

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

APR 16 AM 7:54

IN RE: : CASE NO. 04-0240-LOD
: :
JACK G. JONES : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued April 16, 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 beginning at 8:30 a.m. on February 24, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jack G. Jones ("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 carrying a concealed weapon 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
3. 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. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 8 and Respondent's Exhibits A through C were admitted into the record.

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 January 27, 2004. The Division scheduled the hearing for February 9, 2004, and continued it until February 24, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of the hearing.

C. Respondent's Loan Officer Application and Conviction for Carrying a Concealed Weapon.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 13-14.) (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 July 28, 2003, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on September 2, 2003. (State's Exhibit 1.)

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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit 1, emphasis and boldface type in original; TR at 15-16.)

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 1.)
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 carrying a concealed weapon in 1990. In response to the Division's inquiry, the Respondent submitted a certified copy of an Auglaize County Court of Common

Pleas record confirming the conviction. (State's Exhibits 2 through 5; TR at 19-22.)

8. Respondent admitted that he had been convicted of carrying a concealed weapon in 1990. (TR at 19.) Respondent explained the conviction in a letter he sent to the Division prior to the issuance of the NOH. (State's Exhibit 4.) That letter, which Respondent adopted as his testimony at the hearing, explained:

In the fall of 1989 I was living in the Columbus, Ohio area and working as an armed security guard. I had completed school and became Ohio Police Officer Training Certified. Along {with} the appropriate registration through the Ohio Department of Commerce wall license {I was} working as an armed bank officer. It wasn't unusual for me at this time in my life to have a firearm in my immediate possession.

On the day of October 8th 1990 my fiancé and myself were moving my belongings from the Columbus area to Wapakoneta Ohio (Auglaize County) where she currently resided. We rented a U-haul truck and used our 1986 Plymouth Horizon Hatch Back to make the move. On our last trip from Columbus I had our Horizon load down with many different things but the items in question was ammunition and firearm. As I stated in the previous paragraph this wasn't exactly an unusual event for me actually kind of normal or at least I thought so. Well as my luck has it my first night in this little town and I roll a 4 way stop sign at the corner of Benton and Water Street right in front of Wapakoneta's finest.

The officer wrote me a ticket for the stop sign and questioned me about the vehicle contents, it was brought to the officers attention by a cadet riding with him that I had a box of ammunition that could be seen from the passenger side. I identified myself and explained the situation.

(State's Exhibit 4, TR at 22-23.)

9. Respondent completed Ohio Police Officer Private Security Training in January of 1989 and was Firearms Certified for revolver and shotgun when charged with carrying a concealed weapon. The firearm in his vehicle was unloaded but he decide to plead guilty to a misdemeanor instead of incur legal expenses to fight the charges. (State's Exhibit 4, TR at 22-23, 32.)

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

10. The Respondent did not disclose the 1990 carrying a concealed weapon conviction on his Application. (State's Exhibit 1; TR at 15-16.)
11. He consistently and credibly explained that he read: "[e]xclude minor misdemeanor traffic and parking offenses" in Question 5 as excluding minor misdemeanors from being disclosed. He read it as if there was a comma after the word "misdemeanors" and before the word "traffic." Therefore, he had thought he had nothing to disclose on the Application. (TR at 15-17.)
12. The Hearing Officer finds that the "[e]xclude minor misdemeanor traffic and parking offenses" 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.

E. Respondent's Reputation and Character.

13. Respondent currently works for Mortgage One processing loan paperwork and dealing directly with the lender. He has worked in this position since fall of 2003. (TR at 30-31.)
14. Prior to the fall of 2003, he had worked as a truck technician for several years. (State's Exhibit 1, TR at 31.) He worked his way up to management and taught adult education courses in the area. (TR at 31.) He is certified to teach in this area by the State Department of Education. (Respondent's Exhibits B and C; TR at 32.)
15. Respondent has had no other criminal convictions since the 1990 conviction for carrying a concealed weapon. (TR at 32.)

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 misdemeanor carrying a concealed weapon in 1990.
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 it and answered truthfully based upon his understanding of the question. More importantly, the failure to disclose a 1990 misdemeanor conviction for carrying a concealed weapon is a not substantial misrepresentation for the purposes of this licensing process thirteen years later.
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 it and answered truthfully based upon his understanding of the question. The existence of a 1990 misdemeanor conviction for carrying a concealed weapon is not a material fact for the purposes of this licensing process thirteen years later.
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 carrying a concealed weapon conviction to be disclosed on an application for a loan officer license. 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 confusing question and answered truthfully based upon that misreading 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 old misdemeanor conviction relied upon by the Division and the fact that the Respondent misread a confusing question do not prove that the Respondent is not fit to work in an industry that he is currently working in today. He, like any one, is capable of making a mistake and has owned up to that. The Respondent's testimony establishes 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
April 16, 2004