

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0206-LOD
: :
LOWELL SAWYER : JANE S. ARATA, HEARING OFFICER

2004 MAY -3 PM 12:53

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 3, 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 on March 16, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Lowell Sawyer ("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 theft in 1982, disorderly conduct in 1983, and receiving stolen property in 1983. The Division further alleged that Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose those 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;
2. 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
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 and B were admitted into the record. The Division is to redact any Social Security Numbers from those exhibits. Social Security Numbers are not relevant to any issues in this proceeding and the protection of them is key to the prevention of identity theft.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent received the NOH by certified mail on February 3, 2004. Respondent's hearing request was received by the Division sometime after February 3, 2004 and before February 10, 2004. On February 10, 2004, the Division sent Respondent a letter scheduling the hearing for February 17, 2004, and continuing it until March 16, 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 has conducted, and continues to conduct, business in Ohio as a mortgage loan officer. (State's Exhibit 1.) (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 May 2, 2002, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on May 9, 2002. (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 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 1.)

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 possible convictions for theft in 1982, disorderly conduct in 1983, and receiving stolen property in 1983. In response to the Division's inquiry, the Respondent submitted journal entries and court records confirming the convictions. (State's Exhibits 3, 4 and 5A through 5F.)
8. Respondent, who is 43 years old, was in his early twenties when the activities underlying the criminal convictions at issue took place. He was abusing drugs and alcohol during that period of his life. He has been treated for substance abuse and had no problems with it for the past twenty years. (TR at 14, 21-22, and 36.)
9. He could not recall the details of the petty theft conviction. The disorderly conduct charge arose from behavior while he was intoxicated. (TR at 21-23.)
10. The felony receiving stolen property conviction involved his receipt of a stolen car. When he received the vehicle, it did not have a key and had to be started with a screwdriver. He testified that he did not know it was stolen when he received it but later admitted that he did. (TR at 19-21, 27-28.)
11. There is no evidence in the record of any criminal convictions since 1983. (State's Exhibits 3, 4 and 5A through 5F.)

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

12. The Respondent did not disclose the convictions for theft, disorderly conduct, and felony receiving stolen property on his Application. (State's Exhibit 1; TR at 16-17.)
13. He explained that he did not disclose the convictions due to their age and because he thought the "seven-year stipulation" would clear him of them. According to Respondent, the "seven-year stipulation" refers to a time limit that applies to the use of bad credit information in the mortgage industry. A friend told him that this would also apply with respect to his criminal convictions. (TR at 17-18, 39.)

14. There is no evidence in the record indicating that Respondent contacted anyone from the Division of Financial Institutions or an attorney to try to clarify his confusion about Question 5.
15. Respondent knew there might be an issue with his response to Question 5 yet took no steps to ensure that it was accurate and truthful.
16. Respondent knew that he had criminal convictions for theft and receiving stolen property that should have been disclosed on the Application. His explanations for not doing so are incredible and at best indicate a lack of good judgment.

E. Respondent's Reputation and Character.

17. Over the past twenty years, Respondent has dramatically changed his life. He was released from prison, completed substance abuse treatment, and has had no further problems with criminal activity or substance abuse. He and his wife have four children. He is active in church and counsels young men about avoiding substance abuse. (TR at 36-39.)
18. Respondent has worked in the mortgage broker industry for the past nine years. He is currently a loan officer for First Metropolitan Mortgage Company. (TR at 14-15.)
19. Gregory Tatum, who has known Respondent since childhood testified as a character witness. Mr. Tatum works as a loan officer at First Metropolitan Mortgage Company and has been in the business for the past six years. One of Respondent's successes in life is the impact he has had on Mr. Tatum. He encouraged and inspired Mr. Tatum to change his life. Mr. Tatum was in prison several years ago. When he was released, Respondent helped him out and later encouraged him to go into the mortgage lending business. Respondent has been a true friend to him and helped him during hard times. (TR at 50-56, 59-60.)
20. Mr. Tatum has worked with Respondent for the past few years. He described Respondent as someone who will do anything needed at work and who helps others new to the business. (TR at 59.)
21. Respondent also provided letters from his pastor and his manager at First Metropolitan Mortgage Company that reflect positively on his reputation in the community and at work. (Respondent's Exhibit's A and B, TR at 45-47.)

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.

(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.

(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), (3) and (5).

3. Respondent was convicted of theft in 1982, disorderly conduct in 1983, and felony receiving stolen property in 1983.
4. Theft and receiving stolen property are offenses specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).

5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. 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.
7. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions, was a substantial misrepresentation in his Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting statements regarding his theft and receiving stolen property convictions required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
10. Respondent has engaged in improper and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that he did not have any criminal convictions on his loan officer license application.
11. 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 1322.041(A)(2).
12. Once the theft 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 convictions 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).
13. Instead, the evidence established additional criminal convictions and that he failed to disclose any of his convictions on his Application. Question 5 of the Application explicitly mandates disclosure of theft and receiving stolen property convictions without any limitation. The Respondent's failure to disclose those convictions as well as his lack of credibility when explaining this failure, preclude him from establishing that he is honest, truthful, and of good reputation. His initial testimony, that he did not know that a car he received and could only start with a screwdriver was stolen, also precludes him from establishing that he is honest and truthful.

14. Respondent has made great strides in the last twenty years and has proven that he is not likely to commit any of the crimes he was convicted of in 1982 and 1983 again. Respondent, however, did not prove by a preponderance of the evidence that he is honest, truthful and of good reputation. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
15. Respondent's failure to disclose the theft and receiving stolen property convictions on his Application, his reasons for not disclosing the convictions on his Application, and his testimony about the receiving stolen property conviction, establish that 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in 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)(2), (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
May 3, 2004