

Bob Taft
Governor

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

Doug White
Director

In the matter of:)	Case No. 04-0009-LOD
)	
ALICIA R. EL)	<u>DIVISION ORDER</u>
2470 Professor Avenue)	
Cleveland, Ohio 44113)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On February 24, 2003, Alicia R. El ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of her right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on May 25, 2004.

The hearing officer filed her written report and recommendation with the Division on June 30, 2004, recommending that the Division deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent. Respondent did not file objections.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

- The Division modifies paragraph 11 on page 3 of the Report and Recommendation.

Paragraph 11 on page 3 reads:

"Respondent explained that she did not disclose the theft conviction because she thought it was not as important as the felony conviction that she disclosed since it was a misdemeanor. (TR at 33-34.)"

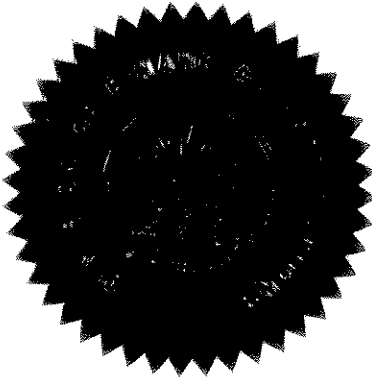
The transcript does not contain a page 33 or 34, however the facts of paragraph 11 are contained on pages 18 and 19 of the transcript.

Paragraph 11 on page 3 shall read:

"Respondent explained that she did not disclose the theft conviction because she thought it was not as important as the felony conviction that she disclosed since it was a misdemeanor. (TR at 18-19.)"

NOTICE OF RIGHT TO APPEAL

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.



Signed and sealed this 29th day of July 2005

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

Certified Mail No. 7002 2030 0002 6804 7450

Exhibit A

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0009-LOD
: :
ALICIA RANAY EL : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 30, 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 May 25, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Alicia Ranay El ("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 theft in 1998 and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on her 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 conviction on her application;
2. Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit such an offense again as required by R.C. 1322.041(A)(3); and
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).

Joseph M. Marotta, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. John L. Lemieux represented the Respondent at the hearing. At the hearing, State's Exhibits A through K were admitted into the record.

The record was left open until June 14, 2004 for the submission of affidavits by the Respondent. Three affidavits were received by the Hearing Officer on June 25, 2004. The affidavits were in an envelope postmarked June 22, 2004. They were marked as Respondent's Exhibit 1 for reference.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 19, 2004. The Division's March 2, 2004 letter to Respondent set the hearing for March 4, 2004, and continued it indefinitely. The Division's March 30, 2004 letter to Respondent set the hearing for May 25, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Conviction for Theft.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A; Hearing Transcript at 17-18.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
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. On February 18, 2003, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on February 24, 2003. (State's Exhibit A.)
4. Question 5 on the Application 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 A; TR at 18.)

5. Respondent answered "Yes" to Question 5 and only disclosed that she had "pleaded guilty to a Felony 5 for cannabis possession."
6. Respondent's signature on the Application is notarized. 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." (State's Exhibit A.)
7. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
8. Respondent's background check revealed a 1998 theft conviction that was not disclosed on the Application. In response to the Division's inquiry, the Respondent submitted certified copies of a Cuyahoga County Court of Common Pleas Journal Entry establishing Respondent's conviction for attempted possession of drugs in 2001 and a Shaker Heights Municipal Court docket sheet evidencing her theft conviction in 1998. (State's Exhibits C, D, E and F.)
9. The theft conviction resulted from Respondent's unsuccessful attempt to steal two men's shirts from a department store. Respondent stated that she did this "for no apparent reason – just to see if I could get away with it." She testified that at the time she was in her 30s, going through a midlife crisis, and doing things that a teenager would do. Respondent accepted responsibility for her actions and stated that she learned a lesson from it all. After ten days in jail, she no longer has any desire to steal. (State's Exhibit F; TR at 13-14.)

D. Respondent's Failure to Disclose Theft Conviction on Application.

10. The Respondent did not disclose the 1998 theft conviction on her Application. (State's Exhibit A; TR at 18.)
11. Respondent explained that she did not disclose the theft conviction because she thought it was not as important as the felony conviction that she disclosed since it was a misdemeanor. (TR at 33-34.)
12. Regardless of Respondent's belief about whether it was important, it is clear that she understood that she had a criminal conviction for theft.
13. Respondent's response to Question 5 indicating that she had a criminal conviction but only disclosing the cannabis conviction was false and misleading. She knew she had a theft conviction and failed to disclose it.

14. The Hearing Officer finds that the Respondent knew that she had a theft conviction that should have been disclosed on the Application. Her explanation for not doing so was not credible and indicated that she simply did not want the Division to find out about this conviction.

E. Respondent's Reputation and Character.

15. The Respondent is currently employed by Sunshine Mortgage and manages a co-ed clothing store. She testified that she is honest, hardworking and active in her church. She believes that she is of good character and fit to handle other people's financial matters. (State's Exhibit A; TR at 15-18.)
16. After the hearing, Respondent submitted affidavits from three individuals who have known her for at least three years. They arrived more than one week after the date they were due and Respondent did not attempt to seek a continuance of the date set for their submission. In addition to being late, the affidavits included very little information regarding how well the affiants knew the Respondent and the underlying factual bases for the conclusions and opinions stated therein. The affiants were not available for cross-examination regarding the information set forth in the affidavits. For these reasons, the affidavits were not admitted into the record and were given no weight by the Hearing Officer in this matter.

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 1322.031(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 requires a theft conviction to be disclosed on an application for a loan officer license.

3. 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.

(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.

R.C. 1322.041(A)(2), (3) and (5).

4. Respondent was convicted of theft in 1998.
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. 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.
7. Respondent's response to Question 5 of the Application indicating that she only had one cannabis possession conviction was a substantial misrepresentation of her criminal record on her application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that she did not have any other criminal convictions, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding her theft conviction required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings.

10. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that she only had the one criminal conviction on her loan officer license application.
11. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
12. Once the theft conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
13. Instead, the evidence established that she was convicted of attempted possession of drugs and failed to disclose the 1998 theft conviction on her Application. Question 5 of the Application explicitly mandates disclosure of all criminal convictions including theft convictions. Respondent's failure to disclose the theft conviction precludes her from establishing that she is honest, truthful, and of good reputation.
14. The Respondent did not establish that it is unlikely that she will commit an offense similar to the theft offense in the future. This burden of proof is hard to meet when, as in this situation, the individual has had another recent criminal conviction. It is hard to predict the future and extremely difficult to prove that someone is unlikely to commit a similar crime in the future when the person has a recent felony conviction for attempted possession of drugs.
15. Respondent did not prove by a preponderance of the evidence that she is honest, truthful and of good reputation. She also failed to prove by a preponderance of the evidence that there is no basis in fact to believe that she will commit an offense similar to the theft offense again. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
16. The recent conviction for attempted possession of drugs and Respondent's failure to disclose the 1998 theft conviction on her Application, establish that her 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,

✓
Jane Stempel Arata
Administrative Hearing Officer
June 30, 2004