

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Paul B. Sauvain

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0205-LOD**

FINDINGS OF FACT

1. On or about May 3, 2002, Paul B. Sauvain ("Respondent" herein) submitted an application (the "Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibits A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 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) at the Vern Riffe Center for Government and the Arts on March 16, 2004. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorney General John A. Izzo, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice. (Tr. Page 15)
5. As of the dates of the Applications, Respondent was employed as a loan officer by Statewide Home Mortgage.

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 1322.041 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 loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 15)

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

According to Respondent's testimony, Respondent's primary criminal convictions arose from teenage experimentation in drugs, and the probation violation was the result of a later DUI conviction. (Tr. Page 19) The convictions occurred 12 and 9 years ago, respectively, and do not appear to evidence a pattern of criminal behavior which would otherwise give cause for concern that Respondent would commit similar offenses in the future, or give cause for concern that Respondent's business will not be operated in compliance with applicable law.

Respondent admitted that he failed to disclose the criminal convictions in response to question 5 of the Application, testifying basically that he misinterpreted the question. (Tr. Pages 12, 18, 22, 23) Other than his own testimony, Respondent did not present any other evidence or testimony

to explain why he failed to disclose the convictions in response to the referenced question 5 in the Application.

With respect to Respondent's failure to disclose the criminal convictions in the Application, relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue, or require any evidence with respect to intent or knowledge. Therefore, there is support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations.

In addition to raising issues under Ohio Revised Code section 1322.07, Respondent's failure to disclose the conviction in the Application unfortunately calls into question Respondent's character and fitness, and whether Respondent meets the relevant criteria contained in Ohio Revised Code section 1322.041(A)(5).

However, Respondent's activities since the conviction include returning to graduate from high school with students ten years younger than Respondent (Tr. Pages 27, 28) and taking responsibility for pursuing college-level education at a local community college. (Tr. Page 27), thereby evidencing direction, tenacity, and perseverance indicative of good character and fitness.

In addition, when Respondent was made aware of his failure to respond properly to question 5 of the Application through a continuing education class (Tr. Pages 12, 13), Respondent on his own initiative, and prior to receipt of the Notice, contacted the Division to inform the Division by letter dated December 19, 2002, of the convictions. The information was provided by Respondent of his own accord, without notice by the Division, prior to the Division's request for information dated February 26, 2003, prior to the Notice, and prior to formal action on the Application by the Division. The action by Respondent to inform the Division of his mistake, without prompting by the Division, further evidences Respondent's character, fitness, and desire to comply with applicable law pertaining to his responsibilities as a loan officer.

In light of Respondent's limited criminal record, the time which has elapsed since the convictions, and Respondent's activities since the convictions, it appears that Respondent's character and fitness is not inconsistent with the requirements of Ohio Revised Code section 1322.041(A)(5). Acting as a loan officer and dealing with the personal finances of the public is a position requiring significant trustworthiness and responsibility. Hopefully, Respondent will keep the negative events of his past truly behind him, and will not disappoint his family, colleagues, and community by engaging in activities which may adversely reflect on his personal and professional character and fitness to serve as a loan officer.

Respondent's failure to disclose the convictions in response to question 5 of the Application is troubling, and calls into question a number of factors including Respondent's attention to detail, veracity, and credibility. In light of the fact that Respondent's criminal convictions did not include the offenses enumerated in question 5 of the Application, and in light of Respondent's apparent good faith notice to the Division of his criminal history on his own initiative prior to inquiry by the Division and action by the Division on the Application, it appears that Respondent has complied with the underlying requirements of Ohio Revised Code section 1322.07 by providing supplemental information effectively amending the Application.

RECOMMENDATIONS

Therefore, in light of the unique facts and circumstances relating to this Application, and for the reasons set forth herein, it is hereby recommended that the referenced Application be approved.

Respectfully submitted,

Jeffery E. Smith, Hearing Examiner



Date