

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

2004 AUG 10 PM 2:46

In re: Steven W. Howell

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Case No. 04-0160-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Steven W. Howell not be granted. The Division conducted an investigation and found:

- a. In or around 1996, in the Auglaize County Municipal Court, Auglaize County, Ohio, Mr. Howell was convicted of check fraud, a misdemeanor of the first degree;
- b. On or about April 3, 2002, Mr. Howell attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- c. On or around April 22, 2002, Mr. Howell provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Howell has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Howell'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Mr. Howell violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Mr. Howell violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and

- e. Mr. Howell violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Howell's address for service is 421 E. Elizabeth Street, Coldwater, Ohio, 45828. He is hereinafter referred to as the "Respondent." The Respondent is employed by Lima Marketplace Mortgage Corp., 5309 Nesbitt Street, Suite A, Elida, Ohio, 45807.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 7).

5. On February 19, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 8).

6. On February 19, 2004, the Division wrote to the Respondent scheduling a hearing for Wednesday, March 31, 2004, at 1:00 p.m. in 1936 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 9). The hearing was held beginning at 1:15 p.m. on Wednesday, March 31, 2004 in Room 1936 of the Vern Riffe Center. Attending were Paula Luna Paoletti, Deputy Attorney General of Ohio in the Executive Agencies Section, and Steven Howell, *pro se*.

7. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On April 3, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No".

4. On June 19, 2002, the Division wrote to the Respondent indicating that the Respondent's background check disclosed a 1996 criminal charge of passing bad checks filed by the St. Mary's Police. (Exhibit 2).

5. In response to that letter, the Respondent wrote to the Division as follows:

Back in 1996 I unknowingly passed a bad check at a grocery store. I was unaware at the time that I didn't have enough money in my checking account to cover the check. When it was not cleared by the bank I thought the bank was at fault but instead it was an error on my part. I went to court pleaded guilty and paid the fine and court cost. I also paid the grocery store the amount of the check that bounced. I was just recently informed by the court that I can remove this off my record. I am in the process of doing this. I hope this does not affect me from becoming a loan officer. It was a simple mistake on my part that has never happened again. (Exhibit 3).

8. The Respondent also submitted a Journal Entry from the Auglaize County Municipal Court showing a plea of guilty to the misdemeanor offense of passing a bad check and ordering the payment of a \$75.00 fine. The Respondent was also ordered to make restitution. (Exhibit 4).

9. On December 9, 2002, the Division wrote to the Respondent indicating that the Respondent had failed to submit to the Division documents relating to his criminal convictions and that therefore his Application had been deemed withdrawn. (Exhibit 5).

10. On January 9, 2003, the Division received a letter from the Respondent as follows:

I received a letter in the mail stating you didn't receive my documents to clear me to get a mortgage broker license. I had talked to Amanda about 2 weeks ago and she said she would call me back. I haven't heard from her so I went back to the courthouse and got the same documents that you requested. This is the only thing they gave me because of their recent renovation. On Friday I am going back to get the paid receipt of restitution and the copy of the journal entry.

I hope this is sufficient enough to clear me. This job is my life and I want to continue it. I have already paid for the continuing education. Please contact me about this matter asap. (Exhibit 6).

CONCLUSIONS OF LAW

1. 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 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.

good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and 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 well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. At the time of the hearing in this matter, the Respondent was thirty-two years of age. (Tr. 25). In 1996, at the time of the criminal proceeding involving passing a bad check, the Respondent was twenty-four years of age. (Tr. 25).

2. The Respondent is a graduate of Coldwater High School in 1990. (Tr. 26). He attended Northern Kentucky University for a year and a half. (Tr. 26).

3. The Respondent has been married for eleven years and has four children. (Tr. 26-27). He is a regular coach of children's baseball leagues in the springs and summers. (Tr. 27). He is also in a tournament bass fishing league with his father. (Tr. 28). The Respondent is also involved with his church and the Knights of Columbus. (Tr. 28). The Respondent is presently employed with his father's business doing sales work. (Tr. 28). The Respondent has lived in Coldwater, Ohio all of his life except for his college activities. (Tr. 29). He believes that he has a good reputation in the community and the people trust him. (Tr. 29). The Respondent also claims to have submitted to the Division a second application (the "Second Application") which is in the record as Respondent's Exhibit A. In the Second Application, notarized on September 12, 2003, the Respondent disclosed the conviction for passing a bad check.

4. Consistent with the filing of the Second Application, the Respondent submitted a receipt for processing fingerprints from National Background Check, Inc., (Respondent's Exhibit B) as well as a check in the amount of the \$100.00 filing fee (Respondent's Exhibit C).

5. This Hearing Officer does not believe that the Second Application is before him for consideration. The Notice of Intent to Deny Loan Officer License Application and Notice Of Opportunity For A Hearing, Exhibit 7, references only the Application. No reference is made at all to the Second Application.

6. The Respondent stands convicted of passing a bad check in an amount at or under \$100 that occurred in 1995, more than eight years prior to the hearing in this matter. That conviction for passing a bad check caused the burden of proof in this matter to shift to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing that he will commit such an offense again. The evidence shows that the Respondent has had steady employment, that he believes that he has a good reputation in the community and he asserts that there is no basis to believe that he will commit such an offense again. The Respondent has had no further involvement in the criminal justice system since his single, isolated involvement with regard to the check violation.


7. However, the Respondent was not truthful with regard to the disclosure of the misdemeanor criminal conviction on his application. Accordingly, the Hearing Officer cannot conclude that the Applicant has met his burden of proof with respect to the requirements to show that he is honest and truthful.

8. Likewise, the Hearing Officer concludes that the failure to disclose the criminal conviction constitutes a violation of Section 1322.07(A), (B) and (C). The Hearing Officer concludes that the Division has established that those violations meet its burden of proof to show that the 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. There is no testimony in the record, other than that of the Respondent.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson / 
Hearing Officer
August 9, 2004