

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2009-1157
:
CHRISTOPHER G. NASH, : DEBORAH K. TONGREN
RESPONDENT : HEARING OFFICER

2010 OCT 15 AM 9:45

ON OCT 15 2010

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued October 14, 2010

I. FINDINGS OF FACT

A. Background.

1. This matter came before Deborah K. Tongren, 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.
2. The Division held the hearing on October 1, 2010 to consider the Division's July 13, 2010 Notice of Intent to Refuse to Issue Loan Officer License and Notice of Hearing ("*NOH*"). In its NOH, the Division alleged that Christopher G. Nash ("*Respondent*") was convicted of a felony in 2005 and a misdemeanor in 2006. For that reason, the Division concluded that Respondent does not meet the requirements to hold a loan officer license and intends to deny his 2009 loan officer license application.
3. Todd A. Nist, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared at the hearing *pro se* and waived his right to counsel. *Tr. pg. 6.*
4. Jacqueline Mallett, Esq. testified on behalf of the Division. Respondent testified on his own behalf and called George O. Adams as a witness.

5. At the hearing, the parties introduced, and the Hearing Officer admitted into the record State's Exhibits 1 through 9 and Respondent's Exhibit A.

B. Jurisdiction.

6. On July 13, 2010, the Division sent the NOH to Respondent at his address of record with the Division, notifying him that it intended to refuse to issue a loan officer license to him and that he had the opportunity to request a hearing. The Division sent the NOH by certified mail, return receipt requested. The United States Postal Service returned the NOH to the Division marked "unclaimed." *State's Exhibit 2; Testimony of Ms. Mallett, Tr. at pg. 16.*
7. R.C. 119.07 provides that when any notice sent by certified mail is returned because the party failed to claim the notice, the agency shall send the notice by ordinary mail to the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained, unless the notice is returned for failure of delivery.
8. On August 9, 2010, in accordance with R.C. 119.07, the Division perfected service when it re-sent the NOH to Respondent by ordinary mail at his last known address and obtained a certificate of mailing. *State's Exhibit 3; Testimony of Ms. Mallett, Tr. at pg. 17.*
9. Respondent timely requested a hearing. *State's Exhibit 4; Testimony of Ms. Mallett, Tr. at pg. 18.*
10. The Division sent a letter to Respondent by certified mail, return receipt requested, informing him that it would hold a hearing on October 1, 2010 and perfected service. *State's Exhibit 5; Testimony of Ms. Mallett, Tr. at pg. 18.*
11. The Division held the hearing on October 1, 2010. The Hearing Officer closed the record at the conclusion of the hearing.

C. **The NOH.**

12. The Division alleged in its NOH that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act ("OMBA"), R.C. Chapter 1322, for the following reasons:

1. Because Respondent has been convicted of (i) a felony drug possession, and (ii) a misdemeanor passing a bad check, 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. Accordingly, Respondent does not meet the requirement found in R.C. 1322.031(A)(6) for issuance of a loan officer license.

2. Respondent's conviction for passing a bad check show that Respondent has not proven that Respondent is honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities. See R.C. sections 1322.041(A)(2) and 1322.041(A)(3).

3. R.C. 1322.07(C) prohibits an applicant for a loan officer license from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.

4. Respondent's actions, as described above, violated R.C. 1322.07(C). Accordingly, Respondent does not meet the requirement found in R.C. 1322.041(A)(2) for issuance of a loan officer license.

State's Exhibit 2.

C. **Respondent's loan officer license.**

13. Jacqueline Mallett is a consumer finance attorney with the Division. Ms. Mallett reviews applications, drafts notices, and takes enforcement actions based on licensing laws. She reviewed Respondent's application for a

loan officer license to ascertain whether he possessed the required character and fitness to be issued a loan officer license. *Testimony of Ms. Mallett, Tr. at pgs. 11-12.*

Respondent's prior loan officer applications and licenses

14. Respondent initially applied for and the Division issued a 90-day loan officer license to Respondent on September 14, 2004 to work for Ohio Financial Group, Ltd. The Division issued the 90-day loan officer license pending Respondent's successful completion of the licensing examination. *Testimony of Ms. Mallett, Tr. at pg. 26.*
15. On January 13, 2005, Respondent's loan officer license terminated by operation of law because he did not take the licensing examination. *Testimony of Ms. Mallett, Tr. at pgs. 26-27.*
16. On April 14, 2005, Respondent applied for a loan officer license to work for United Mortgage Group. *Testimony of Ms. Mallett, Tr. at pg. 27.*
17. On May 26, 2005, the Division performed a background check on Respondent. The background check did not show that Respondent had any arrests or convictions. *Testimony of Ms. Mallett, Tr. at pgs. 34-35.*
18. On July 21, 2005, the Division issued Respondent another loan officer license. *Testimony of Ms. Mallett, Tr. at pg. 28.*
19. On September 28, 2005, Respondent's loan officer license terminated by operation of law because Respondent had not paid the required \$100.00 application fee. *Testimony of Ms. Mallett, Tr. at pg. 29.*
20. On or about November 8, 2005, the Division issued another 90-day loan officer license to Respondent. *Testimony of Ms. Mallett, Tr. at pgs. 29-30.*
21. Respondent failed to take the licensing examination within 90 days and his loan officer license terminated by operation of law. *Testimony of Ms. Mallett, Tr. at pgs. 33, 36.*

Respondent's November 27, 2009 loan officer license application

22. On or about November 27, 2009, Respondent filed another loan officer license application with the Division. *State's Exhibit 1; Testimony of Ms. Mallett, Tr. at pg. 12.*
23. On his loan officer license application and in an attached letter, Respondent explained that he had been convicted of a felony drug offense in 2005. *State's Exhibit 1; Testimony of Ms. Mallett, Tr. at pgs. 13-14.*
24. The Division conducted a routine background investigation. The investigation confirmed Respondent's 2005 felony drug conviction. The investigation also revealed that Respondent had a 2006 misdemeanor conviction for passing bad checks. *Testimony of Ms. Mallett, Tr. at pg. 15.*
25. Respondent had not disclosed his bad check conviction on his 2009 loan officer license application or in his attached letter of explanation. *State's Exhibit 1; Testimony of Ms. Mallett, Tr. at pgs. 13-14; Testimony of Respondent, Tr. at pg. 47.*
26. Respondent maintained that his failure to disclose his bad check conviction was an oversight and that he was not attempting to be dishonest or to conceal the conviction. *Testimony of Respondent, Tr. at pg. 47.*
27. Respondent was credible in his testimony that his failure to disclose the bad check conviction was an oversight. Further, the Hearing Officer notes that the Division did not charge Respondent with failure to disclose his bad check conviction. *State's Exhibit 2.*
28. On January 26, 2010, Ms. Mallett requested that Respondent provide the Division with a detailed explanation regarding both convictions. *State's Exhibit 6; Testimony of Ms. Mallett, Tr. at pg. 19.*
29. On March 29, 2010, Respondent provided the Division with a two-page letter of explanation and certified copies of journal entries from the Cuyahoga County Court of Common Pleas, Case No. CR-05-466294-C, for the drug conviction, and the Lakewood Municipal Court, Case No. 2006CRA00641, for the bad check conviction. *State's Exhibits 7, 8 and 9; Testimony of Ms. Mallett, Tr. at pg. 20.*

Respondent's criminal convictions

Drug possession

30. Respondent explained that he became addicted drugs and alcohol while attending Baldwin-Wallace College. *State's Exhibit 7; Testimony of Respondent, Tr. at pgs. 39-40, 71.*
31. When he was 25 years old, Respondent plead guilty in Cuyahoga County Common Pleas Court to possession of cocaine and ecstasy, a fifth degree felony. On November 17, 2005, the court ordered Respondent to submit to weekly drug tests, pay court costs, and imposed 50 hours of community service and two years probation. The court noted that if Respondent violated the terms of his probation, it would impose six months jail time. *State's Exhibits 7 and 8; Testimony of Respondent, Tr. at pg. 49.*
32. Following his conviction, Respondent relapsed, which violated the terms of his probation. *Testimony of Respondent, Tr. at pg. 41.*
33. As a result, in June 2006, Respondent's probation officer recommended, and the court ordered, that Respondent be committed to Stella Maris instead of serving jail time. Stella Maris is a community drug and alcohol treatment facility. The court committed Respondent to Stella Maris for 60 days where Respondent attended Alcoholics Anonymous ("AA") and/or Narcotics Anonymous ("NA") meetings twice-a-day and received drug and alcohol counseling. *State's Exhibit 7; Testimony of Respondent, Tr. at pgs. 56-57.*
34. In August 2006, Respondent graduated from the Stella Maris program. As a part of his court imposed continuing probation for the drug conviction, Respondent submitted to weekly drug tests. *State's Exhibit 7.*
35. On November 27, 2007, the court released Respondent from probation. *State's Exhibit 8; Testimony of Respondent, Tr. at pg. 53.*

Passing a bad check

36. On June 20, 2006, the Lakewood Municipal Court found Respondent guilty of passing bad checks, a first degree misdemeanor. The court imposed a fine, ordered one year of community control, and sentenced

Respondent to 180 days in jail. The court took notice of Respondent's prior conviction in Cuyahoga County Common Pleas Court and suspended jail time on the condition that Respondent refrain from alcohol and drug use and follow all conditions previously imposed by the Cuyahoga County court. *State's Exhibit 9*.

37. Respondent alleged that the bad check conviction stemmed from his drug and alcohol use and abuse. He explained that prior to entering Stella Maris, he had written a rent check to his landlord. Respondent's landlord did not immediately cash the rent check. When the landlord later presented Respondent's check to the bank, it did not clear. The landlord was unable to reach Respondent and was unaware that Respondent was in treatment at Stella Maris. The landlord filed the bad check charge against Respondent. Respondent has made full restitution to the landlord. *State's Exhibit 7; Testimony of Respondent, Tr. at pgs. 42-43, 60-61.*
38. Respondent has had no arrests or criminal convictions since his 2007 release from probation. *State's Exhibit 7; Testimony of Respondent, Tr. at pgs. 43, 50.*

Respondent's employment history

39. Respondent has worked steadily in the mortgage loan industry since 2006. He worked as a loan officer for Real Estate Mortgage, a mortgage bank, from approximately November 2006 until August 2009.¹ Real Estate Mortgage is no longer in business. *Testimony of Respondent, Tr. at pgs. 44-45.*
40. While working at Real Estate Mortgage, Respondent typically closed six to ten mortgage loans per month. *Testimony of Respondent, Tr. at pg. 59; Testimony of Mr. Adams, Tr. at pg. 83.*
41. On October 14, 2009, Respondent began to work for CMCO Mortgage, LLC, doing business as Home Lending Source ("*Home Lending*"). Respondent is not working as a loan officer for Home Lending because he is unlicensed. *Testimony of Respondent, Tr. at pg. 38.*

¹ Respondent's loan officer work at a mortgage bank did not require that he obtain a license from the Division.

42. Respondent is currently assisting Home Lending in formulating marketing its programs. *Testimony of Mr. Adams, Tr. at pgs. 82-83.*

Respondent's character and fitness

43. An applicant for a loan officer license must establish that he has the character and fitness to be granted a loan officer's license. One factor in that consideration is whether the applicant has ever been convicted of passing bad checks or has ever been convicted of a felony. *Testimony of Ms. Mallett, Tr. at pg. 21.*
44. The Division determined that Respondent lacked the character and fitness required for licensure because Respondent was convicted of a felony in 2005 and of passing bad checks in 2006. *Testimony of Ms. Mallett, Tr. at pg. 22.*
45. Ohio law offers an applicant who has a bad check conviction the opportunity to rehabilitate his character and demonstrate that he would not continue to pass bad checks. *Testimony of Ms. Mallett, Tr. at pg. 22.*
46. In that vein, Respondent offered evidence that he is now a changed person with a good reputation in his business community and a strong commitment to the mortgage loan industry. *Testimony of Respondent, Tr. at pgs. 50-52, 54.*
47. Respondent was remorseful about his convictions and his past drug and alcohol abuse. He admitted that he had made serious mistakes when he was young and under the influence of drugs and alcohol. He has worked hard to change his life. *Testimony of Respondent, Tr. at pgs. 49-51, 55, 61.*
48. Respondent now spends his time raising his four year old son, attending AA and/or NA meetings five times a week, and working in the mortgage loan industry. *Testimony of Respondent, Tr. at pgs. 40, 56, 57-58, 66-67.*
49. Respondent has been clean and sober for 2½ years. *Testimony of Respondent, Tr. at pg. 57.*
50. Respondent has passed the Nationwide Mortgage Licensing System and Registry test and Ohio's counterpart test. *Testimony of Respondent, Tr. at pgs. 52, 61-62.*

51. Respondent is active in his business community through groups such as the Young Professionals in Northeast Ohio and the Cleveland Area Board of Realtors. *Testimony of Respondent, Tr. at pg. 69.*
52. George O. Adams has been a licensed loan officer in Ohio since April 2004. He is also a notary public. Mr. Adams began to work at Real Estate Mortgage Corp. in March 2005. He moved to Home Lending in December 2009. *Testimony of Mr. Adams, Tr. at pgs. 73-74, 76.*
53. Mr. Adams has worked with Respondent for four years and is aware of Respondent's convictions. *Testimony of Mr. Adams, Tr. at pgs. 76, 85.*
54. Mr. Adams holds Respondent in high regard. Mr. Adams has witnessed routine interactions between Respondent and his clients. Mr. Adams contends that Respondent takes the mortgage loan business very seriously and is attentive to and honest with his customers. *Testimony of Mr. Adams, Tr. at pgs. 75, 81.*
55. Respondent offered four letters of recommendation from individuals who are familiar with Respondent and assert that he is of high character, honest, and holds a good reputation in the community. The letters were not signed. *Respondent's Exhibit A.*
56. Respondent explained that the letters were not signed because they had been sent to him through the internet. *Testimony of Respondent, Tr. at pgs. 63-65.* The Hearing Officer recognized that in addition to the lack of signatures, the letters were not notarized and the authors were not available for cross-examination. Accordingly, although the Rules of Evidence do not strictly apply in an administrative proceeding, the Hearing Officer considered Respondent's four character reference letters but afforded them less weight than if the authors had been available for cross examination.
57. Dr. Gregg Good, one of Respondent's former clients wrote that Respondent "did an outstanding job, responded promptly and professionally" to all of his concerns, and ensured a timely closing. *Respondent's Exhibit A.*

58. Michael T. McDonnell, a vice-president in senior talent acquisition at PNC bank, wrote that he has had a personal and professional relationship with Respondent for 10 years. Mr. McDonnell described Respondent as professional, honest, and hard-working. Mr. McDonnell was aware of Respondent's criminal history. *Respondent's Exhibit A; Testimony of Respondent, Tr. at pgs. 65, 67-68.*
59. Doug Sabin, Regional account manager/owner of NorthStar Title Services, wrote that he has had a professional relationship with Respondent for four years. NorthStar Title Services has closed over 100 transactions for Respondent's customers, without a single complaint. Mr. Sabin was aware of Respondent's criminal history and believes that Respondent has changed his life. *Respondent's Exhibit A; Testimony of Respondent, Tr. at pg. 65.*
60. Captain Brian Pell, U.S.M.C., and Respondent have known each other since they were six years old. Captain Pell believes that Respondent has an excellent work ethic and is dedicated to customers. He would trust Respondent to handle a mortgage for him. Captain Pell acknowledged Respondent's past difficulties but maintained that Respondent is currently living a sober life in recovery. *Respondent's Exhibit A; Testimony of Respondent, Tr. at pg. 65.*
61. Respondent maintains that he has been abstinent from drugs and alcohol use for 2½ years and regularly attends AA or NA meetings at least five times a week. *Testimony of Respondent, Tr. at pg. 57.*
62. The Division offered no evidence to contradict Respondent's assertions.
63. The Division maintained that Respondent had not satisfactorily rehabilitated his character, but the Division provided no evidence as to what information might have been sufficient for it to determine that Respondent had the requisite character and fitness to be granted a loan officer license.
64. Because of Respondent's two convictions, the Division maintained that Respondent had engaged in improper, fraudulent, or dishonest dealings, a violation of R.C. 1322.07(C). *Testimony of Ms. Mallett, Tr. at pg. 22.*

65. The Division did not provide any evidence as to how or why Respondent's convictions constituted improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C).
66. The Hearing Officer finds that Respondent was credible in his testimony and was honest and truthful at the hearing. Respondent has learned from his past mistakes and has worked to improve his life since his convictions.

II. CONCLUSIONS OF LAW

Jurisdiction

67. The Division has procedurally complied with R.C. Chapter 11 and has established jurisdiction over this matter.

Applicable Ohio law

68. The Division is responsible for the licensing and regulation of loan officers and mortgage brokers pursuant to the OMBA, codified in R.C. Chapter 1322.
69. The OMBA has changed since the date of Respondent's application for a loan officer license. Because Respondent's application must be reviewed under the controlling law at the time Respondent filed his application, the laws, rules, and regulations cited in this Report and Recommendation are those in effect on November 27, 2009.
70. Prior to issuing a license, the Division is required to ascertain whether the applicant has the necessary character and fitness to hold a loan officer license. *R.C. 1322.031 and 1322.041.*
71. In determining an applicant's character and general fitness for licensure as a loan officer, the Division is statutorily required to consider various criteria. Specifically, the Division is statutorily required to consider Respondent's felony conviction and his bad check conviction. *R.C. 1322.031(A)(2); Ohio Administrative Code ("O.A.C.") 1301:8-7-21(A) and (B).*
72. Ohio law, however, affords Respondent the opportunity to show by a preponderance of the evidence that Respondent's activities and employment record since his convictions demonstrate that Respondent

is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such offenses again. R.C. 1322.041(A)(3).

73. Respondent was truthful about his drug conviction on his application and forthright about his drug conviction and bad check conviction at the hearing.
74. Respondent provided character letters from one customer, two industry professionals, and a childhood friend who confirmed Respondent's good character and reputation. While it is understood that the letters constitute hearsay pursuant to the Rules of Evidence, it is also clear that those rules serve as a guideline and are not to be strictly construed in administrative proceedings. "As the fact finder, a hearing officer may consider generally inadmissible hearsay evidence, along with the credibility of individuals giving testimony in reaching his or her decision." *Boos v. Admr., Ohio Bur. Of Unemployment Services*, 11th Dist. No. 2003-T00174, 2004-Ohio-6693.
75. This Hearing Officer considered the totality of the circumstances and evidence, including the testimony of Respondent and Mr. Adams and to a limited extent the character letters provided in Respondent's Exhibit A.
76. The totality of the circumstances and the weight of the evidence indicate that Respondent is devoted to his family and determined to work as a licensed loan officer in the mortgage loan industry. Respondent has steadily worked in the mortgage loan industry since 2006 and has continued to work in the industry since October 2009 although he has been unable to originate loans.
77. The record evidences a person who has worked hard to reform himself, to earn the trust of others, to establish himself as a person of good character.
78. Five years have passed since Respondent's conviction for passing a bad check, a conviction that was tied to Respondent's drug abuse. Respondent has been sober for 2 ½ years without any other criminal charges or convictions.
79. Respondent has demonstrated by preponderance of the evidence that he commands the confidence of the public, possesses the requisite character and general fitness for licensure, is honest, truthful, and of good

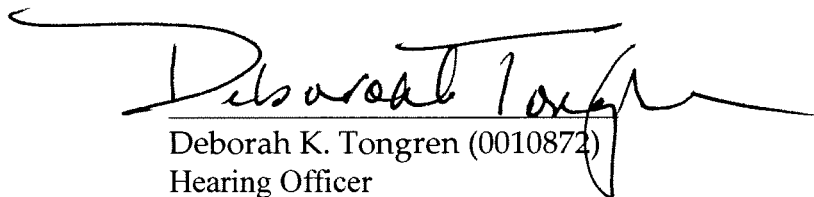
reputation, will operate his mortgage business fairly and in compliance with the OMBA, and that there is no basis in fact for believing that he will repeat an offense for passing a bad check. This Hearing Officer concludes that Respondent possesses the necessary criteria under R.C. 1322.031(A)(2), 1322.041(A)(3), and 1322.041(A)(6) to be licensed as a loan officer in Ohio.

80. R.C. 1322.07(C) prohibits a person who is required to be licensed under the OMBA to engage in conduct that constitutes improper, fraudulent, or dishonest dealings.
81. The Division alleged that Respondent's convictions, standing alone, represented improper, fraudulent, or dishonest dealings, but offered no evidence to indicate that how or why Respondent's actions were improper, fraudulent, or dishonest.
82. This Hearing Officer concludes that the convictions alone, without any other evidence from the Division to demonstrate that Respondent's actions were improper, fraudulent, or dishonest, are insufficient to demonstrate a violation of R.C. 1322.07(C).
83. Consequently, this Hearing Officer concludes that Respondent's character, general fitness, activities, and employment record since his convictions demonstrate a person who: 1) is honest, truthful, and of good reputation; and 2) commands the confidence of the public and warrants the belief that his business will be operated honestly, fairly, and in compliance with the OMBA. This Hearing Officer further concludes that there is no basis in fact for believing that Respondent will commit another criminal offense involving passing a bad check or involving money or securities.
84. Accordingly, this Hearing Officer concludes that Respondent meets the statutory requirements for a license as a loan officer.
85. "An administrative agency should accord due deference to the findings and recommendation of its referee, especially where there exists evidentiary conflicts, because it is the referee who is best able to observe the demeanor of the witnesses and weigh their credibility." *Brown v. OBES* (1994), 70 Ohio St.3d 1, 4.

III. RECOMMENDATION

Based on the totality of the circumstances and the weight of the evidence submitted into the record for this case, the Hearing Officer respectfully recommends that the Superintendent of the Division grant Respondent's 2009 loan officer license application.

Respectfully submitted,



Deborah K. Tongren (0010872)
Hearing Officer