

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

IN THE MATTER OF:	:	DIVISION OF FINANCIAL INSTITUTIONS
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J. R. Miller	:	Case No. 04-0283-LOD
	:	
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**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued August 22, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:00 P.M. on May 27, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent J R Miller (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1999, Respondent was convicted of Possession of Marijuana, a Minor Misdemeanor and Possession of Drug Paraphernalia, a Misdemeanor of the Fourth and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Anthony Siciliano. Respondent appeared and represented himself. Respondent brought one witness.

At the hearing, State's Exhibits 1 through 8 were admitted into the record. Respondent's Exhibits A and B were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on March 30, 2004. The Respondent requested a hearing, which was received by the Division on April 5, 2004. On April 7, 2004, the Division scheduled the hearing for April 15, 2004. The Division, upon its own motion continued the hearing to May 27, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Ex. 4).
2. Respondent is an individual who has conducted, and continues to conduct, business as a mortgage analyst for Fidelity Mortgage Bank in Ohio. (Tr.p.17).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about November 10, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Ex. 1).
5. Respondent filled out and signed the Application on or about, November 3rd, 2003. (Ex. 1).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you...ever been convicted of or pleaded guilty to any criminal offense including, but not limited to . . . drug . . . trafficking . . ." (Ex. 1).
7. In or around 1999, Respondent was convicted of Possession of Marijuana, a Minor Misdemeanor and Possession of Drug Paraphernalia, a Misdemeanor of the Fourth Degree. (Ex. 4, 5; Tr. p. 9)
8. Respondent submitted no letters of reference to attest to his character.

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. 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 of 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.
3. Ohio Revised Section 1322.041 provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

(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.

4. Ohio Revised Code Section 1322.07(A) and (B) provide:

NO mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 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 misrepresentation in any registration or license application;

(B) Make any false or misleading statements of a material fact or any omission or 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;

5. Because the Respondent answered "no" to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
6. Respondent had one witness, his employer Dan Flick.

DISCUSSION

1. The Respondent stated that he is currently employed by Fidelity Mortgage Inc. as a loan officer. (Ex. 1; Tr. p.17).
2. The Respondent testified that he thought question five wanted to know if he was convicted of a minor misdemeanor traffic or parking offense. He knew he didn't have either of those so he marked no to the question. (Ex.1;Tr. p.15).
3. The Respondent stated that his 1999 conviction for marijuana was a minor misdemeanor and he thought that the paraphernalia was included in one charge and didn't realize it was two charges until this proceeding. (Tr.p.15, 17).
4. Respondent stated that in 2000 or 2001 he was charged again with paraphernalia because he was in a friend's room that had marijuana rolling papers. When questioned by the Hearing Officer about why he did not report his 2000 or 2001 conviction, Respondent answered "Reasons being because the letter from the State was an inquiry of the 1999 charge. And I attested to the 1999 charge." (Tr. pp. 20-21).
5. Respondent testified that he is a loan officer acting in Ohio but originating loans for other States. (Tr. pp. 21-22).
6. Respondent states that he inquired with his boss whether he was permitted to originate loans outside of Ohio and his boss told him "yes." (Tr. p. 23).
7. When questioned by the Hearing Officer regarding the Respondent acting as a loan officer in contravention to signing a document stating it is a crime to act as a loan officer in Ohio without being licensed (Ex.1; Tr.p.24) Respondent stated that the understanding of it is "kind of general". (Tr. p. 24).
8. Respondent called Dan Flick, his employer, as his witness. (Tr. p. 30).
9. Mr. Flick testified that Respondent has been an exemplary employee. That Respondent has very good character and works hard and is dedicated to his job. (Tr. p. 30).

10. Mr. Flick further testified that he does not believe that JR would intentionally misrepresent himself or mislead anybody. (Tr. p. 31).

11. Mr. Flick testified that he had checked with their legal department and was told that it was legal for Respondent to originate loans outside of Ohio. (Tr. p. 32).

12. Mr. Flick testified he was aware that Respondent had a criminal past with some misdemeanors and that Respondent had not put those misdemeanors on his application. (Tr. p. 34).

13. Assistant Attorney General Anthony Siciliano argued on behalf of the State that Respondent did not include his 1999 convictions and was not forthcoming about his 2000 conviction until questioned about his criminal record at the hearing. Attorney Siciliano further argued that the language in the application was not designed to trip anybody up and that the application is clear that Respondent was not allowed to originate loans in Ohio without a license and that Respondent has not proven that his character and honesty and truthfulness and reputation or his general fitness meet the requirements set for in Chapter 1322 of the Ohio Revised Code.

14. However, based upon Respondent's testimony and the testimony of his employer, this Hearing Officer would not hold Respondent responsible for originating loans if the legal department advised him that he was allowed to originate loans so long as they were out of state loans. This Hearing Officer believes that Respondent has taken the appropriate steps to change his life around and believes his character and general fitness do command the confidence of the public to 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 section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,

Julie M. Lynch
Hearing Officer
August 22, 2004