

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0074-LOD
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:
Katina R. Hall : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 30, 2005

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 3:00 p.m. on April 28, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Katina R. Hall (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of petty theft in 1992 and failed to disclose the conviction on her loan officer application filed in September of 2004. Therefore, 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. The Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would commit such an offense again as required by R.C. 1322.041 (A) (3);
2. 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).
3. By failing to disclose her criminal conviction on her loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

Emily A. Smith, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits A through G were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on March 10, 2005 by certified mail, return receipt requested. (Exhibit D.) Respondent's hearing request was received by the Division on March 18, 2005. (Exhibit E.) The Division scheduled the hearing for March 28, 2005 and, on its own motion, continued the hearing to April 7, 2005. The hearing was continued at the Respondent's request to April 28, 2005. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH. (Exhibits F & G.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on September 14, 2004. (Exhibit A.)
2. Question five of that application asked the following question:
 5. 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 "No." (Exhibit A; TR at 13.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031(B) which apparently revealed that the Respondent had been charged in 1992 with petty theft. By letter dated October 27, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing her plea and the court's finding. (Exhibit B.)
5. The Respondent provided a certified copy of the Computerized Docket of the Reynoldsburg Mayor's Court for Case No. 92RCC95073-A. The Docket shows that on December 9, 1992 the Court found the Respondent guilty of petty theft in violation of city ordinance 545.05(A)(2), a first degree misdemeanor. The Court sentenced the Respondent to 30 days in jail, all 30 days suspended, and fined the Respondent \$250.00 plus costs. (Exhibit C.)
6. In a letter to the Division and in her testimony, the Respondent explained that the violation occurred when she and two friends shoplifted some items from a grocery store as a "college prank." They were arrested and taken to

the city jail. The arresting officer made each of them write a paragraph explaining why they had stolen. She recalled going to court and paying a fine that was over \$200.00. (Exhibit C; TR at 20.)

7. The Respondent testified that she failed to disclose the conviction on her loan officer application because she had forgotten about it. (TR at 18.) Later, she testified that she had believed that it was "over with" because she had gone to court and paid her fine. (TR at 29.)
8. The Respondent testified that since the conviction she managed a clothing store and a video-rental store and has worked in radio for ten years in sales and as a traffic manager. (TR 23 – 24.) In the last two years, she has begun investing in residential rental property. (TR at 27 – 29.) The Respondent did not introduce evidence about her activities other than her work and her investments.
9. No witnesses appeared, either personally or in writing, to testify on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

* * *

(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 R.C. 1322.031(A)(2), 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.

The NOH states that the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown that she is honest, truthful, and of good reputation, and that there is no basis in fact for believing that she will commit such an offense again, as required by R.C. 1322.041(A)(3). Since the Respondent was convicted of petty theft in 1992, an offense listed in R.C. 1322.031(A)(2), the burden is on the Respondent to prove by the preponderance of the evidence that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again.
4. The Respondent has not satisfied this burden. The Respondent has provided little information about her activities and employment record since her conviction. The Respondent listed her employers and general duties, but she did not present any information from these employers to show, or any reason why this employment shows, that she is honest, truthful and of good reputation. Moreover, she presented no information about activities other than work and investment activities. Accordingly, the Respondent has not met the burden of proving by the preponderance of the evidence that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again as required by R.C. 1322.041(A)(3).
5. The NOH asserts that the Respondent's loan officer application should be denied because the 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). The Division bases this finding upon the Respondent's conviction for petty theft and her failure to disclose the conviction on her loan officer application.
6. The Respondent's conviction may be some evidence that she does not possess the character and general fitness to be loan officer. However, since the Respondent committed the offense more than twelve years ago when she was only nineteen years old, it would not be sufficient by itself to establish that the 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).

7. The Respondent failed to disclose her criminal conviction on her loan officer application as required by R.C. 1322.031(A)(2). When asked about her criminal record in Question 5 of the application, the Respondent answered "no" even though she had been convicted of petty theft. At one point the Respondent testified that she forgot about the conviction and at another point that she thought the matter was over after she appeared in court and paid her fine. Given the events which surrounded the conviction, it is not likely that she forgot about the conviction. Moreover, the Respondent presented no information to support her character and fitness. In the absence of any such evidence, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that her 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).
8. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
9. R.C. 1322.07 provides, in part, that no applicant for a loan officer license shall do any of the following:
 - (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.
 - (B) Make any false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations.
 - (C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

* * *

10. The Respondent's failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).

11. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2), (A)(3) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license.

III. RECOMMENDATION

The record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and that her 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. Moreover, the Respondent has not proven that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,



James J. Lawrence
Hearing Officer
June 30, 2005