

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL  
INSTITUTIONS

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IN RE: : CASE NO. 04-0133-LOD  
: :  
KEVIN O. WRIGHT : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued November 15, 2004

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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 August 2, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Kevin O. Wright ("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 public indecency and voyeurism and violated R.C. 1322.07(A), (B) and (C) by failing to disclose the convictions 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 convictions 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).

Monica Rausch, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Sister Rose Ann Fleming, also an attorney, represented Respondent at the hearing. At the hearing, State's Exhibits A through G and Respondent's Exhibits 1, 2, 3, and 5 were admitted into the record. The record was left open to permit the Respondent to submit a copy of his Application for an Ohio Certificate of Certified Public Accountant and related correspondence after the hearing. These documents were marked as Respondent's Exhibit 4 and admitted into the record without objection. The record also remained open after the hearing to permit the Respondent to submit documents regarding a 1996 Cook County, Illinois conviction. These documents were marked as Respondent's Exhibit 6 and admitted into the record without objection.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 20, 2004. The Division scheduled the hearing for March 5, 2004, and continued it indefinitely upon its own motion. The hearing was then set for until June 16, 2004. Respondent's motion for a continuance was granted and the hearing continued to August 2, 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 Criminal Convictions.**

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A.)
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 April 9, 2002, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on April 12, 2004. (State's Exhibit A.)
4. 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 A.)

5. 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 A.)

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 possible convictions for public indecency and voyeurism. In response to the Division's inquiry, the Respondent submitted information confirming misdemeanor convictions in 1992 for public indecency and in 1993 for voyeurism. The materials he submitted to the Division make no mention of any other criminal convictions. (State's Exhibits B, C, D, and F.)
8. Respondent also has convictions for voyeurism in March of 1994, public indecency in May of 1996, public indecency in August of 1996, and public indecency in September of 1996. The May and August 1996 incidents took place in Kentucky and the September 1996 incident took place in Illinois. (Respondent's Exhibits 4 and 6; TR at 117-118.)
9. All of the convictions stemmed from Respondent's public exposure of his private parts and gratifying himself in a car at a mall parking lot or while watching women. (State's Exhibit D; Respondent's Exhibits 4 and 6; TR at 117-118.)
10. Respondent's mental health condition of obsessive-compulsive disorder manifested itself in the sexually compulsive behavior underlying his criminal convictions. The Respondent received treatment for this disease and there is no evidence of any similar convictions after 1996. He regularly attends a twelve-step program for those who have had problems with sexually compulsive behavior. Dr. Marvin Douglas Reed, Respondent's treating psychologist, testified that Respondent is currently in remission and no longer meets the diagnostic criteria for obsessive-compulsive disorder. (TR at 16, 23, 43, 114-17, 142-145.)

**D. Respondent's Failure to Disclose Convictions on Application.**

11. The Respondent did not disclose any of his criminal convictions on his Application. (State's Exhibit A.)
12. Respondent testified that he did not disclose the convictions because they were not specifically listed in Question 5 on the Application. (TR at 104-105.)
13. Respondent also testified that he did disclose the convictions in response to a question on his Application for an Ohio Certificate of Certified Public Accountant ("CPA Application"). That question was: "Have you ever been convicted of any crime or unprofessional conduct? If yes, attach explanation." He also claimed that he attached an explanation to that application. (Respondent's Exhibit 4, Question 4; TR at 101-103.)
14. At the hearing, Respondent submitted a blank form of an application for an Ohio Certificate of Certified Public Accountant as evidence of the question. The Hearing Officer indicated that a copy of his CPA Application as submitted could serve as evidence of the question but not the blank form. The blank form stating "Revised 11/2003" on it was not a true and accurate copy of the application filled in and submitted by the Respondent in 1998. More importantly, a copy of the completed CPA Application itself, not the Respondent's testimony, is the most accurate evidence of whether Respondent disclosed the convictions on the CPA Application. (Respondent's Exhibits 3 and 4; TR 101-104; 112-113.)
15. Question 4 on the CPA Application had a "yes" box and a "no" box in front of it. Neither box was checked on Respondent's CPA Application. The boxes are circled and "yes" is written in the left margin. The record does not indicate who wrote "yes" in the margin or circled the question but it is clear that Respondent did not mark the "yes" box on the CPA Application. Respondent signed the CPA Application in October 14, 1998. (Respondent's Exhibit 4.)
16. As part of the CPA Application, Respondent certified in a notarized affidavit that, among other things, he had "never been convicted of any felony, fraud, or misdemeanors (except as disclosed herein) by any court; that the statements made herein are true; that I have not suppressed any information that might affect this application...." Respondent signed this affidavit on October 30, 1998. (Respondent's Exhibit 4.)
17. The front page of the CPA Application indicates that it was received by the Accountancy Board on December 2, 1998. The CPA Application materials include a page titled "Attachment - CONFIDENTIAL" explaining that Respondent has some misdemeanors due to "acting inappropriately in public places." The Attachment is not dated and there is no indication of when the Accountancy

Board received it. The Attachment and the Application materials provide no other description of the behaviors involved. (Respondent's Exhibit 4.)

18. On December 7, 1998, Respondent faxed a letter to the Accountancy Board providing further information that was requested by that Board. Respondent described the four criminal convictions listed as his misdemeanor convictions within the past seven years. The letter did not mention that Respondent also was convicted of public indecency in May of 1996 and public indecency in September of 1996. These convictions were not mentioned in any of the CPA Application materials. (Respondent's Exhibits 4 and 6; TR at 117-118.)
19. The Hearing Officer finds that it is more likely than not that Respondent left Question 4 blank on the CPA Application. It is not clear from the record whether the Attachment was part of his CPA Application when it was submitted. The CPA Application materials indicate that Respondent reluctantly revealed information about his convictions in the CPA licensing process as he did in this licensing process. Those CPA Application materials indicate that Respondent did not reveal two 1996 public indecency convictions that he testified about at the hearing. In both licensing processes, facts underlying the convictions and the type of convictions involved were only revealed upon request. (State's Exhibits A, B, C and D; Respondent's Exhibits 4 and 6; TR at 117-118.)
20. Even after the Division requested further information about two convictions, the Respondent failed to come forward with complete and accurate information about other similar convictions. If the Hearing Officer had not asked, some of his 1996 convictions would not have been disclosed to the Division. His disclosure of information only when repeatedly confronted with questions is not an indication that he is trustworthy or being completely honest in this process. Given this background, it is hard to believe that Respondent made an inadvertent error on his loan officer license application. No doubt the issues involved are difficult to discuss but the Respondent's reluctance creates doubt as to whether he is trustworthy, honest and of good character. (State's Exhibits A, B, C and D; Respondent's Exhibits 4 and 6; TR at 117-118.)
21. Respondent's response to Question 5 indicating that he did not have any criminal convictions when in fact he had several was false and misleading. He knew he had several convictions and failed to disclose them. (State's Exhibits A, C, D and F.)

**E. Respondent's Reputation and Character.**

22. Respondent has been a mortgage loan officer since October of 1999. Before that time, he worked as an accountant for several years. An Ohio Certificate of Certified Public Accountant ("CPA license") was issued to him on December 15, 1998. Respondent's CPA license expired December 31, 2000, and remains in suspended status. (Respondent's Exhibit 4; TR at 100-102.)
23. Respondent mentioned his CPA license in two letters he sent to the Division on June 26, 2002 and February 14, 2004 respectively. In both letters, he failed to mention that his CPA license had expired giving the impression it was active. (State's Exhibits C and F; Respondent's Exhibit 4.)
24. Todd Oltman testified about Respondent's reputation in the community and his abilities as a loan officer. Mr. Oltman has known Respondent for about seven years. Respondent helped him refinance his home a couple times. Respondent was fair and efficient with those loans. Mr. Oltman testified that he trusts Respondent and refers other customers to him. (TR at 45-50.)
25. Reverend Grady Smith, the Respondent's minister, testified about Respondent's reputation in the community and his abilities as a loan officer. Reverend Smith has known Respondent for over ten years. He has counseled Respondent and helped Respondent with his struggles. He stated that Respondent actively attends the support group to help with his problems and helps others with the same issues. Respondent has helped him and several members of his family with mortgage loans. Reverend Smith testified that Respondent is trustworthy and honest. (TR at 52-59.)
26. Joseph Miner testified about Respondent's reputation in the community and his abilities as a loan officer. Mr. Miner has known Respondent for over ten years and is aware of the problems in Respondent's past. Respondent helped him with four loans. He testified that Respondent is honest and explains the loan process well. Mr. Miner has referred other customers to Respondent. (TR at 60-64, 122.)
27. Timothy Tripp, an Associate Minister at Respondent's church, provided a letter regarding Respondent's character and reputation. He has known Respondent for seven years and believes that Respondent has done a good job confronting his problems. He also believes that Respondent's clients and coworkers are safe. (Respondent's Exhibit 5; TR at 130-131.)
28. Respondent identified Reverend Tripp's letter at the hearing. Reverend Tripp did not testify at the hearing. Therefore, the Division was not able to cross-examine him on how well he knows the Respondent as well as other bases for his opinion. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits 5 was considered but afforded less weight than it

would have been if Reverend Tripp had testified and been available for cross examination. (Respondent's Exhibit 5; TR at 130-131.)

29. Sherrie Dauper, a wholesale lender with National City Bank, testified about her experiences with Respondent in the mortgage industry. She has known Respondent for four years. She has reviewed over fifty of his loan files and found no problems. Respondent has never asked her to do anything fraudulent and she has no reason to doubt the integrity of his work. (TR at 66-71.)
30. John Bruer testified about his experiences with Respondent in the mortgage industry. He has worked with Respondent since 2001. He is a licensed loan officer but currently works as a loan processor. In that position, he coordinates information between Respondent and his customers. He speaks to all of Respondent's customers at some point in the loan process and they are pleased with Respondent's work. He has no reason to doubt the integrity of Respondent's work. (TR at 72-80.)
31. Jeffrey David McGuinness, the General Manager at American Standard Mortgage, testified about his experiences with Respondent in the mortgage industry. Respondent has been a loan officer at American Standard Mortgage since June of 2002. Mr. McGuinness is responsible for compliance reviews of all loan files. He has reviewed over 250 files for loans closed by Respondent and there have been no problems. Mr. McGuinness testified that Respondent is honest, trustworthy, and knowledgeable in the industry. He described Respondent as a leader in the office and someone that others go to for advice. Respondent's loans "stick" and there have been no complaints about his work. (TR at 82-94.)
32. Mr. McGuinness provided customer surveys from ten of Respondent's customers. The surveys were not authenticated by or the subject of testimony from the customers at the hearing. The customers were also not available for cross-examination by the Division at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the customer surveys were reviewed but not relied upon by the Hearing Officer in this matter. (Respondent's Exhibit 2; TR at 87-89.)
33. Dr. Marvin Douglas Reed, a forensic psychologist, testified that he did not believe that Respondent would be likely to steal, cheat or lie. This opinion was based upon the results of standard psychological tests he administered to Respondent and his interactions with Respondent in over several sessions during the past four years. Dr. Reed has no psychological concerns with Respondent's ability to conduct business as loan officer in an appropriate manner. While the Hearing Officer considered this helpful opinion and testimony, it did not change her opinion regarding Respondent's failure to disclose his criminal convictions. (Respondent's Exhibit 1; TR at 16, 23, 31.) (The transcript's reflection on page 23-24 that Dr. Reed had met with Respondent "two times" in "four years"

includes a typographical error as evidenced by Dr. Reed's report, Respondent's Exhibit 1, at page 3.)

## **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.

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(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 public indecency in 1992, voyeurism in 1993, voyeurism in March of 1994, public indecency in May of 1996, public indecency in August of 1996, and public indecency in September of 1996.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact.



6. Information regarding whether someone has criminal convictions, even convictions for crimes not specified in R.C. 1322.031(A)(2), may well be important to the Division. The Division, when evaluating an application, must consider more than if an applicant has committed financial or drug offenses. It must also consider that person's ability to comply with the laws that govern the mortgage industry. R.C. 1322.041(A)(5). An applicant's ability to comply with the laws that govern us all may reflect upon his or her ability to comply with the laws that govern the mortgage industry.
7. The Respondent had criminal convictions that should have been disclosed on his Application and failed to do that. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions when in fact he had several was a substantial misrepresentation on his Application that violated R.C. 1322.07(A). That conduct also constitutes making a false statement of a material fact in violation of R.C. 1322.07(B).
8. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
9. Respondent answered Question 5 on the Application incorrectly. Facts underlying the convictions and the type of convictions involved were only revealed upon request. Even after the Division requested further information about two convictions, the Respondent failed to come forward with complete and accurate information about other similar convictions. If the Hearing Officer had not asked, some of his 1996 convictions would not have been disclosed to the Division. His conduct in this licensing process constitutes improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C).
10. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by R.C. 1322.041(A)(2).
11. Respondent's disclosure of his convictions only when repeatedly confronted with questions is not an indication that he is trustworthy or being completely honest in this process. Thus, he has not established that his 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**

Respondent has not established 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 deny Respondent's application for a loan officer license pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
November 15, 2004