

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

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DIVISION OF FINANCIAL  
INSTITUTIONS

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**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Stan M. Hoard**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0014-MBD**

**FINDINGS OF FACT**

1. On or about March 29, 2004, Stan M. Hoard ("Respondent" herein) submitted a renewal application (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for continued licensing as a mortgage broker as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A herein.
2. On or about September 10, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.04 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) on December 21, 2004, at the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. At the Hearing, Respondent was represented by Terrance A. Grady, Esq., and the Division was represented by Assistant Attorney General James M. Evans, Esq. and Timothy C. Winslow, Esq., Staff Attorney for the Division.
4. As of the date of the Application, and at all times relevant hereto, Respondent was the owner of Hoard and Associates.

## **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 1322.04 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 mortgage broker.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.03, 1322.04, and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

Section 1322.04(A)(7) of the Ohio Revised Code states that the Superintendent shall issue a mortgage broker license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the mortgage broker license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences a conviction in 2004 of federal income tax evasion, which unfortunately reflects the very type of criminal offense the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.03(A)(7).

Respondent answered question 1 of the Application in the affirmative, and provided further information concerning the conviction upon inquiry by the Division. In a previous renewal application however, dated March 28, 2003 (the "2003 Renewal Application"; State's Exhibit 9), respondent failed to disclose the then-pending Internal Revenue Service investigation which resulted in the conviction. Respondent acknowledged the failure to disclose the pending investigation in the 2003 Renewal Application, but stated that the failure to disclose was an "oversight" or "mistake", despite the fact that the investigation had been ongoing since 2000 according to the testimony of Respondent (Tr. Pages 23, 25, 26, 31, 32, 33, 73, 79, 83, 84)

Respondent further testified that as early as 2001 Respondent was aware that the then-pending and ongoing investigation was likely to result in criminal charges (Tr. Pages 27, 28, 74), but still failed to disclose the pending investigation, or any information whatsoever relating to the investigation, including the likelihood of criminal charges, in the 2003 Renewal Application.

The record is replete with admissions and acknowledgement by Respondent that he in fact failed to disclose the pending investigation, and the known likelihood of criminal charges, to the Division in the 2003 Renewal Application or any time thereafter prior to the filing of the Application.

The Division provided testimony through its employee, Ms. Palazij, that there was no indication or record in the Division's file that Respondent had provided disclosure of the investigation, or the likelihood of criminal charges, prior to the filing of the Application. (Tr. Pages 88, 89)

The legislature also recognized, in Ohio Revised Code Section 1322.04(A)(7), that circumstances may arise when that criminal record may not reflect real changes in an individual which have occurred since the facts that gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.04(A)(7) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

In addition to his own testimony, Respondent presented several witnesses at the Hearing. Respondent's witnesses testified generally in a similar manner, which can be characterized as supportive of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and that 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. Respondent's witnesses included current and former customers as well as Mrs. Marcel Hoard, Respondent's spouse and a co-worker at Hoard and Associates.

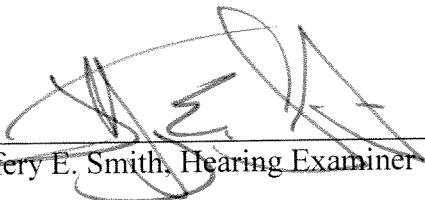
While the conviction itself does not appear to evidence a pattern and practice of criminal behavior, the failure to disclose the pending investigation and pending criminal charges in the 2003 Renewal Application is unfortunately inconsistent with Respondent's burden of proving, by a preponderance of the evidence, that he should be entrusted with the responsibilities of acting as a mortgage broker under Ohio law in the State of Ohio and is an individual whose character and general fitness will, and does now, command the confidence of the public and warrant the belief that the business will be operated honestly and fairly, consistent with Ohio Revised Code Section 1322.04(A)(10).


The relevant provisions of Ohio law do not provide for excuse or mitigation due to "mistake" or "oversight" in failing to disclose material information to the Division, and Respondent was clearly aware, based on his own testimony, of the existence of the investigation and the likelihood of criminal charges in sufficient time for disclosure to the Division in the 2003 Renewal Application. Failure to disclose these matters to the Division unfortunately adversely impacts on Respondent's overall credibility, character, and fitness, and his ability to meet the statutory "preponderance of evidence" test imposed by Ohio Revised Code Section 1322.04.

RECOMMENDATIONS

For the reasons set forth herein, it is recommended that the referenced Application of the Respondent be denied.

Respectfully submitted,

  
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Jeffery E. Smith, Hearing Examiner

  
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Date