

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

Shane A. Long

Case No. 04-0402-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued November 5, 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 1:30 P.M. on August 27, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Shane A. Long (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 2003, Respondent was convicted of Delivery/Manufacturing Marijuana, 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 Emily Smith. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 7 were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on April 27, 2004. The Respondent requested a hearing, which was received by the Division on May 6, 2004. On May 17, 2004, the Division scheduled the hearing for June 4, 2004. The Division, upon its own motion continued the hearing to July 12, 2004. On July 19, 2004, Asst. Attorney General Emily Smith requested a continuance of the hearing scheduled July 12, 2004, which the Hearing Officer granted said continuance. On August 27, 2004 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. 3).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio. (Tr. p. 8).
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 January 21, 2004, 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, December 30, 2003. (Ex. 1).
6. Within the Application Respondent answered "yes" to Question number 5, which asked: "Have you . . . ever been convicted of any criminal offense." (Ex. 1).
7. In 2003, one year prior to the submission of the Application, Respondent was charged with Delivery/Manufacturing of Marijuana. (Tr. pp. 9,11 16;Ex.1,2,3).
8. Respondent did not bring any witnesses nor did Respondent bring any affidavits for character references.

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 "yes" 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 presented no witnesses nor did he submit any affidavits of character references.

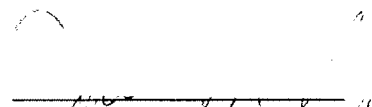
DISCUSSION

1. The Respondent stated that he is employed by Majors Financial Group.(Tr. p. 8).
2. The Respondent testified that he was convicted of cultivation of marijuana in Oakland County, Michigan. (Tr.pp.9,11).
3. The Respondent testified that he lived part time in Michigan and part time in Ohio. (Tr.p13).
4. Respondent stated that his roommate was, without his knowledge, selling marijuana all the time. (Tr. p.14).
5. Respondent furthered testified that his roommate sold marijuana to a friend, and the cops caught one of the friends and set his roommate up with ten pounds of marijuana. The cops raided the house and found marijuana and drugs in his roommates room. (Tr. p.14).
6. Respondent testified that his roommate grew marijuana in the basement and that Respondent knew he was growing it in the house. (Tr.p.14). Respondent did not move out when he found out because he only had two weeks left on his lease. (Tr.p.15). Respondent was charged because he lived in the house but was not charged to the extent the roommate was charged. (Tr. p.12).
7. Respondent testified on advice of counsel he pled guilty because he was advised if he pled guilty he would serve no jail time. (Tr.p.16).
8. Respondent stated he feels he was a trustworthy person before this conviction and that he was a victim of circumstance and that he has never been in trouble. (Tr.pp.22-23).
9. Based upon Respondent's testimony, 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
November 4, 2004