

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS
04 OCT 14 AM 8:51

IN RE: : CASE NO. 04-0212-LOD
JEFFREY B. SAWYER : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued October 13, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on July 19, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jeffrey Sawyer ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of disorderly conduct and driving under the influence and violated R.C. 1322.07(A), (B) and (C) by failing to disclose those convictions on his loan officer license application. Therefore, the Division asserted 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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose the convictions on his application; and
2. 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).

Tony Siciliano, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified 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 January 22, 2004. The Division served the NOH on Respondent by certified mail after the first attempt to do this failed. Respondent's hearing request was received by the Division on April 15, 2004, prior to the April 29, 2004 deadline stated on the hearing request form the Division sent to Respondent. The Division scheduled the hearing for April 26, 2004 and continued it indefinitely on its own motion. The hearing was then set for July 19, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of the hearing.

C. Respondent's Loan Officer Application and Criminal Convictions.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1.)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
4. Respondent signed his loan officer license application ("Application") on February 6, 2003. The Division received the Application on February 10, 2003. (Application State's Exhibit 1.)
5. Respondent answered "No" to Question 5 on the Application, which asked:

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.

(Application, State's Exhibit 1.)

6. In response to the Division's inquiry, Respondent provided court documents establishing that he had a 1997 conviction for disorderly conduct and 1999 conviction for driving under the influence. (State's Exhibits 3 and 4.)

7. The disorderly conduct conviction was the result of a fight he had with a girlfriend. According to Respondent, she became upset, broke kitchen glassware, hit Respondent, and screamed obscenities at him. He called 911 but when the police arrived, she claimed that they had been physically fighting and Respondent was arrested. (State's Exhibit 4; Hearing Transcript at 11.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
8. The driving under the influence conviction occurred after Respondent broke up with a girlfriend and went out drinking with some friends. (State's Exhibit 4; TR at 11.)
9. Respondent has no similar criminal convictions after the 1999 conviction. (State's Exhibit 4; TR at 11, 19, 23.)

D. Respondent's Incorrect Response to Question Five.

10. Respondent did not disclose the 1997 conviction for disorderly conduct and 1999 conviction for driving under the influence on his Application. The Respondent consistently and credibly explained that he made an inadvertent mistake because he thought the Division only wanted information on felony convictions. His boss told him that he only needed to disclose felonies. (State's Exhibit 4; TR at 10, 18-20.)
11. The Hearing Officer finds that Respondent made a mistake on the Application but he did not try to hide the convictions from the Division or make any statement that he thought or knew was false on the Application. The Respondent did not omit any information that he thought or knew he should disclose from his Application.

E. Respondent's Reputation and Character.

12. Respondent worked as a travel manager for eight years, in medical sales for four years, and as a loan officer for almost two years. He has had no problems in these positions. He enjoys working as a mortgage loan officer and receives referral business from others. (TR at 20-24.)
13. After the driving under the influence conviction, Respondent's brother encouraged him to get his life together and he did so. Respondent went to Alcoholics Anonymous and church. Alcohol and drugs are no longer a part of his life. He now focuses on his family, his daughter, and his job. (TR at 11-12, 19, 26-27.)

II. CONCLUSIONS OF LAW

A. Jurisdiction 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. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 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 of the Revised Code.

(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.

R.C. 1322.041(A)(2) and (5).

3. Respondent was convicted of disorderly conduct in 1997 and driving under the influence in 1999.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He made an inadvertent mistake because he did not understand the scope of the question.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He made an inadvertent mistake because he did not understand the scope of the question. Respondent made a mistake on the Application but he did not try to hide the convictions from the Division or make any statement that he

thought or knew was false on the Application. The Respondent did not omit any information that he thought or knew he should disclose from his Application.

6. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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. That Section does not require a conviction for driving under the influence to be disclosed on an application for a loan officer license. It also does not require a conviction for disorderly conduct to be disclosed on such an application. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his application.
7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent made an inadvertent mistake because he did not understand the scope of the question. He did not try to hide the convictions from the Division or make any statement that he thought or knew was false on the Application. The Respondent did not omit any information that he thought or knew he should disclose from his Application. An inadvertent mistake by itself does not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C.1322.07(C).
8. There is no basis for establishing any violations of R.C. 1322.07(A), (B) or (C) by the Respondent.
9. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by R.C. 1322.041(A)(2).
10. The Respondent admitted that he made an inadvertent mistake because he misunderstood Question 5 on the Application. The convictions relied upon by the Division and the fact that the Respondent made a mistake on his Application, do not prove that the Respondent is not fit to work as a loan officer. The Respondent's testimony about events after the convictions and his work history indicate that Respondent's character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5). It is the Division's burden to prove otherwise and it has not done so.

III. RECOMMENDATION

The Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Jaňe Stempel Arata
Administrative Hearing Officer
October 13, 2004