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STATE OF OHIO
DEPARTMENT OF COMMERCE

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

Michael D. Goody

CASE NO. 05-0012-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JAMES N. TURNER

Issued August 17, 2005

I. FINDINGS OF FACT

A. BACKGROUND

This matter first came before Hearing Officer Terrence O'Donnell, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (the "R.C."). Said hearing was held 1:23 PM on April 18, 2005, at 77 South High Street, Room 1918, Columbus Ohio. Following the hearing it was determined that as result of another client relationship held by the law firm of Bricker & Eckler, with which Mr. O'Donnell is employed as an Associate Attorney, Mr. O'Donnell had been placed in a situation involving a potential conflict of interest. As a result, James N. Turner, Chief Legal Counsel for the Ohio Department of Commerce, an attorney licensed to practice law in Ohio, assumed the responsibility to serve as Hearing Officer for the purpose of preparing a Report and Recommendation in accordance with R.C. Chapter 119.

The hearing was held at the request of Respondent Michael D. Goody, of Mentor, Ohio (the "Respondent") to consider the Division's Notice of its Intent to Deny Mr. Goody's Application for a Loan Officer License and Notice of Opportunity for a Hearing (the "NOH"). The NOH alleges that the Respondent on November 8, 2004 attested in a sworn statement that information he had provided about his criminal background on his loan officer license application and submitted to the Division was complete and truthful when it was not, and that on November 15, 2004, the Respondent provided the Division

with untruthful information about his criminal background. As a result of those allegations the Division determined that the Respondent's character and general fitness do not command the confidence of the public so as to warrant a belief that the business will be operated honestly, fairly, and in compliance with the purposes of the Ohio Mortgage Act, and that his conduct violated the prohibitions set forth in R.C. Sections 1322.07(A), 1322.07(B), and 1322.07(C). The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Timothy C. Loughry. Respondent requested a hearing but did not appear. The Respondent did submit a written statement to the Division. (Ex. "D"). During the hearing, the Division did not produce a certificate of delivery of certified mail for the notice of the re-scheduled hearing, instead relying on an inference that delivery had been effected for that letter since the same delivery address was used for it as was used for the NOH, which was delivered via certified mail. (Transcript (the "T") pp. 11-14, Exhibit "C", pp.6; Exhibit "E").

At the hearing, State's Exhibits "A" through "E" were admitted into the record (T. pp. 14).

B. JURSDICTION

The Division issued the NOH to Respondent on February 18, 2005 (Ex. "C"). Respondent timely requested a hearing by an undated document received in the Division on March 3, 2005. (Ex. "D"). The Division scheduled a hearing for March 17, 2005 by letter dated March 9, 2005, as required by R.C. Chapter 119 (Ex. "E"), and on its own motion continued that date to April 18, 2005 (Ex. "E"). The hearing went forward, notwithstanding that the Respondent failed to appear, on April 18, 2005. (T., pp. 6).

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. A statutory requirement became effective on May 2, 2002, which mandated that mortgage loan officers become licensed. (Senate Bill 76, 2001).
 2. The Division is the state agency responsible for the licensing and regulation loan of mortgage officers pursuant to R.C. Chapter 1322.
 3. Respondent is an individual who wishes to conduct business in Ohio as a mortgage loan officer. (Exhibit "A")
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1. On November 15, 2004, the Division received from Respondent a Loan Officer Application (the "Application") which was signed under oath by the Respondent on November 8, 2004. (Exhibit "A", pp.3)
 2. Within the Application Respondent answered "No" to Question number 5, 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?" (Exhibit "A", pp. 2)

3. During the course of a standard background check, the Division became aware of the existence of a prior criminal history for the Respondent, as a result of which the Division requested additional information to complete the application process. (Exhibit "A", pps. 5-6)
4. The Respondent replied by providing a certified copy of his pleas to and criminal conviction of the offenses of Over Specified Limits, Driving While Under Suspension, and DUI/Drugs on July 12, 1993 in Mentor Municipal Court stemming from an incident that took place in May, 1993; OMVI on August 17, 2000 in Willoughby Municipal Court stemming from an incident that took place in June, 2000; and Disorderly Conduct – Intoxication on August 27, 2003 in Willoughby Municipal Court from an incident that took place on August 13, 2003. The Respondent also provided a written explanation of the incidents in which he discussed his past problems with alcohol and his resolve to change his life through sobriety. (Exhibit "B")
5. Respondent did not appear to submit any further evidence into the hearing record. However, the letter received from Respondent providing his explanation of the record for his convictions as set forth above was introduced by the Division as part of the Application and is treated as Respondent's written statement for the purpose of this Report and Recommendation. (Exhibit "B") Since that letter cannot be cross examined, it was not given significant weight.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.
2. An agency is under no duty to discover whether someone subject to adjudication has moved so that notice can be mailed to their present address. The duty rests upon the person subject to the adjudication to notify the agency of their new address, and if they fail to do so, it is enough that the notice was sent to the last known address. See: *McCoy V. Bureau of Unemployment Compensation* (1947), 81 Ohio App. 158 and *Blanchard v. Bureau of Unemployment Compensation* (1968), 14 Ohio Misc. 181.

B. LICENSE APPLICATION

3. The Division has proven that in 1993, 2000, and 2003 Respondent was convicted of the offenses stemming from criminal activity as set forth in paragraph 4 above and that those convictions were not disclosed on the application form originally submitted.
4. The Division also charged that 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.
5. The Division brought Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly into question by presenting evidence of Respondent's convictions as set forth above together with the demonstration that Respondent provided false information under oath in his application dated November 8, 2004 which was submitted to the Division on November 15, 2004.
6. O.R.C. Section 1322.041(A)(3) states that if Respondent has been convicted of any criminal offense involving certain named offenses, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again. Included among the listed offenses are offenses related to fraud and drug trafficking.
7. Possession of Drug Paraphernalia and Drug Abuse do not import holding contraband substances or materials for sale so as to support a conviction for Drug Trafficking and therefore will not be considered here to be a violation of R.C. Section 1322.041(A)(3) as it incorporates the regulations provided in R.C. Section 1322.031(A)(2).
8. Because the convictions set forth above are known, both the burden of proof and the burden of going forward shifted to Respondent once evidence was presented by the Division to support its own burden.
9. As a result of the convictions set forth above and the Respondent's failure to disclose them, the Division has raised the issue of Respondent's character and general fitness under R.C. Section 1322.041 (A)(5).
10. The Respondent did present some evidence of his rehabilitation in the form of his statement explaining his substance abuse problem as the source of his problems that led to convictions. Because that explanatory note was not made under oath or submitted to cross-examination, it cannot

be concluded that Respondent has successfully refuted the Division's assertions that Respondent's character and general fitness do not command the confidence of the public or warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Section 1322.041(A)(5).

III. RECOMMENDATION

The Division has proven the Respondent has a criminal conviction that involves fraudulent behavior – namely that the Respondent knowingly gave false information to a police officer. Respondent did not submit any substantial evidence to prove that his activities and employment record show 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 the Ohio Mortgage Broker Act. The Respondent did not appear. Consequently, the recommendation to the Superintendent of Financial Institutions is to **deny a mortgage loan officer's license to Michael D. Goody.**

Respectfully submitted,

James N. Turner
Hearing Officer
October 25, 2004
Docket No. 04-DFI-055