

Ted Strickland
Governor

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

Kimberly A. Zurz
Director

In the matter of:

KEVIN O. VASQUEZ
16480 Morningstar
Strongsville, Ohio 44136

) Case No. M2009-1069
)
) **DIVISION ORDER**
) **Issuance of Loan Officer License**
) **&**
) **Notice of Appellate Rights**
)

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division") is charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, as codified in Ohio Revised Code ("R.C.") Chapter 1322, and finds that this Order is necessary and appropriate, in the interest of the public, and is consistent with the purposes of the Ohio Mortgage Broker Act.

On May 3, 2010, the Division of Financial Institutions issued notice to Kevin O. Vasquez ("Respondent") that the Division intended to refuse to issue him a loan officer license and that set forth the following allegations and findings:

- A. The Division is authorized by R.C. 1322.10(A)(1)(a) to refuse to issue a loan officer license if the Division finds that the licensee has violated "or fail[ed] to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted[.]"
- B. R.C. 1322.041(A) provides that a loan officer license will be issued if the superintendent finds that the applicant meets the conditions set forth in divisions (A)(1) to (6) of R.C. 1322.041.
- C. The Division is required by Ohio Admin. Code 1301:8-7-21(H) to consider an applicant's "failure to fully satisfy any judgment or award issued by any court of competent jurisdiction" in order to determine an applicant's character and general fitness.
- D. In February 2006, Notice of Federal Tax Lien 200602239098 in the amount of \$8,052.82 was recorded against Respondent by the Cuyahoga County Recorder.
- E. In August 2006, Certificate of Judgment Nos. 2006 JD 01329, 2006 JD 01330 and 2006 JD 01336 were entered against the Respondent in the Portage County Common

Pleas Court related to State of Ohio personal income tax liens in the amount of \$3,363.83.

As a result of the findings listed above, the Division has determined that:

1. Respondent's actions show 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. See R.C. 1322.041(A)(6) and Ohio Admin. Code 1301: 8-7-21(H).
2. Because Respondent did not meet the conditions for issuance outlined in R.C. 1322.041(A)(6), the Division has the authority to refuse issuance of loan officer license to Respondent. See R.C. 1322.10(A)(1)(a).

The Notice also informed Respondent that he had thirty (30) days to request an adjudicatory hearing pursuant to R.C. Chapter 119 regarding the Division's allegations set forth in the Notice.

Respondent requested an administrative hearing, which was scheduled for July 26, 2010. Respondent requested a continuance and the hearing was rescheduled to September 20, 2010. Respondent requested a second continuance and the hearing was again rescheduled to October 25, 2010. Respondent appeared at the October 25, 2010 hearing and waived his right to counsel. The hearing officer's report and recommendation (the "Report and Recommendation") was filed with the Division on November 18, 2010 (a copy is attached). The Report and Recommendation found that the Division established a sufficient evidentiary basis for denying Respondent's 2009 loan officer license application be denied based Respondent's lack of good character and fitness based upon his failure to satisfy civil judgments related to his non-payment of state income taxes. Respondent filed objections on December 7, 2010.

Pursuant to R.C. 119.09, the Division may approve, modify, or disapprove the recommendation of a hearing officer based upon the report, recommendation, transcript of testimony and evidence, or objections of the parties and any additional testimony and evidence permitted. In accordance therewith, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony, exhibits, Respondent's objections filed and all applicable laws. Any finding and/or conclusion not specifically addressed in the attached Memorandum in Support is approved, adopted and incorporated herein.

For the reasons provided herein and in the attached Memorandum in Support, the Division modifies the Report and Recommendation. The Division has weighed the evidence and

will ISSUE a loan officer license to Respondent Kevin O. Vasquez provided that his application has no other outstanding deficiencies.

IT IS SO ORDERED.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Division Order may be appealed by filing a notice of appeal with the Division setting forth the Order that Respondent is appealing from and stating that the Division's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may also include, but is not required to include, the specific grounds for the appeal. The notice of appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the notice of appeal with the Division or court, the notice that is filed may be either the original notice or a copy of the original notice. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Division Order.

Signed and sealed this 3rd day of January, 2011.

CAROLYN L. BRADFORD
Superintendent
Division of Financial Institutions
Ohio Department of Commerce

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

**Memorandum in Support of the Division Order
To Refuse the Loan Officer/Originator License Application of Kevin O. Vasquez**

Case No. M2009-1069

The Ohio Department of Commerce, Division of Financial Institutions (the "Division") hereby approves all of the Findings of Fact and Conclusions of Law set forth in the Administrative Hearing Officer's Report and Recommendation (the "Report and Recommendation") issued November 18, 2010, except as set forth below.

I. Findings of Fact

Based on a review of the transcript and the exhibits admitted into the record, the Division hereby modifies Paragraph 22 of the Findings of Fact which should read as follows:

22. Respondent stated that he believed that his 2004 bankruptcy discharged all debts incurred prior to the March 2004 bankruptcy filing, including any debts he owed to the IRS federal and the Ohio Department of Taxation.

The modification is necessary because Respondent's statement concerning his belief that he was able to discharge taxes in bankruptcy is legally and factually incorrect. Therefore, the findings of fact should reflect that Respondent's belief about discharging taxes in bankruptcy is only supported by Respondent's statement.

The Division hereby disapproves Finding of Fact Paragraph 21 because United States Bankruptcy law does not permit debtors to discharge tax liens. Respondent's Exhibit A is copy of his bankruptcy discharge which states that Respondent's debts were discharged pursuant to 11 USC 727. 11 USC 727(a)(12)(b) discharges all debts except as provided for in 11 USC 523. 11 USC 523 lists the exceptions to discharge. Under 11 USC 523(a)(1)(A), a discharge under section 727 does not discharge a debtor from a tax of the kind specified in 11 USC 507(a)(8). 11 USC 507(a)(8) specifies taxes on or measured by income. Respondent's state tax liens stem from personal income taxes. See, State's Exhibit's 6, 7 and 8. Therefore, the issue of whether Respondent listed the State of Ohio as a creditor in his 2004 bankruptcy filing is irrelevant.

II. Conclusions of Law

Based on a review of the transcript and the exhibits admitted into the record in this case and the Findings of Fact set forth herein and in the Report and Recommendation, the Division hereby modifies Conclusions of Law Paragraphs 47 and 54.

47. R.C. 1322.041(A)(6) provides:

(A) Upon conclusion of the investigation required under division (D) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(6) 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 1332.01 to 1322.12 of the Revised Code.

This modification is necessary because Conclusion of Law Paragraph 47 recites the version of R.C. 1322.041(A)(6) as effective on January 1, 2010 which included the words "financial responsibility." The version R.C. 1322.041(A)(6) in effect in 2009 when respondent filed his application did not include the words "financial responsibility."

54. Respondent violated the provisions of Ohio Adm. Code 1301:8-7-221(H) because he failed to fully satisfy three state liens and one federal tax lien. State and federal tax liens are equivalent to civil judgments entered by a court of competent jurisdiction. Therefore, Respondent lacks the character and fitness for licensure required under R.C. 1322.041(A)(6).

This modification is necessary because Conclusion of Law Paragraph 54 implies that state tax liens are reduced to judgment in court. State and federal tax liens are by law equivalent to judgment liens entered by a court. Upon the filing of a certified copy of the Ohio tax commissioner's entry making a tax assessment final, R.C. 5747.13(C) requires the common pleas clerk of courts to immediately enter a judgment against the individual subject to the assessment. See State's Exhibits 6, 7 and 8. Thus, the Ohio tax liens against Respondent became judgments by operation of law. Federal tax liens are also equivalent to judgment liens and are attached by operation of Ohio and Federal law.

The federal tax lien against Respondent in State's Exhibit 5, states "[a]s provided by section 6321, 6322 and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following named taxpayer. We have made a demand for payment of the liability for it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to the taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue." Internal Revenue Code section 26 USC 6321 allows the IRS to assess a lien for unpaid taxes. 26 USC 6322 provides the time frame an IRS tax lien is effective and 26 USC 6323 explains the priority of IRS tax liens and requires that federal tax liens be attached pursuant to the laws of the state where the property of the taxpayer is located. Ohio law, R.C. 317.09(A)(2), states that liens in favor of the United States shall be filed with the county recorder. Ohio case law treats liens in favor of the United States as judgment liens and does not require the federal tax claim be reduced to judgment because doing so would "subject the federal government to the differing and changing procedures, rules and regulations of each of the states of the Union. If a state were so disposed, the situation could become so burdensome to the collectors of internal revenue as to give a state, in the matter of tax collection, a veto power over the federal government." *Yellow Motors Credit Corp, v. Boling et al.* 2 Ohio App. 2d 7, 10 (1965 9th App. Dist.).

The Division disapproves Conclusion of Law Paragraph 52 because under Federal and Ohio statutory law and Ohio Case law, federal tax liens are equivalent to judgment liens. There was no need for the Division to demonstrate that a federal tax lien is equivalent to a judgment. Respondent's non-payment of his federal taxes is a violation of Ohio Adm. Code 1301:8-7-21(H) and can be considered by the Division in determining Respondent's character and fitness.

III. Recommendation

Subsequent to the date of the hearing, Respondent presented the Division with a correspondence concerning the federal tax lien from his accountant that included a copy of a \$200.00 money order made payable to the IRS that his accountant purported to be a “sign of good faith.” As part of his objections filed on December 7, 2010, Respondent presented correspondence from state tax collectors concerning the settlement of Respondent’s tax debt for \$3,105.00 and a copy of a cashiers’ check for \$3,105 made payable to the “Ohio State Treasurer.”

Because Respondent has presented evidence that he settled and paid his Ohio tax liens and made a “good faith” payment on his federal tax lien, the Division modifies the recommendation and determines to issue a loan officer license to Respondent provided that his application has no other outstanding deficiencies. However, the Division reserves the right to re-evaluate the payment status of Respondent’s state and federal tax liens upon review of any application filed by Respondent.

Based on the Findings of Fact and Conclusions of Law, as set forth above, the Division hereby modifies the Report and Recommendation. The Division has weighed the evidence and will issue Respondent Kevin O. Vasquez a loan officer license provided that his application has no other outstanding deficiencies.

Signed and sealed this ____ day of January, 2011.

CAROLYN L. BRADFORD
Superintendent
Division of Financial Institutions
Ohio Department of Commerce