

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

In re: Larry L. Heydon

Case No. 04-0241-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 Larry L. Heydon not be granted. The Division conducted an investigation and found:

- a. In or around 1992, in the Municipal Court of Portage County, Ohio, Mr. Heydon was convicted of disorderly conduct, a misdemeanor of the fourth degree.
- b. In or around 1994, in the Municipal Court of Portage County, Ohio, Mr. Heydon was convicted of two counts of theft, misdemeanors of the first degree.

2. As a result, the Division determined:

- a. Mr. Heydon has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving theft, or any criminal offense involving money or securities as set forth in Revised Code Section 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Heydon'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).

3. Mr. Heydon's address for service is 2961 House Drive, Akron, Ohio, 44319. He is hereinafter referred to as the "Respondent". The Respondent is employed by Aegis Lending, 23230 Chagrin Boulevard, Suite 425 Beachwood, Ohio 44122. (Exhibit 1A).

4. This matter was initiated by the Superintendent of the Division by the issuance, on January 23, 2004, of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing. (Exhibit 1A). The Respondent signed a certified mail receipt for that document. (*Id.*).

5. On January 30, 2004, the Division received a Hearing Request Form signed by the Respondent. (Exhibit 6)

6. On February 2, 2004, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing in this matter for 9:00 a.m. on February 9, 2004 (Exhibit 1C). The hearing was simultaneously continued until Tuesday, March 2, 2004 at 3:00 pm in Room 1908 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. (*Id.*).

7. The hearing was held beginning at 3:00 pm on Tuesday March 2, 2004 and was attended by: John A. Izzo, Assistant Attorney General of the Executive Agencies Section, the Respondent, *pro se*, and Dianne Wagenbrenner, Staff Attorney for the Division.

8. 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 April 28, 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 3). The Respondent was given the standard Explanation And Instructions. (Exhibit 2).

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? 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" and wrote "previous record expunged." (Exhibit 3).

4. Following submission of the Application, on May 21, 2003, the Division contacted the Respondent by letter indicating that the Division was unable to decide whether to issue a license because the Respondent's Background Check showed an August 29, 1992 arrest for indecent exposure and an April 29, 1994 arrest for possession of criminal tools and two counts of theft (Exhibit 4).

5. In response to that letter, on May 29, 2003, the Respondent submitted a written explanation as follows:

In response to your letter, I have obtained the documentation you have requested. I didn't list the dates or offenses because they should have been expunged. Now I see that they are still showing on my record. I have talked to an attorney about getting the previous expungement proceedings back.

The documents say just about everything that happened, but doesn't reflect my side on either.

The first offense, the public indecency [*sic*], I did do the offense, which was dropped to a disorderly conduct. But what happen was the restaurant wouldn't let me in because of being closed and nothing else was open and I was on foot. As stupid as it was, I had no choice, I did go behind some shrubs, out of plain view, but was noticed by the officer.

The second offense, I was the driver, I went to the Glen Morris apartments to see a girlfriend and had 2 of my friends with me., When we got there, I went inside for about one hour and I thought my friends went to the store down the road. I came back out and they were in the car and ready to go. Next thing I know, police cars are at my house arresting me, seems someone caught my license plate. I explained this to the officers and they wanted no excuses. I was able to plea to misdemeanors so no jail time was required, I paid a big fine and that was it. I was told that these charges were filed because my friends, that I no longer talk to anymore, said that I was involved. The victim didn't want to drop any charges against any of us. So I was pinned into the charges.

I'm not trying to get out of the charges, but I did want to give my side of the story. Since then I have moved out of the 'College house,' purchased my own home, become a successful loan officer and also obtained a degree in Criminal Justice, the same field that got me in this trouble, go figure.

I appreciate your review of my application and hope these 2 incidents, almost 10 years old, don't hurt my chances to obtain my license.

6. The Respondent also supplied copies of the court records showing the 1992 conviction for disorderly conduct (Exhibit 6) and the 1994 conviction for two counts of misdemeanor theft. (Exhibit 7)

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:

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Because the Respondent has been convicted of a theft 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. In order to grant a license, the Superintendent of the Division must find that the 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 in compliance with the provisions of the Ohio Mortgage Broker Act.

DISCUSSION

1. The Respondent's explanations for the two criminal matters are set forth in the transcript beginning on page 18. In 1992, the Respondent was involved in a late night public urination episode that ultimately was reduced to disorderly conduct. (*See* Tr. 18). In 1994, the Respondent was the driver of an automobile. (Tr. 19). He gave a ride to two friends. He dropped off the friends at a house and waited for them. (*Id.*). Before long, they returned with

stolen merchandise from that house. (*Id.*). He pled guilty to two misdemeanor counts of theft. (*Id.* See Exhibit 7).

2. The Respondent, at the time of submitting his Application, wrote that his convictions had been expunged. There is no evidence in the record of a court order granting an expungement to any criminal conviction involving the Respondent. The Respondent asserts that he contacted an attorney to discuss an expungement. (*See* Tr. 20). That attorney is no longer practicing. (*Id.*).

3. At the time of the hearing in this matter, the Respondent was within one day of being 32 years of age. (Tr. 20). He was graduated from Streetsboro High School in 1990 and attended the University of Akron. Respondent submitted a photocopy of his diploma from the University of Akron showing that it was received on August 16, 1997, and that the Respondent was granted an Associate of Applied Science in Criminal Justice Technology. (Respondent Exhibit A).

4. The Respondent will have worked for Aegis Lending for three years as of June, 2004. (Tr. 21). Prior to that, he worked for TruGreen ChemLawn for five years. (*Id.*). Prior to that, he worked at Brown Derby Restaurants for four years. The Respondent is single and has no dependents. (*Id.*).

5. The Respondent also conducts landscaping business under the name Larry Heydon Landscaping. (Tr. 22).

6. The Respondent submitted several letters of support. In a letter dated March 1, 2004, from the Respondent he wrote about the two criminal offenses and his work at the University of Akron. (*See* Respondent's Exhibit B).

7. The Respondent submitted a letter from Scott A. Miller, Branch Manager for Aegis Lending, in support of the Application. Mr. Miller wrote that the Respondent has eclipsed every production record and is one of the top loan officers. (*See* Respondent's Exhibit C). Respondent also submitted a letter from William C. Massey, the CEO of Aegis Lending Corporation. (Respondent's Exhibit D). Also submitted was an unsigned letter from Daniel M. David, Regional Vice President of Aegis Lending, who wrote that he has supervised the Respondent for three years and that the Respondent has an outstanding record with the company. (Respondent's Exhibit E).

8. Michelle E. Carr, a loan processor with Aegis Lending, also submitted a letter. She wrote that she was worked with the Respondent daily for almost three years and has found him to be professional and courteous. (Respondent's Exhibit F). The Respondent also submitted a letter from Jennifer Romano, loan processor with Aegis Lending, who has known the Respondent for three years and has likewise found him to be respectful, professional and courteous. (Respondent's Exhibit G).

9. Exhibit A submitted by the Respondent is a composite exhibit showing multiple communications from customers praising the Respondent's work as well as copies of certificates

of appreciation received by the Respondent from Aegis Lending Corporation for having met various production goals. Likewise, Exhibit I submitted by the Respondent is a composite exhibit showing production rankings for Aegis Lending for various months beginning in October 2001 and ending in January 2004. These records indicate the high production volume of the Respondent. Finally the Respondent submitted a copy of the *Aegis Voice*, the magazine of Aegis Lending. The Respondent is listed on page 9 of that magazine in a list of loan officers who are credited with "exceptional customer experiences". (Exhibit J).

10. The Hearing Officer recognizes that the Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that his/her activities and employment record since the conviction, show that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again. In this case, the offense conducted was theft. Likewise, the Hearing Officer notes that in order for the Superintendent of the Division, to issue a license, the Superintendent must find that the 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 in compliance with the purposes of Section 1322.01 to Section 1322.12 of the Revised Code.

11. There is considerable confusion on the part of the Respondent as to whether his criminal convictions were expunged. The Respondent insists that he contacted an attorney, paid that attorney a fee, and then assumed that the conviction would be expunged. (See Tr. 31-33). The Respondent knew in 1996 or 1997, however, that his convictions had not been expunged. (Tr. 33). He wrote on the application that his conviction has been expunged because "I guess I just assumed it was expunged because I never heard back from them." (Tr. 33-34). The Respondent also operates a separate landscaping business and did not reflect that fact in answering Question 3 of the Application, which inquires as to whether the applicant will hold any other job. (Tr. 35).


12. In this instance, the Hearing Officer cannot conclude that the Respondent has met his burden of proof in this matter. His mere assertion that his criminal record is expunged is not sufficient. At the time of the filing of the Application, the Respondent's criminal convictions for misdemeanor theft and for disorderly conduct were in existence. The failure to disclose a criminal conviction on the Application is a serious matter. The Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to its application questions. The level of transparency expected in the Application should be every bit as much as the transparency in the mortgage loan processing market. Question 5 of the Application is unambiguous in its applicability to this Respondent. The failure to answer Question 5 fully and truthfully is unacceptable. The Respondent has not shown by a preponderance of the evidence that his activities and employment record, since his convictions, show that he is honest, truthful and of good reputation and that there is no basis for, in fact, believing that he will commit such offenses again. In particular, the Hearing Officer finds that the record is nearly devoid of evidence of the Respondent's activities outside of the employment context. Further, considering that the Applicant has failed to answer Question 5 truthfully and failed to answer Question 3 truthfully, the Hearing Officer cannot conclude that the record shows that the Superintendent of the Division can find that the Respondent's character and general fitness command the

confidence of the public and warrant the belief that the business will be operated fairly and honestly in compliance with the purposes of the Ohio Mortgage Broker Act. The failure to answer Questions 5 and 3 truthfully is evidence of the dishonesty. Further, the criminal offenses occurred in the relatively recent past. The theft convictions are hard to justify in relationship to the Respondent's position as a loan officer entrusted with confidential customer information.

RECOMMENDATION

Based upon the above 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. Cook
Hearing Officer
May 3, 2004