

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 JUL 23 PM 12:40

IN RE: : CASE NO. M2008-556
:
LAURA E. BAINBRIDGE, : DEBORAH K. TONGREN
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 23, 2009

I. FINDINGS OF FACT

A. Background.

This matter came before Deborah K. Tongren, 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 Division held the hearing on April 22, 2009, at 77 South High Street, Columbus, Ohio at the request of Laura E. Bainbridge, ("*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*").

Based on the allegations in its NOH, the Division intends to deny Respondent's 2008 loan officer renewal application, for the following reasons: 1) Respondent falsified answers to questions in her 2002 and her 2005 loan officer applications and in her 2007 and 2008 renewal applications; 2) Respondent was convicted of a theft offense as described in R.C. §1322.031(A)(2); 3) Respondent lacked the character and general fitness required of a loan officer, and 4) Respondent engaged in conduct that was improper, fraudulent or dishonest.

James Evans, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Vincent Farris, Esq. represented Respondent at the hearing. Respondent testified on her own behalf, and Respondent's employer, Brian

Doskocil, also testified on her behalf. Lori Massey, an attorney examiner, testified on behalf of the Division.

State's Exhibits 1 through 7, and Respondent's Exhibit A were introduced and the Hearing Officer admitted them into evidence at the hearing.

B. Division's Notice of Revocation Order.

1. On February 20, 2009 the Division sent a cover letter and the NOH to Respondent, via certified mail, return receipt requested. The NOH specified the basis for the Division's proposed action and offered Respondent the opportunity to request a hearing on the matter. The Division perfected service on February 25, 2009. *State's Exhibit 1.*
2. On March 3, 2009, Respondent timely requested a hearing on the matter. *State's Exhibit 2.*
3. On March 4, 2009, the Division notified Respondent that it would hold a formal hearing on the allegations contained in the NOH on April 22, 2009.
4. The hearing took place at 10:00 a.m. on April 22, 2009, with both parties in attendance.

C. Respondent's Actions.

5. On or about March 20, 2002, Respondent submitted a loan officer license application to the Division. *State's Exhibit 5, pg. 31-32.* A one-page list of instructions accompanied the Division's application form. The second paragraph of the instructions stated:

You must answer each question on this application fully and truthfully. Any omission, untruthful answer, or incomplete answer may result in your being denied the privilege of obtaining a Mortgage Loan Officer License and acting as a loan officer in the State of Ohio, or in subsequent legal action. Questions 2 through 67 must be fully answered regardless of dismissals or similar terminations, and must include all action or legal proceedings occurring in any court in any jurisdiction. This includes any matter dismissed favorably to you, filed

by you or in which you were involved in any manner other than as a witness.

State's Exhibit 6, Testimony of Respondent, Tr. at pg. 32.

6. Question number five on the 2002 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? If the answer is yes, furnish details." Respondent answered, "No" and signed the application, affirming that she had answered the question "fully and frankly." *State's Exhibit 5, pg. 32, Testimony of Respondent, Tr. at pg. 20.*
7. The Division issued a loan officer license to Respondent on May 2, 2002. *State's Exhibit 5, pg. 29.*
8. Neither party provided copies of Respondent's 2003 and 2004 loan officer renewal applications.
9. On July 22, 2005, the Division cancelled Respondent's loan officer's license, due to her failure to file a renewal application. *State's Exhibit 5, pg. 28.*
10. On August 23, 2005, Respondent re-applied to the Division for a loan officer's license. Respondent answered "No" to question number two which asked, "Have you ever been known by any other name?" *State's Exhibit 5, pg. 23.*
11. Respondent also responded "No" to question number six on the 2005 loan officer renewal application which asked, "Have you 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?" *State's Exhibit 5, pg. 24.*
12. Respondent attested that the answers given by her on the 2005 loan officer renewal application were "complete and true." *State's Exhibit 5, pg. 26.*

13. The Division granted Respondent's 2005 loan officer renewal application, and issued a loan officer license to her on August 29, 2005. *State's Exhibit 5, pg. 22.*
14. In her 2007 and 2008 loan officer renewal applications to the Division, Respondent continued to represent that she had not been convicted of any criminal offense involving theft. *Testimony of Ms. Massey.*
15. Further, Respondent failed to inform the Division that she had been known by another name. *Testimony of Respondent, State's Exhibit 5.*
16. In her 2007 electronic loan officer renewal application, Respondent answered "No" to questions one and two. Renewal application question one asked, "Have you EVER, regardless of whether it was previously reported to the Division, pleaded guilty to or been convicted of ANY theft offense?" Renewal application question two asked, "Have you been arrested, charged or convicted by any state or federal authority of any criminal offense (excluding minor traffic violations)?"
17. Respondent attested that her answers to all of the questions in the 2007 loan officer renewal application had been "prepared or carefully reviewed by me [Respondent] and that these constitute a complete, truthful, and correct statement of all information requested herein. I realize that any false or fraudulent representation or substantial misrepresentation will be grounds for denial of this application or revocation of any license granted hereunder, and is subject to criminal prosecution under Section 2921.13 of the Ohio Revised Code." *State's Exhibit 5, pgs. 19 and 20, Testimony of Ms. Massey, Tr. at pg. 65-66.*
18. The Division granted Respondent's 2007 loan officer renewal application. *State's Exhibit 5, pgs. 13, 17 and 21.*
19. On or about April 7, 2008, Respondent electronically applied to renew her loan officer license. She answered "No" to renewal application questions one and two. Renewal application questions one and two asked, "1. Have you pleaded guilty to or been convicted of ANY theft offense as defined in Ohio Administrative Code Section 1301:8-7-01(K)?" and "2. Have you been charged with, convicted of or pleaded guilty to any state or federal criminal offense including but not limited to theft, receiving stolen

- property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities (excluding minor traffic violations)?" *State's Exhibit 5, pgs. 15-16.*
20. Respondent attested that her answers on her 2008 loan officer renewal application were "complete, truthful, and correct." *State's Exhibit 5, Pg. 16.*
 21. Following Respondent's 2008 loan officer renewal application, the Division conducted a criminal background check of Respondent, pursuant to the authorization in R.C. §1322.031(B), effective January 1, 2007. *Testimony of Ms. Massey, Tr. at pg. 60-61.*
 22. The Division's investigation revealed that in 1983, Respondent, who was then known by the name "Laura E. Kern," was convicted in Florida for petty larceny. *State's Exhibit 4.*
 23. The Florida court documents indicate that on or about January 1, 1983, "Laura E. Kern" was arrested on one count of petit theft/shoplifting, and was found guilty on February 11, 1983. She was ordered to, and paid a \$110.00 fine. *State's Exhibit 4.*
 24. On October 15, 2008, the Division notified Respondent of its findings and requested that Respondent provide, within 90 days, a "detailed account of the facts and circumstances giving rise to the arrest and/or charge; a certified copy of the journal entry which evidences your plea and the court's finding; and three letters of reference, from people who can attest to your character and general fitness to remain a loan officer." *Respondent's Exhibit A.*
 25. On or about November 4, 2008, Respondent provided the Division with certified copies of the 1983 court documents from Pinellas County, Florida. *State's Exhibit 4.*
 26. Respondent was only twenty-one at the time of her conviction. She had been married briefly at the age of seventeen, and occasionally used her married name of Laura Kern. *Testimony of Respondent, Tr. at pg. 42-45.*
 27. In her recollection of the circumstances of the conviction, Respondent maintained that she was shopping with a friend at a JC Penney's store in Florida and began running when the security guard touched her friend.

She had tried on a \$39.00 jacket, but could not remember who had possession of the jacket when she began to run. Respondent did not recall a court appearance or remember paying a \$110.00 fine. *Testimony of Respondent, Tr. at pg. 12-17, and 27-28.*

28. Respondent maintained that she had answered the questions on the loan officer applications and on the loan officer renewal applications truthful because she had no memory of the 1983 Florida conviction. *Testimony of Respondent, Tr. at pg. 36.*
29. Respondent maintained that she had no intent to deceive the Division about her past conviction. *Testimony of Respondent, Tr. at pgs. 24-26.*
30. Respondent did not explain her failure to provide the Division with information that she had been known by the name, "Laura Kern."
31. Brian Duskocil, President and operations manager of Preferred Mortgage Consultants, Inc., Respondent's current employer, maintained that Respondent approaches her position as a loan officer as a profession, treating her customers with courtesy and respect. She is a productive employee, who has never been on heightened supervision or had a complainant filed against her. *Testimony of Mr. Duskocil, Tr. at pg. 101-102.*

II. CONCLUSIONS OF LAW

A. Jurisdiction

32. The Division has complied with the procedural requirements of R.C. Chapter 119 and has established jurisdiction over this matter.

B. Proposed Denial of Respondent's 2008 Loan Officer's License.

33. The Division is responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
34. Respondent is a mortgage loan officer, licensed by the Division.
35. R.C. §1322.041(B) states that a loan officer's license may be renewed annually if the requirements of that section are met, and if the applicant meets the conditions set forth in R.C. §1322.041(A)(2) through (6).

36. R.C. §1322.041(A)(6) provides that, as a condition to licensure, an “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.”
37. “The clear purpose of the statutory scheme is to require appellant [the Division] to determine an applicant’s fitness to work as a loan officer.” *Hockenberry v. Ohio Dept. of Commerce* (2007), 173 Ohio App.3d 331, 337.
38. The Division has an on-going duty to oversee the licensing of loan officers in Ohio and to assure to the public that its licensees have the requisite character and fitness to hold a loan officer’s license. R.C. §1322.041(A).
39. This Hearing Officer finds that the questions on the loan officer applications and the loan officer renewal applications were clear and unambiguous, and further, that Respondent attested to the truthfulness of her answers on each of the documents.
40. Respondent’s testimony that she forgot that she had once been known by another name, and that she did not recall her 1983 conviction was unconvincing and reflected negatively upon Respondent’s general character and fitness to hold a loan officer’s license.
41. This Hearing Officer finds that Respondent’s actions are inconsistent with the character necessary to hold a loan officer license in Ohio. Consequently, this Hearing Officer concludes that the weight of the evidence in this matter demonstrates an individual who lacks sufficient character and fitness, pursuant to R.C. §1322.041, to hold a loan officer’s license.
42. Respondent provided false information not once, but four separate times, in sworn statements on her 2002 and 2005 loan officer applications and in her 2007 and 2008 loan officer renewal applications.
43. R.C. §1322.07 states that no mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under R.C. §§1322.01 to 1322.12 shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

44. Ohio Administrative Code §1301:8-7-10(G) states:

(G) Each question on the license application is material to the licensing process. Submitting false or incomplete information or omitting information in connection with a license application is grounds for denial or revocation of the license and may subject the applicant to civil or criminal penalties.

45. R.C. §§1322.07(A), (B), and (C) do not require any showing of intent on behalf of the Division, therefore, Respondent's contention that she had no intent to deceive the Division is unpersuasive and immaterial.

46. Respondent's failure to disclose material information, that she had been known by another name and that she had a 1983 conviction, constitutes an attempt to gain licensure through omission of material facts, and substantial misrepresentations on her license applications, in violation of R.C. §1322.07(A).

47. Respondent's failure to provide truthful answers to questions on her 2002 and 2005 loan officer applications, and on her 2007 and 2008 loan officer renewal applications, constitutes false or misleading statements of material fact or omissions of a statements required by state law, in violation of R.C. §1322.07(B).

48. Respondent's failure to provide truthful answers on her 2002 and 2005 loan officer applications and her 2007 and 2009 loan officer renewal applications is in violation of R.C. §1332.07(C), for engaging in conduct that constitutes improper, fraudulent, and dishonest dealings, in violation of R.C. §1322.07(C).
49. R.C. §1322.10(A)(1)(a) authorizes the Division to refuse to renew a loan officer's license for failure to comply with any provision of R.C. §§1322.01 through 1322.12..
50. This Hearing Officer finds that Respondent's actions fail to satisfy the licensing requirements set forth in R.C. §1322.041(A)(6) and in R.C. §§ 1322.07(A), (B), and (C).
51. Accordingly, the Division has the authority, and has demonstrated sufficient evidence to deny Respondent's 2008 loan officer's license renewal application, pursuant to R.C. §1322.10(A)(1)(a).
52. Further, R.C. §1322.10(A)(1)(b) authorizes the Division to impose discipline for "any criminal offense involving" theft. *Dray v. Ohio Dept. of Commerce, Division of Financial Institutions*, (April 30, 2009), Franklin C.P. No. 08-CVF-08-11901, at 6.
53. R.C. §1322.041(A)(3), effective January 1, 2007, provides that a conviction involving theft, as described in R.C. §1322.031(A)(2), constitutes an absolute bar to licensure. Thus, pursuant to R.C. §§1322.041(A)(3), Respondent's 1983 conviction for petty theft, constitutes a conviction involving theft, and bars Respondent from licensure in Ohio as a loan officer.
54. For the foregoing reasons, this Hearing Officer finds that sufficient evidence exists for the Division to deny Respondent's 2008 loan officer's license renewal application pursuant to R.C. §§1322.10(A)(1)(a) and (A)(1)(b), for Respondent's violations of R.C. §§1322.041(A)(3), 1322.041(A)(6), 1322.041(B)(3), 1322.07(A), (B), and (C).

III. RECOMMENDATION

Based upon the evidence submitted into the record in this matter, this Hearing Officer finds, and respectfully recommends that the Superintendent

find, that a sufficient evidentiary basis exists to deny Respondent's 2008 loan officer license renewal application pursuant to R.C. §§1322.10(A)(1)(a) and (A)(1)(b) for Respondent's violations of R.C. §§1322.041(A)(3), 1322.041(A)(6), 1322.041(B)(3), 1322.07(A), (B), and (C). Therefore, this Hearing Officer respectfully recommends that the Division deny Respondent's 2008 loan officer license renewal application.

Respectfully submitted,

Deborah K. Tongren
Hearing Officer