

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

04-0208-LOD
7:43

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Gregory D. Tatum

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0208-LOD**

FINDINGS OF FACT

1. On or about May 2, 2002, Gregory D. Tatum ("Respondent" herein) submitted an application and related materials (together with materials subsequently submitted by Respondent and accepted by the Ohio Department of Commerce, Division of Financial Institutions, collectively the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a Loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the offices of the Ohio Division of Financial Institutions on March 8, 2004. At the Hearing, the Respondent appeared *pro se*, and the Division was represented by Assistant Attorneys General Anthony D. Siciliano, Esq. and Monica L. Rausch, Esq.. Diane Wagenbrenner, staff attorney for the Division, was also present on behalf of the Division.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 16)
5. As of the date of the Application, Respondent was employed as a loan officer by 1st Metropolitan Mortgage Company.

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

At the Hearing, Respondent and the Superintendent stipulated to the Superintendent's evidence relating to the various criminal convictions of Respondent as described in the Notice. (Tr. Page 16) Respondent testified that he failed to disclose the referenced criminal convictions in the Application because of an "...honest mistake; I misread the question." (Tr. Page 18) Other than his own testimony regarding his purported misunderstanding of the requirements of question 5 of the Application, Respondent did not present any other evidence or testimony to explain why he failed to disclose his criminal convictions in response to the referenced question in the Application.

Respondent and Respondent's long-time friend and co-worker, Mr. Lowell Sawyer, were the only witnesses appearing on behalf of Respondent in the Hearing. Respondent also submitted certain unsubstantiated written testimonials on his behalf. Respondent testified with respect to his response to question 5 of the Application, as well as his actions and activities since his most recent criminal conviction, including family and church involvement and activities. (Tr. Pages 18 through 26, and 35 through 40) Mr. Sawyer did not testify as to why Respondent failed to disclose his criminal convictions in the Application, but did testify with respect to Respondent's personal character and reputation, as well as Respondent's personal attributes. (Tr. Pages 27 through 34)

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination,

based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

The legislature also provided in Ohio Revised Code section 1322.041(A)(3) that, upon conviction of certain enumerated offenses, an applicant must provide proof by a preponderance of the evidence that the applicant has met the standards set forth in that section to overcome the automatic disqualifier provisions of that section.

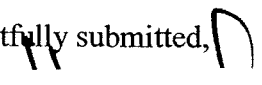
The only evidence presented by Respondent relating to Respondent's character and fitness under Ohio Revised Code section 1322.041(A)(5), and the factors considered in Ohio Revised Code section 1322.041(A)(3) in overcoming his prior convictions, consisted of his own testimony and that of his friend and co-worker, Mr. Sawyer. Beyond that, Respondent presented no objective evidence in support of his contention that the Superintendent's findings under Ohio Revised Code sections 1322.041(A)(3) and 1322.041(A)(5), as set forth in the Notice, are inappropriate and incorrect.

Unfortunately, Respondent failed to disclose his extensive history of criminal convictions as required by question 5 of the Application. Irrespective of the credibility of Respondent's testimony, his actions and activities since his most recent criminal conviction, or the fact that the convictions occurred some time ago, the relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue. Therefore, there is support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations

In light of Respondent's failure to provide objective testimony contradicting the Superintendent's assertions under Ohio Revised Code sections 1322.041(A)(3) and 1322.041(A)(5), and Respondent's failure to disclose the convictions as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.041 and 1322.10.

RECOMMENDATIONS

For the reasons set forth herein, the referenced Application of the Respondent should be denied.

Respectfully submitted, 

Jeffery E. Smith, Hearing Examiner



Date