

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2004 JUN 18 AM 9:43

IN RE: : CASE NO. 04-0259-LOD
: :
STEPHANIE RENEE SIMMONS : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 18, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on April 21, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Stephanie Renee Simmons ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of falsification to mislead and theft by deception (welfare). Therefore, the Division asserted 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. 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 not commit such an offense again as required by R.C. 1322.041(A)(3); and
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).

Paula Luna Paoletti, the Deputy Attorney General for the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 8 (including 4A and 4B) and Respondent's Exhibit A were admitted into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 24, 2004. The Division scheduled the hearing for March 5, 2004, and continued it until April 21, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Criminal Convictions.

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; Hearing Transcript at 13-14.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. The Division received Respondent's Loan Officer Application ("Application") on April 26, 2002. (State's Exhibit 1.)
4. Question 5 on the Application asked:

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.

(Application, State's Exhibit 1; TR at 14.)

5. Respondent answered "Yes" to Question 5 and stated that she had been convicted of welfare fraud in 1998. (State's Exhibit 1; TR at 14.) The conviction for welfare fraud actually took place prior to February 23, 1995. She was placed on probation for the welfare fraud on February 22, 1995 and has made full restitution. (State's Exhibit 5; TR at 22.)

6. Respondent also has a 1993 conviction for falsification with intent to mislead. That conviction is the result of her trying to tell a police officer that she was her sister. She and her sister were on the way home from taking Respondent's son to the hospital for breathing problems and were pulled over because one of the lights on the car was out. Respondent did not have a driver's license at the time and her sister did. (State's Exhibit 4A and 4B; TR at 18-20.)
7. The theft by deception (welfare) conviction was based upon Respondent keeping two checks for public assistance benefits after she had taken a part time job. She believed that those benefits were for an earlier period. Her son's father told her she could keep the checks and that his mother had done so in a similar situation. At the time, Respondent was 23 years old. (State's Exhibit 3; TR at 21-24.)
8. After February of 1995, Respondent has had no other criminal convictions. She testified that she is careful making decisions now and realizes the importance of making correct decisions. (State's Exhibit 3; TR at 25-26.)

D. Respondent's Reputation and Character.

9. Respondent has worked as a retail store assistant manager for over seven years, creating gift baskets for ten months, and for a mortgage broker for over 18 months. She has been employed by Fidelity Mortgage as a loan officer since October of 2002 and seeks a license to continue her work there. She testified that she is upfront and honest with customers and enjoys helping them with financial decisions. While she has been at Fidelity, there have been no complaints about her work, credibility, or honesty. There is no indication that she has not been trustworthy since the 1995 conviction. (TR at 26-27, 29-31.)
10. Respondent provided letters from two individuals familiar with her reputation in the community and her work. Michael Walker has known Respondent for four years. Respondent has assisted him with refinancing projects. He stated that Respondent is professional, honest, trustworthy, and reliable. (Respondent's Exhibit A; TR at 33.)
11. Tiffany Valpreda worked with Respondent on a daily basis at Fidelity Mortgage from May 2003 through March 2004. She described Respondent as a hardworking role model with strong leadership skills. Ms. Valpreda attended Respondent's program on how to obtain referrals from existing clients and found it helpful. (Respondent's Exhibit A; TR at 33-34.)

12. The two letters were identified by the Respondent at the hearing. The authors of the letters were not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters in Respondent's Exhibit A were considered but afforded less weight than they would have been if the respective authors had been available for cross examination.
13. Respondent also submitted nine customer questionnaires filled in by individuals she has worked with since late 2003. The authors of the questionnaires were not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the questionnaires in Respondent's Exhibit A were reviewed but not relied upon by the Hearing Officer in this matter.
14. The Hearing Officer found Respondent to be honest and truthful at the hearing. She has learned from her mistakes and improved her life greatly since 1995. She was professional and courteous at the hearing. She is not likely to commit the theft offense of which she was convicted again.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

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

B. Loan Officer License Application.


1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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.

honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,


Jane Stempel Arata
Administrative Hearing Officer
June 18, 2004