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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0225-LOD
JOSEPH J. WAITS : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued September 7, 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 18, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Joseph J. Waits ("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 aggravated assault and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction 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 conviction 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).

Martine Jean, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. John G. Neal represented Respondent at the hearing. At the hearing, State's Exhibits 1, 2, 3, 4A, 4B, 5A, 5B, 5C, 5D, 5E, 5F, and 6, and Respondent's Exhibit 1 were admitted into the record. Respondent proffered Respondent's Exhibit 2 after it was not admitted into

the record. The record was left open until June 9, 2004, for the Division to submit a copy of Respondent's request for a hearing indicating when it was received by the Division. The Division submitted that document and it was added to the record as the last page of State's Exhibit 1.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 23, 2004. Respondent's hearing request was received by the Division on February 17, 2004. The Division scheduled the hearing for March 1, 2004, and continued it until April 6, 2004. Respondent's unopposed continuance motions were granted and the hearing continued to May 11, 2004, and later to May 18, 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 Aggravated Assault.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 2.) (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 March 12, 2002, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on March 18, 2002. (State's Exhibit 2.)
4. 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 2.)

5. 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 2.)

6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
7. Respondent's background check revealed a possible conviction for aggravated assault in 1998. In response to the Division's inquiry, the Respondent submitted copies of court records confirming the conviction. (State's Exhibits 4A, 4B, 5A, 5B, 5C, 5D, 5E, and 5F.)
8. Respondent explained the events that led to the conviction in a letter he sent to the Division prior to the issuance of the NOH and later at the hearing. On May 13, 1998, he coached his oldest daughter's little league team. His ex-wife's boyfriend, Jeff Cook, made comments to him during the game while he was the third base coach, including encouraging a German shepherd to "sic" him. Driving home from the game, Respondent noticed that a car was following him. Initially, he was not sure who was in the vehicle but later became aware that it was his ex-wife's boyfriend. He pulled his car into a parking lot to find out why he was being followed and Mr. Cook pulled his car in too. When Respondent got out of his car, Mr. Cook pulled a knife on him. Respondent was stabbed three times by Mr. Cook who was then on top of him. He managed to get the knife away from Mr. Cook and stabbed him several times in self-defense. Both men were hospitalized, and later charged. Respondent pleaded guilty to aggravated assault and served 120 days in jail with work release. The judge involved told Respondent that he made a mistake by not retreating from the situation once Mr. Cook pulled the knife on him. Respondent's probation was terminated early, in 2002. (State's Exhibit 5B and 5F; TR at 36-49, 200, 207-208.)
9. Respondent has no other criminal convictions. (TR at 200-201.)

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

10. The Respondent did not disclose the 1998 aggravated assault conviction on his Application. (State's Exhibit 2; TR at 24.)
11. He consistently and credibly explained that he read "any crime 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" in Question 5 as requiring financial offenses, not other types of criminal offenses, to be disclosed. He discussed the question with his manager at work and they concluded that it did not need to be disclosed. His manager did tell him that it would probably come up in the background check. Therefore, he had thought he had nothing to disclose on the Application. (TR at 29-30, 32-34, 215-217.)

12. The Hearing Officer finds that the language in Question 5 could be confusing. The Respondent read the language in Question 5 as he testified and, based upon his understanding of the question, answered it truthfully. He made a mistake but he did not try to hide the conviction 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.

13. Respondent has been a mortgage loan officer since 1996. He worked with Kentwood Mortgage for three years and then worked with Star Point Mortgage. Star Point Mortgage was taken over by First Star Mortgage where Respondent is currently employed as a mortgage loan officer. Respondent describes himself as honest and knowledgeable in the industry. He does the best job he can and makes sure to let people know if cannot do a loan for them. Respondent provided an exhibit summarizing the loans he completed last year. Of the thirty-five loans he completed, all but eight were referrals. (Respondent's Exhibit A; TR at 20-22, 187-189, 202.)
14. Ten other witnesses testified on Respondent's behalf. They clearly established that Respondent is respected and highly regarded in his community and in the mortgage industry. His reputation for truthfulness and honesty in the community and the industry is excellent. All of the witnesses were aware of the criminal conviction and described the incident as something totally out of character for the Respondent. Many of the witnesses were familiar with the Respondent from playing on sports teams with him and indicated that they had never seen the Respondent lose control, lose his temper, or have any problem with anger management.
15. Scott Miltenberg, a retired teacher and an active coach in Respondent's community, testified about Respondent's reputation in the community. He has been aware of the Respondent and known him for over twenty years. He testified that Respondent is honest, of high integrity, and truthful. (TR at 54-62.)
16. Jeffrey Craft, a loan officer for First Star Mortgage, testified about Respondent's reputation in the community and his experiences with Respondent in the mortgage industry. He has known Respondent for thirty-five years and played basketball with Respondent. He currently sees Respondent every day. He was brought into the mortgage industry by Respondent one year ago. Respondent was responsible for training him and taught him to focus on doing the best for the customer and to work on getting referrals. He testified that Respondent has a very good reputation for truthfulness and honesty and does not push loans that are not good for the customer. (TR at 69-79.)

17. Mark Johnson, who has known Respondent since high school, testified about Respondent's reputation in the community and his experiences with Respondent as a loan officer. He sees Respondent once or twice a month. He testified that Respondent has a very good reputation for being truthful and honest. Respondent has handled two loans for him and he believes that he got a fair deal each time. He referred ten other people to Respondent based upon his experiences with him. He has played approximately 750 basketball games with Respondent and has never seen Respondent in any type of altercation. He stated that the conviction was out of character for Respondent. He believes that Respondent was pushed to react that way. (TR at 81-87.)
18. Marvin Powell, who worked with Respondent at Kentwood Mortgage and Fidelity Mortgage, testified about his experiences with Respondent in the mortgage industry. Mr. Powell is a retired Master Sergeant from the Air Force who started in the mortgage business with Respondent. Mr. Powell was the operations manager for four years at Kentwood Mortgage and was responsible for compliance and operations. In that capacity, he listened to loan officer's phone calls including some of the Respondent's calls. Additionally, his office was right beside Respondent's office so he could hear how he handled calls. He had no concerns with Respondent's work. He described Respondent as up-front, responsible, and very knowledgeable about the industry. He never received any customer complaints about the Respondent. He testified that Respondent is dependable and trustworthy. He would trust the Respondent in any situation. (TR at 89-101.)
19. Douglas R. Gescuk, a real estate appraiser, testified about his experiences with the Respondent in the mortgage industry. Mr. Gescuk also worked with Respondent when he was a loan officer with Fidelity Mortgage. He knows at least thirty people in the mortgage industry who also know Respondent. Respondent sends him three or four of the twenty to twenty-five deals he handles each month. He likes receiving Respondent's loans because they are always in good shape and the customers do not have questions. He has been pressured by others to appraise property at values too high for the property. Respondent has never done something like that. He testified that Respondent is trustworthy and honest. (TR at 106-111.)
20. Jeffrey Ferrara, who works for Accredited Home Lenders, testified about Respondent's reputation in the community and his experiences with Respondent in the mortgage industry. He socializes with Respondent and plays on basketball teams with him. His business is to generate loans on the wholesale end of the mortgage business. Respondent sends him two or three of the twenty-five to forty loans he handles each month. Respondent is always honest with him about loans and never pushes him to do loans he cannot do. He refers others to Respondent because he trusts him and knows he will get the best deal for them. He has referred at least five people to Respondent in the past three years. He

testified that Respondent has a very good reputation for honesty and truthfulness. (TR at 113-137.)

21. Greg Anderson, a loan officer at First Star Mortgage, testified about Respondent's reputation in the community and his experiences with Respondent in the mortgage industry. He has known Respondent since he was seven years old and has worked with him for seven months. He has never seen Respondent angry. He stated that Respondent is personable, very good at explaining things to the customers, and highly regarded in the community. He also testified that Respondent is truthful and honest. (TR at 141-146.)
22. Timothy Stegmuller, an account executive with U.S. Bank, testified about his experiences with Respondent in the mortgage industry. He has been in that position at U.S. Bank for six years. Before that, he was a loan officer in the mortgage industry and an underwriter. He has had at least nine years of experience in the mortgage industry. He first met Respondent when Respondent was working at Kentwood Mortgage and has known Respondent for five years. He currently processes anywhere from zero to three loans from Respondent per month. He described Respondent as stable, truthful, reliable and knowledgeable in the industry. He testified that Respondent is trustworthy and honest. (TR at 151-158.)
23. Douglas Kauffman, the owner of an insurance company, testified about Respondent's reputation in the community and experience working in the insurance industry. Respondent worked for him from 1988 to 1992. He would rehire him because he did a good job and got along well with people. Mr. Kauffman socializes with Respondent and plays basketball with him. He stated that Respondent has never had any problem with anger management. He was shocked to hear about the episode that led to the conviction. Respondent is the person who helps break up fights during basketball games. He testified that Respondent is truthful and honest. (TR at 160-169.)
24. Pamela Gregory, who works at Republic Title as a closer, and testified about her experiences with Respondent in the mortgage industry. She closes fifteen to twenty loans a month and up to five of those loans could be from Respondent. She has known the Respondent for over two years and knows over two hundred loan officers. She refers customers to Respondent because he is very honest and tells customers what he can do and what he cannot do for them. He does not overcharge customers on the loans. As a closer, Ms. Gregory does not try to sell a loan if a customer is uncertain. Although some in the industry push her to do this, Respondent does not. Respondent is always available during the closings on his loans and no one at her company has had any problems closing any of his loans. Respondent has a good reputation for truthfulness and honesty. His conviction does not change her opinion of him since it is out of character for him. (TR at 171-180.)

25. The Respondent's testimony and that provided by the other witnesses establish that he is honest, trustworthy, and of good character. He conducts himself in the community and in the industry in a manner that commands the confidence of the public and warrants the belief that his business will be operated honestly and fairly in compliance the Ohio Mortgage Broker Act.

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 aggravated assault in 1998.
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 misread the question and answered truthfully based upon his understanding 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 misread the question and answered truthfully based upon his understanding of the question.
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 aggravated assault to be disclosed on an application for a loan officer license. In addition, Respondent did not omit any information that he thought or knew he should disclose from his 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 misread a question and answered truthfully based upon his understanding of the question. These activities alone do 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 1322.041(A)(2).
10. The Respondent admitted that he made a mistake while reading the application. The conviction relied upon by the Division and the fact that the Respondent misread a question do not prove that the Respondent is not fit to work in an industry that he has worked in for the past eight years. The Respondent's testimony, and the testimony of the other witnesses establish 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 in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

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,


Jane Stempel Arata
Administrative Hearing Officer
September 7, 2004