

DIVISION OF FINANCIAL INSTITUTIONS  
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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0287-LOD  
: :  
PHILIP L. SHEN : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued October 14, 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 July 28, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Philip L. Shen ("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 attempted possession of dangerous drugs for sale in 2001. 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 has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
2. Respondent's character and general fitness do not command the confidence of the public and warrant the belief that his 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. Mark Rhea, an attorney with the Division, attended the hearing as the Division's representative and testified at the hearing. The Respondent did not appear and was not represented by counsel at the hearing. At the hearing, State's Exhibits A through F were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on March 30, 2004, and served it upon him by certified mail. (State's Exhibit D.) It is clear that the Respondent received the NOH because he sent the Division the hearing request form sent to him with the NOH. (State's Exhibits D and E; Hearing Transcript at 12.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. Respondent's hearing request was received by the Division on April 29, 2004. (State's Exhibit E.)
3. The Division scheduled the hearing for May 14, 2004, and continued it until July 28, 2004. On May 11, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location for the July 28, 2004 hearing. That letter was sent by regular mail to the Respondent at the most recent address he had provided to the Division, which was also where he had received the NOH by certified mail. The letter was not returned to the Division as undeliverable. (State's Exhibits A, D, and F; TR at 13-15.)
4. The Respondent did not contact anyone at the Division, the Division's counsel or the Hearing Officer to indicate that he could not be present at the July 28, 2004 hearing or to make a continuance request. (TR at 14-16.)
5. The hearing was held on the date and at the location set forth in the Division's May 11, 2004 letter. The hearing started 31 minutes after the time set forth in the letter to make sure that the Respondent was not running late. (State's Exhibit F; TR at 1, 4.)
6. The Respondent received the NOH by certified mail and received written notice of the date, time and location of the hearing.

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**C. Respondent's Loan Officer Application and Criminal Conviction.**

7. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A.)
8. 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).
9. The Division received Respondent's Loan Officer Application ("Application") on January 26, 2004. (State's Exhibit A.)
10. Respondent answered "Yes" 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 A, emphasis and boldface type in original.)

11. in response to the Division's inquiry, the Respondent provided certified copies of Arizona court records evidencing his conviction for attempted possession of dangerous drugs for sale in 2001. The records indicate that ecstasy was the drug involved in the conviction. (State's Exhibits B and C; TR at 7-8.)

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

12. The Respondent mailed a letter to the Division indicating that he earned a Masters of Business Administration degree after the conviction. His letter and his Application also state that he has been employed with American Century Mortgage in Cincinnati, Ohio. The record contains no other evidence regarding his activities after the conviction. (State's Exhibits A and C.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's NOH properly notified the Respondent that he was entitled to request a hearing and was served upon him by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of his right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once a date is set. The Division's May 11, 2004 letter including this information was sent to the Respondent by regular mail at the most recent address he had provided to the Division and where he had received the NOH by certified mail. The letter was not returned to the Division as undeliverable.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the hearing in this matter.
5. The Respondent received proper notice of the hearing. Therefore, it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124,125-26, 532 N.E.2d 189, 191.
6. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer License Application.**

7. 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.
8. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer<sup>1</sup> 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.

9. 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:

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

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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)(3) and (5).

10. Respondent was convicted of attempted possession of dangerous drugs for sale in 2001. Attempted possession of dangerous drugs for sale is an offense involving drug trafficking for the purposes of R.C. 1322.031(A)(2) and 1322.041(A)(3).
11. Once the attempted possession of dangerous drugs for sale conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the conviction show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
12. The record contains very little evidence regarding Respondent's activities after the conviction. It also does not contain evidence establishing that Respondent's reputation is good and that he is fit to be a loan officer. The lack of this evidence viewed in conjunction with Respondent's recent conviction precludes Respondent from meeting his burden of proof under R.C. 1322.041(A)(3).
13. For those same reasons, Respondent has not established that his character and general fitness command the confidence of the public and warrant the belief that his 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 not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

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Jane Stempel Arata  
Administrative Hearing Officer  
October 14, 2004