

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

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In re: Craig P. Klein

: Case No. 03-LO-D-96-97

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License Application of Craig P. Klein not be granted. The Division conducted an investigation and found:

In or around 1886, Mr. Klein was convicted of Petty Theft, a misdemeanor offense, in the Municipal Court of South Euclid, Ohio and in or around 1993, Mr. Klein was convicted of Criminal Trespassing, a misdemeanor offense, in the Municipal Court of Athens County, Ohio;

2. As a result, the Division determined:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and
- ii. that Mr. Klein's character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in Section 1322.041(A)(5).

Mr. Klein's address for service is 829 Woodview Road, Cleveland Heights, Ohio 44121. He is hereinafter referred to as the "Respondent". The Respondent is employed by Diversified Lending, Inc.. (Exhibit 1A).

This matter was initiated by the Superintendent of the Division by the issuance on September 26, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 1A).

On October 3, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 1B).

On October 6, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for October 15, 2003 at 10:00 a.m. (Exhibit 1C) The hearing was simultaneously continued and rescheduled until a date to be determined. (Id.).

On October 21, 2003, the Division wrote to the Respondent to schedule the hearing for November 13, 2003 at 9:00 a.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 1D).

On November 12, 2003, Robert D. Gutin, Esq., wrote to the Division to enter his appearance and to request a continuance of the hearing. (Exhibit 1E). On November 12, 2003, the Division wrote to Mr. Gutin to announce that the hearing would be rescheduled to December 4, 2003 at 10:30 a.m. in Room 1936 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio.

The hearing was held beginning at 11:00 a.m. on December 4, 2003 and was attended by: John A. Izzo, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; the Respondent; and Robert D. Gutin, Esq. Also in attendance was Robert Grieser, Deputy Superintendent for Consumer Finance of the Division.

The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On September 18, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 3, Tr. 17). The Applicant was provided with the standard Explanation and Instructions. (Exhibit 2)

2. Question 5 of the Application provides:

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?

3. In response to Question 5, the Respondent answered "Yes" and stated: "please refer to attached addendum". (Exhibit 3).

4. The Respondent attached a letter to the Application in which he wrote:

This addendum is pertaining to question number five, located on the fourth page of the Ohio Dept. of Commerce

(Division of Financial Institutions) Loan officer application. This form is in reference to the Ohio Mortgage Broker Act (o.r.c. chapter 1322 // o.a.c. chapter 1301:8-7)

1986: Cited with possession of marijuana and drug paraphernalia after an arrest in South Euclid, OH for petty theft (while switching price tags on a bottle of wine for a dare!) turned-up a resinated pot pipe in my pocket.

1988: During a routine traffic stop, a state trooper found a small amount of marijuana in the car I was driving. I was cited with possession in Delaware, OH.

1993: I was cited for driving under the influence in Parma, OH.

1993: I was charged with carrying a concealed weapon and possession of drug paraphernalia in Athens, OH. These charges were dismissed.

(please see attached forms !)

I plead "no contest" to a trespassing charge in Athens at that same time.

2000: I was cited for possession of marijuana / drug paraphernalia because there was a pipe in a jacket that had been left in the car I was driving!

"While I am certainly not proud of the blemishes (expunged or otherwise!) on my record ... the following list represents an accurate facsimile of the criminal charges on file with various state and local authorities. I would like to emphasize that I have never been convicted of a felony and that the misdemeanors of years past have served as important lessons during my transition into adulthood!

To the best of my knowledge, this list is a complete account of all criminal charges on my record. I believe that most, if not all, of these citations have either been expunged or dropped off my record!"

(Exhibit 4).

5. On May 5, 2003, the Division wrote a letter to the Respondent entitled "Warning of Disqualification". (Exhibit 5). The letter provided that with certain types of convictions or judgments against an applicant for a license, the license will be denied unless the applicant can prove, 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 that there is no basis for believing that the applicant will commit such an offense again. (Id).

6. On June 13, 2002, the Respondent replied to the Division in writing as follows:

I am writing in response to the automatic disqualification notice that I received on the 7th of May. I would like to state, for the record, that I am strongly in favor of the new licensing requirements contained in the Ohio Mortgage Broker Act! I believe that this bill will accomplish a great deal towards elevating the professional standards within the industry as well as eliminating those individuals who have, in many instances, ruined people's lives and made it difficult for honest brokers to conduct business. I am not one of these people, despite the fact that I have a conviction for petty theft on my record!

This charge resulted from my foolishly placing a price tag (which was a few dollars lower) over the marked price on a bottle of wine in an Acme grocery store in 1986 when I was 19 years old. I truly regret this incident ever took place. I suffered a great deal of shame and humiliation from my family and friends, indirectly lost my girlfriend because of it and had to pay a fine, lawyer's fees and perform community service while also getting placed on probation.

I have never forgotten that exquisitely uncomfortable time in my life and I learned an important lesson about the adverse consequences of dishonesty. In retrospect, my immaturity and lack of judgment was incredible! It was a lame thing to do and I should have known better! I will never forget that sick feeling in the pit of my stomach when the store detective grabbed me or the pained look in my fiancée's eyes as she sat in the waiting area of the police station after posting my bail! The man I am today would never consider repeating the actions of the boy I was then! It is an embarrassment to me, yet perhaps it served some good after all.

Since that time, I have grown tremendously spiritually, emotionally and intellectually. I traveled a great deal and began to get a better sense of the world and my place in it. I became very proficient in playing the harmonica and singing and completed a Bachelor's degree in Philosophy. The discipline involved in these pursuits gave me a sense of accomplishment that further strengthened my resolve to never repeat the mistakes of my youth!

It is ironic, in a sense, that my past should come back to haunt me in this fashion because I have always strived to maintain the highest possible standards in my career as a loan officer! I have NEVER originated a loan that did not benefit the borrower and gauge my success by the people I help and the many referrals I get, NOT by the amount of settlement charges on my H.U.D.'s! I became a broker, in fact, because in the few years I worked for non-conforming lenders I was unable to give credit-worthy borrowers the rates and programs they deserved. I could not, in good conscience, convince people to sign loan documents when I KNEW they could do much better (in a conforming program) elsewhere. Thus, after several years as a non-conforming L.O., I became a broker to avoid the conflict between doing what was best for the company and what was best for the borrower.

As my knowledge increased, I always passed it on to those people who I did business with ... informing them of the Homestead Exemption, for example, or explaining the technique of over-paying on the principal portion of a loan to save time and money rather than refinancing a few credit cards (with fairly low balances!) into a new, often less advantageous mortgage the way many of my colleagues did! This sense of ethics and fair play has become second nature to me and has enabled me to take a great deal of pride in my work- secure in the knowledge that many people are in a much better financial position due to my efforts. While I am not strictly altruistic, it has always been important to try and make a positive difference in the lives of the people I come in contact with and to make the world a better place to be in as a result of having been there!

If the State sees fit to make an exception to automatic disqualification of licensure in my case; I hereby pledge to maintain the high standards of honesty, integrity and responsibility that are demanded of a Loan Officer. Please do not deprive me of the means to earn a living because of the ignorance I exhibited in my youth! It was poor judgment, not a character defect, which led me to switch the price tag on that bottle of wine all those years ago! It is my fervent hope that the powers that be will be gracious and merciful in allowing me to become a licensed Loan Officer in the state of Ohio!

(Exhibit 6).

Attached to Exhibit 6 were two letters of reference/recommendation: one from Suzette M. Whelan; and one from Robert Fursik.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant 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.

2. Ohio Revised Code Section 1322.041 provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offense, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

...

- (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.

3. Because the Respondent has been convicted of petty theft, a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that the Applicant's activities and employment since the conviction show that the Applicant is honest, truthful and of good reputation and there is no basis in fact for believing that he will commit another 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. Because of the existence of both convictions, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

DISCUSSION

1. Nearly 20 years ago, in 1986, when the Respondent was 20 years old, he was arrested for petty theft. (Tr. 19). At the time, he was in a grocery store with some friends. (Id). The friends dared him to switch the price tag on a bottle of wine to see whether the Respondent could "get away with it". (Id). The price tag was switched by the Respondent and he was subsequently arrested and charged with petty theft. (Id).

2. The outcome of that charge was a plea of "no contest" to petty theft. According to the Respondent, this was a fourth degree misdemeanor. (Tr. 20). The difference in the price of the two bottles of wine was a total of \$7.00.

3. In 1993, the Respondent was charged with criminal trespassing. (Tr. 21). This incident arose from having had his van parked on a school parking lot while he was attending school. (Tr. 21). The Respondent declined the Police Officer's request to have his van searched and he was charged with trespassing. (Tr. 31-32). Other charges involved in that incident were dismissed in exchange for the "no contest" plea to criminal trespassing. A nominal fine was imposed. (Tr. 22).

4. Over a 14-year period from 1986 through 2000, the Respondent acknowledges that he was experimenting with illegal drugs. (Tr. 29). In particular, he experimented with marijuana. (Id). In 2000, the Respondent was charged with possession of marijuana and drug paraphernalia in Cuyahoga County. (Tr. 34). The Respondent was driving away from a club in Westlake and a policeman pulled him over for weaving, searched the vehicle and found a pipe in a jacket inside the vehicle. (Tr. 34).

5. At the time of the hearing, the Respondent was 38 years of age. (Tr. 32).

6. In 1988, the Respondent was arrested for possession of a small amount of marijuana while in Delaware, Ohio. (Exhibit 4). In 1993, the Respondent was arrested for driving under the influence in Parma, Ohio. (Exhibit 4).

7. The Respondent provided several letters of recommendation. A letter from Robert Furesik (see Exhibit 6), the Respondent's supervisor at Premier Mortgage, wrote in support of the Respondent. The Respondent also submitted a letter from Suzette M. Whelan. The Respondent helped Ms. Whelan and her husband refinance two properties. She wrote to note that she has known the Respondent for many years and that he has always been honest and trustworthy. (Exhibit 4). The Respondent submitted a letter of support from Rabbi Yaakov Labinsky of Aish Hatorah of Cleveland. The Rabbi wrote to acknowledge the turnaround changes in the Respondent's life and to offer reassurance of his changed character. It is the Rabbi's firm believe that the Respondent is an honest person who is unlikely to repeat his past mistakes. (Respondent's Exhibit A). Finally, the Respondent submitted a letter in support from Robert Teren, the owner of Diversified Lending, the employer of the Respondent. In the six months that Mr. Teren has known the Respondent, he has found him to be an honorable person with thorough understanding the proper loan procedures and ethical guidelines. (Respondent's Exhibit B).

8. In this instance, the Hearing Officer finds that the Respondent correctly answered Question 5 of the Application and noted his criminal convictions. The Hearing Officer had an opportunity to observe the Respondent's demeanor in connection with his appearance in the Hearing. The Hearing Officer is impressed with the Respondent's sincerity and honesty. Further, the convictions in this matter are both *de minimus* in nature and occurred many years ago while the Respondent was much younger. Today, at age 38, the Hearing Officer believes that the Respondent is now an older and wiser man, less prone to youthful lapses in judgment.

9. The Hearing Officer finds that the Respondent has shown by a preponderance of the evidence that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will commit such offenses again. Further, the Hearing Officer finds that the Respondent's character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

RECOMMENDATION

Based on the above-findings of fact, conclusions of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
February, 11, 2004

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