

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

07 JAN -2 PM 12:55

IN THE MATTER OF: : CASE NO. M2006-9992893
:
:
Craig L. Gabriel : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
December 27, 2006

I. FINDINGS OF FACT

A. Background

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 9:00 a.m. on November 30, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Craig L. Gabriel (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 of unauthorized use of property in 1987. 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:

1. 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 commit such an offense again as required by R.C. 1322.041 (A) (3);
2. Respondent's conviction 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 as required by R.C. 1322.041(A) (5);

Todd A. Nist, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the

hearing. The Respondent failed to appear at the hearing without explanation for his absence. At the hearing, State's Exhibits A through H were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on July 13, 2006 by certified mail, return receipt requested. The U.S. Postal Service returned the envelope marked "Unclaimed." Thereafter, on August 11, 2006, the Division remailed the NOH to the Respondent and again, the mail addressed to the Respondent was returned marked "Unclaimed." (Exhibit B.) The Division caused the NOH to be published in the Dayton Daily News on August 29, September 5 and 12, 2006 and sent notice of this publication to Respondent by regular mail on October 18, 2006. (Exhibit C.) The Division received Respondent's hearing request on October 27, 2006. (Exhibit D.) The Division scheduled the hearing for November 6, 2006 and, on its own motion, rescheduled the hearing for November 30, 2006. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit A.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on March 1, 2006. (Exhibit E.)
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? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "Yes" (Exhibit E; TR at 12.) The Respondent attached a statement to his loan officer application in which he disclosed that he had been charged with passing bad check in 1987. (Exhibit E.)
4. By letter dated March 10, 2006, the Division required the Respondent to submit a certified copy of the judgment entry evidencing the plea and the court's findings with respect to the charge of passing bad check. (Exhibit F.)
5. The Respondent submitted a certified Docket Sheet summary from the Miami County Municipal Court. The Docket Sheet for case number 1986-CR-B-002928 shows that on April 22, 1987 the Court found the Respondent guilty of unauthorized use of property. The Court fined Respondent \$250.00, suspending \$225.00 and imposed costs of \$117.80. The Docket Sheet does not indicate that the Court imposed any jail time or any period of probation. (Exhibit G.)
6. In the statement attached to the loan officer application, Respondent explained that the bad check charge occurred because he had made

bookkeeping mistakes involving his check register and certain deposits. He further stated that he had learned a valuable lesson from this experience and had not had any similar incidents since 1987. (Exhibit E.)

7. The Division received letters from seven individuals in support of Respondent's honesty, truthfulness and good reputation. Some of the writers had known Respondent for many years. Some were friends, others worked with Respondent. Mr. David C. Torre, President of First National Mortgage Banc, Inc., Respondent's prospective employer as a loan officer, wrote that he has known Respondent for thirty years and that Respondent is the exact type of person that he wants representing his company and industry, hardworking, ambitious, conscientious and principled. (Exhibit H.)
8. No witnesses appeared at the hearing on Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The hearing officer in this matter has considered letters written on Respondent's behalf by people who were not present at the hearing. If Respondent had presented these letters for consideration at the hearing, the Attorney General would have objected to their admission as hearsay evidence. Because they were part of the Division's file, no such objection was made. The hearing officer has considered the letters as indicating that people who know the Respondent were willing to write letters on his behalf. The hearing officer has given the statements in the letters little weight because he had no opportunity to observe the witnesses as they gave testimony, to judge the credibility of their testimony and to benefit from their responses to cross examination by the Attorney General.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041 (A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that the applicant meets certain conditions including:

* * *

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), 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 R.C. 1322.01 to 1322.12.
3. The Superintendent has promulgated Ohio Adm. Code 1301:8-7-21 which provides that in determining "character and general fitness" as those terms are used in R.C. 1322.041(A)(5) the Superintendent shall consider whether the applicant [for a loan officer license] has, among other things, been found guilty within the prior ten years of any misdemeanor involving deception, moral turpitude, or any offense listed in R.C. 1322.031(A)(2).
 4. The NOH states that Respondent has not shown 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, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if an applicant for a loan officer license has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Unauthorized use of property is a theft offense, one of the types of offenses described in R.C. 1322.031(A)(2). Since the Respondent was convicted of unauthorized use of property 1987, the burden is on the Respondent to prove 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.
 5. The Respondent has met this burden. Although the offense committed by the Respondent was serious, the Respondent committed the offense when he was young, twenty-one years of age. An offense committed many years ago, when the Respondent was young and immature, is not strong evidence of his character and general fitness today. As of the date of this Report and Recommendation twenty years have passed since Respondent was charged with passing a bad check. On the other hand, the record shows that Respondent's life in the intervening twenty years is free of similar incidents. Respondent's statement that he learned from the mistakes that he made as a young man and had not had any similar incidents in the intervening twenty years is credible and is sufficient in this case to overcome the burden imposed by R.C. 1322.041(A)(3).

6. The NOH states 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 as required by R.C. 1322.041(A)(5). The Division bases this finding on the fact that the Respondent was convicted of a criminal offense involving theft in 1987.
7. The Respondent's criminal conviction does not support a finding 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 as required by R.C. 1322.041(A)(5). The conviction occurred more than ten years prior to Respondent's application for a loan officer license. Pursuant to Ohio Adm. Code 1301:8-7-21 (B), the Superintendent will not consider such a conviction in determining character and general fitness for purposes of R.C. 1322.041(A)(5). In the absence of the single criminal conviction in 1987, the record is devoid of evidence that questions the Respondent's character or general fitness today.
8. Respondent has proven by a preponderance of the evidence that his activities and employment in the twenty years since his conviction prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing that Respondent will commit such an offense again. Moreover, the record in this proceeding does not contain evidence 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 as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has fully met the requirements for a loan officer license under R.C. 1322.041(A). Therefore, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A).

Respectfully Submitted,

 James J. Lawrence
Hearing Officer
December 27, 2006