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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2006-9992796
: :
GARY WILLIAMS : JANE S. ARATA, HEARING
: OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued January 11, 2007

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, who was 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 October 25, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Gary Williams ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH").

The Division alleges that Respondent was convicted of theft in 1997, possession of cocaine in 2005, and trafficking in cocaine in 2005. The Division further alleges that he violated R.C. 1322.07(A), (B), and (C) by failing to disclose these convictions on his loan officer license application. All citations to the Ohio Mortgage Broker Act in this Report and Recommendation are to the Ohio Mortgage Broker Act effective prior to January 1, 2007, unless otherwise noted.

The Division asserts 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 another criminal offense involving drug trafficking or theft 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).

Timothy Loughry, 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. During the hearing, State's Exhibits 1 through 4 were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on May 19, 2006, and served it upon him by certified mail. (State's Exhibit 1.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to him by certified mail. (State's Exhibit 1.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing continued once and was set for October 25, 2006. (State's Exhibit 1.)
4. Respondent received the NOH by certified mail and notice of the date, time, and location for each hearing scheduled in this matter. (State's Exhibit 1.)

C. Respondent's Loan Officer Application and Criminal Convictions.

5. Respondent is an Ohio resident who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 2.)
6. On September 30, 2005, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on October 6, 2005. (State's Exhibit 2; Hearing Transcript ("TR") at 16-17.)
7. 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 2, emphasis and boldface type in original.)

8. Respondent's signature in the Attestation on the Application is notarized. Directly above that signature, 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." (Application, State's Exhibit 2.)
9. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
10. Respondent was convicted of theft in 1997, possession of cocaine in 2005, and trafficking in cocaine in 2005. The 2005 convictions were felonies of the fifth degree. He is still on probation for the 2005 trafficking in cocaine conviction. (State's Exhibit 4; TR at 19, 28.)

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

11. Respondent did not disclose his 1997 theft, 2005 possession of cocaine, and 2005 trafficking in cocaine convictions on his Application. (State's Exhibit 2.)
12. Respondent initially stated that he did not disclose the criminal convictions because he thought only had to disclose convictions in the past 12 months. When confronted with the fact that his January 2005 cocaine convictions were within 12 months of when he signed the Application in

September of 2005, he tried to claim that he filled it out months before he signed it when that would have been the case. This explanation was incredible and simply wrong. His claim that he filled in the Application at a point in time closer to when the convictions took place only makes it more likely that he did so with knowledge that he had a criminal conviction in the past 12 months. (State's Exhibit 2; TR at 13, 16-18.)

13. Respondent also claimed that he thought the question was only asking for crimes committed while he was a loan officer. His inconsistent and conflicting testimony about why he did not disclose the convictions reflects negatively on his honesty and competency to be a loan officer. (TR at 17, 27-28.)
14. Respondent's testimony about his response to Question 5 on the Application evidences that he knew his convictions should be disclosed on the Application at the time he filled it out and failed to do so. His false and inaccurate response to Question 5 on the Application reflects negatively on his honesty and his ability to be a loan officer.

E. Respondent's Reputation and Character.

15. The record contains very little information about Respondent's activities and employment record during the period starting with his 1997 theft conviction through his 2005 possession of cocaine and trafficking in cocaine convictions. Those recent convictions and the fact that Respondent failed to disclose any of his criminal convictions on his 2005 Application, raise serious concerns about his honesty, truthfulness, and ability to be a loan officer. These concerns were not outweighed by the evidence of good character provided in a letter and testimony from two supervisors at A.G. Financial who have only known him after the 2005 convictions. Therefore, the evidence is not sufficient to establish that he is honest, truthful, and of good reputation. The lack of evidence and the recent convictions also preclude Respondent from proving that there is no basis in fact for believing that he will commit theft or drug trafficking offenses again. (State's Exhibits 2, 4; TR at 31-37.)
16. For the reasons described above, the evidence in the record establishes that 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

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. 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 theft or drug trafficking.

4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
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.
6. Respondent's response to Question 5 on the Application indicating that he did not have any criminal convictions despite his 1997 theft, 2005 possession of cocaine, and 2005 trafficking in cocaine convictions, was a substantial misrepresentation in that 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 when in fact he had three convictions, in violation of R.C. 1322.07(B).
7. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his 1997 theft, 2005 possession of cocaine, and 2005 trafficking in cocaine convictions required to be in an application by R.C. 1322.031(A)(2) from the Application.
8. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
9. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the Application that he did not have any criminal convictions when in fact he had been convicted of theft in 1997, possession of cocaine in 2005, and trafficking in cocaine in 2005.
10. 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).
11. Once the 1997 theft conviction was proven by the Division, the burden of proof shifted to Respondent 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 information about Respondent's activities and employment record during the period starting with his 1997 theft conviction through his 2005 possession of cocaine and trafficking in cocaine convictions. Those recent convictions and the fact that Respondent failed to disclose any of his criminal convictions on his 2005

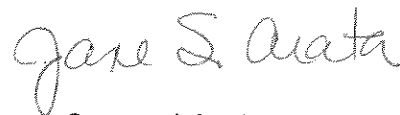
Application, raise serious concerns about his honesty, truthfulness, and ability to be a loan officer. Relatively little time has passed since his recent 2005 trafficking in cocaine conviction and he is still on probation. The evidence provided on his behalf does not suffice to outweigh these concerns. Therefore, the evidence is not sufficient to establish that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit theft or drug trafficking offenses again as required by R.C. 1322.041(A)(3).

13. For the reasons described above, the evidence in the record establishes that 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
14. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

The Respondent does not meet the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (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,



Jane Stempel Arata
Administrative Hearing Officer
January 11, 2007