

IN THE MATTER OF: : CASE NO. 04-0429-LOD
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:
John Mobasseri : James J. Lawrence, Hearing Officer

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared with Counsel John M. McCarty, Kraig & Kraig of Cleveland, Ohio. At the hearing, State's Exhibits 1 through 7 were admitted into the record. The Respondent did not offer Exhibits for admission.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on October 26, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on November 4, 2004. The Division scheduled the hearing for November 22, 2004 but, on its own motion, continued the hearing to December 13, 2004. The Division sent notice of the hearings by ordinary mail to the same address to which it mailed the NOH. (Exhibits 4, 5 & 6.)

C. Respondent's Loan Officer Application

1. The Respondent has held a loan officer license since April of 2002. (TR at 21.) The Respondent filed a 2004 Loan Officer Renewal Application on April 30, 2004. (Exhibit 1.)
2. Question one of that application asked the following question:
 1. [Within the past sixteen (16) months] Have you been arrested, charged, or convicted by any state or federal authority of any criminal offense (excluding minor traffic violations)?
3. In response to Question 1, the Respondent answered "yes." However, he provided no details concerning the nature of the offenses or the circumstances that gave rise to the offenses. (Exhibit 1.)
4. By letter dated July 1, 2004, the Division required the Respondent to submit a certified copy of the journal entry evidencing the disposition of the case. (Exhibit 2.)
5. The Respondent provided a journal entry from the Cuyahoga County Court of Common Pleas for Case No. CR 444761 which states that on March 2, 2004 the Respondent entered a plea of guilty to possession of drugs in violation of R.C. 2925.11, a fifth degree felony, and the Court, making no finding of guilt, ordered the Respondent placed in intervention in lieu of conviction program for a term of two years. (Exhibit 3.)

6. The Respondent explained that the case arose out of a routine traffic stop in December of 2002. At the stop, the police searched his vehicle and found one marijuana cigarette and a baggie containing two Valium pills and some residue. The residue was later determined to be cocaine. The Respondent was charged with and pled guilty to possession of marijuana² in the Lyndhurst Ohio Municipal Court and paid a fine. (TR at 22-24, 38-41.)
7. In November of 2003, an officer of the Mayfield Heights Ohio Police Department asked the Respondent to reveal names of individuals using hard drugs. When the Respondent did not give him information about users of hard drugs, the police officer referred the matter of the cocaine residue to the Cuyahoga County Prosecutor who sought and obtained an indictment against the Respondent, for possession of cocaine. (TR at 26, 42-43.) This indictment resulted in the referral of the Respondent to the drug intervention program.
8. The Respondent testified that the baggie was not his, that he did not know that it was in his vehicle, and that he did not use any of the cocaine or Valium that had been in the baggie. (TR at 27.) Further, the Respondent testified that prior to his arrest in 2002 he was an occasional user of marijuana, but that he has not used marijuana since. (TR at 25, 32.)
9. The Respondent testified that he completed the treatments involved in the intervention program. (TR at 30.) He attends Alcoholics Anonymous meetings two to four times per week. (TR at 45.) He meets with his probation officer monthly (TR at 30, 44.) And he submits to random drug testing once per month. (TR at 49.)
10. The Respondent did not submit evidence, other than his own testimony, to support his assertion that his character and general fitness do 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.
11. The Division introduced an article from the Mayo Clinic Website which states at page 5 that "Addiction is a chronic relapsing disorder, meaning you tend to fall back into old addictive behaviors, including drug use, even after treatment." (Exhibit 7.) The Respondent's counsel objected to the introduction of the article because it discussed drug addiction generally, and

² The record does not disclose the exact offense to which the Respondent pled guilty. Presumably, the Respondent pled guilty to a violation of R.C. 2925.11(C) (3) (a), a minor misdemeanor.

did not address the Respondent specifically. The Hearing Officer admitted the article for background information on drug addiction. (TR at 15-17.)

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 Renewal Application.

1. 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:


* * *

- (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.
2. In making a finding under R.C. 1322.041(A)(5), the Superintendent needs assurance that the character of the applicant is such that the applicant will comply with the laws of the state of Ohio once granted a license. An applicant's drug use, even occasional drug use, together with the association with people who use illegal substances establishes behavior that shows a disregard for the laws of the state. The record in this case establishes that the Respondent was an occasional user of marijuana and associated with others who used harder narcotics. This shows that the Respondent's character is such that he may disregard the laws of the state of Ohio. Although the Respondent had the opportunity to present evidence to establish that, in spite of his past drug usage and associations, his character and general fitness do command the confidence of the public, he either chose not to or could not present such evidence.

III. RECOMMENDATION

The Respondent's use of marijuana and association with others who use illegal substances in violation of state law while he was a licensed loan officer establishes that his 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. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer renewal application pursuant to R.C. 1322.041.

Respectfully Submitted,


James J. Lawrence
Hearing Officer
March 15, 2005