

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

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DIVISION OF FINANCIAL INSTITUTIONS

In re: Earnest James Mitchell

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Case No. 04-0306-LOD

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 Earnest J. Mitchell not be granted. The Division conducted an investigation and found:

- a. In or around 1990, in the Springdale Mayor's Court of Hamilton County, Ohio, Mr. Mitchell was convicted of passing bad checks, a misdemeanor of the first degree;
- b. In or around 1996, in the Municipal Court of Hamilton County, Ohio, Mr. Mitchell was convicted by passing bad checks, a misdemeanor of the first degree;
- c. On or around April 29, 2002, Mr. Mitchell attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- d. On or around May 3, 2002, Mr. Mitchell provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Mitchell has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Mitchell'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Mr. Mitchell violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";

- d. Mr. Mitchell violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law”; and
- e. Mr. Mitchell violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Mitchell’s address for service is 3790 Vine Street, Apartment 1, Cincinnati, Ohio 45217. He is hereinafter referred to as the “Respondent.” The Respondent is employed by New Life Mortgage Services, 7617 Reading Road, Suite 200, Cincinnati, Ohio 45237.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 27, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 10).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 10).

6. On February 4, 2004, the Division wrote to the Respondent indicating that the letter to the Respondent dated January 28, 2004, contained in incorrect date and that the Respondent had until March 1, 2004 to request a hearing in this matter. (Exhibit 11).

7. On February 3, 2004, the Division received a Hearing Request Form from the Respondent. (Exhibit 12).

8. On February 6, 2004, the Division wrote to the Respondent acknowledging the request for a hearing and scheduling a hearing for 9:00 a.m. on February 12, 2004. On the motion of the Division, the hearing was simultaneously continued until March 8, 2004 at 1:00 p.m. in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 13).

9. The hearing was conducted beginning at 1:10 p.m. on Monday, March 8, 2004 in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. Attending was Daniel P. Jones, an Assistant Attorney General of Ohio in the Executive Agencies Section. The Respondent did not attend and no one attended on behalf of the Respondent. (Tr. 8).

10. 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 April 29, 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 1).

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 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? Exclude minor traffic and parking offenses.

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No".
4. As part of the Application, the Respondent signed a National Background Check consent. (Exhibit 1).
5. Following the submission of the Application, the Division received the report of the National Background Check which disclosed a 1990 arrest in Springdale Ohio for passing bad checks and an arrest in June, 1996 in Cincinnati for passing bad checks. (Exhibit 2).
6. Following submission of the Application, the Division contacted the Respondent by letter seeking an explanation for the information disclosed on the National Background Check. (Exhibit 3).
7. In response to that letter, the Respondent submitted a written explanation as follows:
- In reply to charges of passing bad check on January 6, 1990, 12 years ago, and June 1, 1996, eight years ago, was an error on my part of making poor check entries, I have made cash payment to the required parties and court including cost. During this time I was working two jobs, raising three children with a hard working lovely wife (family). Also during this time frame, (twelve years ago), I totally forgotten all about the check incidents, which I fail to mention on my application I apologized for my oversight.
- (Exhibit 4)
8. The Respondent also submitted a copy of the Journal Entry from the Hamilton County Municipal Court in connection with the 1996 charge. (Exhibit 5).
9. The Respondent also submitted a copy of the State of Ohio, The Department of Administrative Services, Equal Opportunity Division, Minority Business Enterprise Certificate issued to the Respondent in his capacity as President of Diversified Sales/Service, Inc. (Exhibit 6).

10. On March 17, 2003, the Division wrote to the Respondent in a letter entitled "Warning of Disqualification" indicating that the Respondent's Application would be denied because of the criminal convictions. (Exhibit 7).

11. In response thereto, the Respondent submitted a letter to the Division as follows:

I would like to take this opportunity to say that despite my conviction (passing bad checks in January 1/6/1990 12 years and in 6/1996 eight years ago) I am embarrasse[sic] for my action too this day.

I am asking that the superintendent grant me a loan officer license. I have always embraced "The code of ethic" as it relates to professionalism as a sales agent I have been a license Insurance agent for 33 years. I am honest and a truthful person and of good reputation, and sure this type of offence will not occur again base on the fact that I have no open checking account in my name what so ever at all, and have no plans to open an account in the future.

I apologize to the superintendent, the committee, and my employer of Newlife Mortgage Services for my short coming. I am asking you grant me favor in this matter, and I'll continues in my best effort to be the best person I can be in this life at 51 year of age I can be of service to others.

(Exhibit 8).

12. The Respondent also submitted a copy of the 1990 City of Springdale Mayor's Court Entry regarding the charge of passing bad checks. (Exhibit 9).

13. Also in the record is a letter to the Division from the Respondent dated February 27, 2004, as follows:

I am 52 years of age; an my feeling, and heritage as an Negro form Waverly, Florida a son of a Citrus worker, stating that I am not a honest person, truthful, and of no good reputation. That's and awful thing to go on record, and to say that, and not to know me is of shame. Due to my health condition (three heart attacks within 3 mos. with an injection factor of 19%) I can not meet with you and your committee on my behalf. (March 8, 2004)

As you can see I have resign from New Life Mortgage Service, and I assure Ms. Axtell, that I no intention to commit another criminal offense involving theft or any criminal offense involving money or securities. Everyday my life is in jeopardy with death.

I am asking you remove my name from any harm or danger.

Thank you Sir.

(Exhibit 14)

14. Also in the record is a letter from the Respondent to the Division dated March 4, 2004 as follows:

After talking with Mr. Daniel Jones, via telephone on March 3, 2004 he explain to me that my letter dated on Feb. 27, 2004 had been reviewed, and needed some clarity, on my part.

I am asking that my Loan Officer License application form the Division of Financial Institutions be withdrawn at this time, due to my medical situation.

(Exhibit 15).

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 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(A) 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 offenses, 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 of the Revised Code 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 misrepresentations in any registration or license application;
- (B) Make 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[.]

....

4. Because the Respondent has been convicted of passing bad checks, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated fairly and in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent did not attend the hearing in this matter and no one attended on his behalf.

2. The Hearing Officer has before him a record showing two convictions for passing bad checks. There is no evidence in the record with regard to the Respondent's activities and employment record since those convictions. (*Id.*).

3. The Hearing Officer also notes that Question 5 was answered incorrectly.

4. Based on the record before him, the Hearing Officer determines that the Respondent has not met his burden to show that by a preponderance of the evidence that his employment record and activities since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit such an offense again. Likewise, the Hearing Officer determines that the Division has met its burden to show that the Respondent's character and 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 Ohio Mortgage Broker Act. The Hearing Officer also determines that the Division has shown violation of Section 1322.07(A), (B) and (C).

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
May 20, 2004