly "an inadvertent act", or the result of Respondent's belief that "...felonies should drop

off after seven years.” One position would infer a “mistake”, while the other would seem to be based on a conscious decision that the question was not relevant.

Other than his own testimony, Respondent did not present any other evidence or testimony to explain why he failed to disclose the convictions in response to the referenced question 5 in the Application.

Respondent’s failure to disclose the convictions in the Application unfortunately calls into question Respondent’s character and fitness, and there is therefore support for the Division’s assertion that Respondent fails to meet the basic statutory criteria contained in Ohio Revised Code section 1322.041(A)(5). Other than his own testimony, Respondent provided no evidence at the Hearing regarding his character and fitness under Ohio Revised Code section 1322.041(A)(5)

It is noted that Respondent’s criminal convictions do not appear to evidence a pattern of ongoing criminal behavior. However, Respondent unfortunately failed to disclose the convictions as required by question 5 in the Application. While Respondent may, in fact, have misunderstood or mistakenly responded negatively to the applicable question, the relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue, or require any evidence with respect to intent or knowledge. There is therefore support for the Division’s assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations.

In light of the nature of the criminal convictions, the limited evidence provided by Respondent to meet Respondent’s “preponderance of evidence” test, and the failure to disclose the convictions as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent’s findings under Ohio Revised Code sections 1322.041 and 1322.07.

RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

Jeffery E. Smith, Hearing Examiner

31 Apr 04

Date