

IN THE MATTER OF: : CASE NO. 04-0227-LOD
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:
Karl P. Stefanoff : James J. Lawrence, Hearing Officer

I. FINDINGS OF FACT

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on August 23, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Karl P. Stefanoff (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted in 1992 of assault and resisting arrest without violence and in 1993 of attempted robbery and that he failed to disclose these convictions on his loan officer application filed in May of 2002. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322. for the following reasons:

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2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041 (A) (3);
3. 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 as required by R.C. 1322.041(A)(5).

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 8 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on May 14, 2004 by certified mail return receipt requested. (Exhibit 5.) The Division received the Respondent's hearing request on July 15, 2004. (Exhibit 7.) The Division scheduled the hearing for July 26, 2004 and, on its own motion, continued it to August 23, 2004. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit 8.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on May 6, 2002. (Exhibit 1.)
2. Question 5 of that application asked the following question:
 5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to 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?
3. In response to Question 5, the Respondent answered "No." (Exhibit 1.)
4. Respondent signed the application on April 30, 2002 before a notary public. Directly above the applicant signature line, the application states:

"Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 1.)

5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check revealed that the Respondent had been charged with robbery by the Brooklyn Ohio Police Department. (Exhibit 2.) By letter dated January 28, 2003, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing the disposition and sentence. Additionally, the Division asked the Respondent to complete a "multi-state offender" questionnaire. (Exhibit 3.)
6. The Respondent submitted a Journal Entry in Case No. CR-291143 that showed that on April 27, 1993 the Cuyahoga County Court of Common Pleas convicted the Respondent of attempted robbery, in violation of R.C. 2923.03/2911.02, a third degree felony. The Respondent also submitted a judgment entry from the County Court of Seminole County Florida that showed that on August 12, 1992 the Court in Case No. 92-005707MMA convicted the Respondent of the offense of resisting arrest without violence in violation of Florida law. (Exhibit 4.)
7. The Respondent explained that these offenses occurred when he was only eighteen and during a time when he was distressed over his father's illness and death. With respect to the conviction for attempted robbery, the Respondent explained that he was with a group of friends at a high school when an altercation with other youths occurred. One of his friends demanded that one of the other youths take off his Starter brand jacket. The Respondent and his group of friends took the jacket and left the school grounds. They were immediately apprehended by police. All of them were charged with robbery. (Exhibit 4; TR at 11, 26 – 27.) The resisting arrest conviction occurred after an altercation over a collision between the Respondent's vehicle and a golf cart. The Respondent was charged with assault and resisting arrest and pleaded guilty to the lesser offense. (TR 24 – 25.)

D. Respondent's Failure to Disclose Conviction

1. The Respondent did not disclose the convictions on his loan officer application. (Exhibit 1; TR at 20.)

2. The Respondent stated that he did not disclose the convictions because at the time that he completed the application, he read the question so that he was to indicate only convictions for the offenses specifically listed in the question. (TR at 20.) Additionally, he asked his employer's owner, Gary Habebe, who he believed to be a member of the Board of the Ohio Mortgage Brokers Association. Mr. Habebe advised him that he did not need to include the offenses because the question only concerned crimes involving money or securities such as embezzlement and laundering. (TR at 12, 20, 29.)

E. Respondent's Reputation and Character.

1. The Respondent testified about his activities and employment since the convictions. In 1993 or 1994, he went to work as a laborer at Premier Manufacturing. He worked there for seven to eight years and rose to the position of lead man. He left there to go to work for United Mortgage Group where he worked as a loan officer and later as production manager for three and a half years. He now works for Ohio Lending Solutions as a loan officer. (TR at 27 – 28.) He married his high school sweetheart in 1997 and they have a four year old son. (TR at 21.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

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

B. Loan Officer License Application.

1. R.C. 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 of 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. R.C. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent of the Division of Financial Institutions requires. Pursuant to this provision, in question 5 of the application the Superintendent asks for information about convictions for any criminal offense.

3. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 or the Revised Code.

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven 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 honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

* * *

(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 sections 1322.01 to 1322.12 of the Revised Code.

4. R.C. 1322.07 provides, in part, that no applicant for a license under sections 1322.01 to 1322.07 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 misrepresentation in any registration or license application.

(B) Make any 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.

* * *

5. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the Cuyahoga County Court of Common Pleas of the offense of attempted robbery and in the County Court of Seminole County Florida of the offense of resisting arrest without violence.
2. The Division alleges that these convictions show that the 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. However, the Respondent committed the offenses that gave rise to these convictions more than twelve years ago. Since then, the Respondent has married, had a child and been continuously employed, first with a machine company and then, the last four years, in the mortgage industry. While the length of time since the convictions does not diminish the seriousness of the offenses, the passage of time, together with the changed circumstances in the Respondent's life and the lack of any further offenses does diminish their weight as evidence against the Respondent's character and against the belief that the Respondent will conduct himself as a loan officer honestly and fairly. Based upon the fact of the convictions alone, the Division has not established that the Respondent's character and general fitness do not command the confidence of the public. Nor do they, by themselves, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
3. The Division alleges that the Respondent's failure to disclose the convictions on his loan officer application shows that his 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. However, the Respondent explained that he incorrectly read question 5 of the application and misunderstood its meaning. The Respondent sought the counsel of the owner of the company before answering the question. Moreover, the Respondent signed the National Background Check, Inc. Registration Form that authorized the release of his criminal history information in the files of the Ohio Bureau of Criminal Identification and Investigation to the Division. He had to know that

simply answering "No" to question 5 would not prevent the Division from discovering his criminal history. The Respondent's failure to disclose the convictions in his response to question 5 shows that he did not put enough thought and effort into completing the application. The facts in this case do not show that the Respondent's failure to correctly answer question 5 on the application was done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

4. R.C. 1322.041 provides, among other things, that since Respondent was convicted of attempted robbery the Respondent must prove by a preponderance of the evidence, that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again. (R.C. 2913.01(K)(1) provides that a theft offense includes, among other offenses, the offense of robbery.)
5. The Respondent testified that since the conviction for attempted robbery, he worked for Premier Manufacturing for seven to eight years rising to the position of lead man and then worked for United Mortgage Group for over three years rising to the position of production manager. He is currently employed by Ohio Lending Solutions. Also, since the conviction he has married, had a child and supports his family. He committed the offense while young, eighteen years of age and shortly after his father's death. Moreover, the offense, while serious, was of a kind that is committed by young men and not likely to be repeated later in life. Therefore, the conviction itself is not strong evidence that the Respondent is untrustworthy, dishonest and likely to commit another similar offense again today. On the other hand, the Respondent's employment history and stable family life are strong evidence that he is trustworthy and honest and not likely to commit a similar offense again. The Respondent has shown by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again.
6. When Respondent failed to disclose his convictions on his loan officer application, he did violate R. C. 1322.07(A), in that he omitted a material fact required by state law from a license application. In doing so, he failed to comply with R.C. 1322.01 to 1322.12.

7. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading of the question and miscommunication with his employer. He did not omit the information to deceive or mislead the Division. The purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,



James J. Lawrence
Hearing Officer
September 27, 2004