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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0147-LOD
: :
ROBERT A. RUDESS, JR. : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued July 15, 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 6, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Robert A. Rudess, Jr. ("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 attempted forgery in 1997. 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 he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he 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).

Anthony Siciliano, an Assistant Attorney General with 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 and Respondent's Exhibits A through G were admitted into the record. The record in this case was reopened and Respondent was given until July 12, 2004, to submit certified copies of records pertaining to any out of state criminal convictions. The Respondent failed to provide any records and on July 12, 2004, the record was closed.

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 February 13, 2004. The Division's February 20, 2004 letter to Respondent set the hearing for February 24, 2004, and continued it until April 6, 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 seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1.) (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. On April 13, 2002, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on May 3, 2002. (State's Exhibit 1.)
4. Respondent answered "Yes" to Question 5 on the Application, which 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.)

5. Directly below Question 5 Respondent wrote, "1996 - bad check, closed account not knowing that the check was not yet cashed." (Application, State's Exhibit 1.)

E. Respondent's Reputation and Character.

16. Respondent was a loan officer for over two years before the Division notified him that he could not act as a loan officer. He stated that his clients were referrals and were satisfied with his work. (TR at 24-25.)
17. Respondent is a Grand Knight and a comptroller for the Toledo Knights of Columbus. As comptroller he oversees \$50,000. (Respondent's Exhibits C and D; TR at 28-29.)
18. George E. Young, the Financial Secretary for the Toledo Knights of Columbus, provided a favorable letter of reference for Respondent. Respondent is held in high regard and considered to be honest, trustworthy, and loyal. Respondent has done several loans for members who were pleased with his work. (Respondent's Exhibit B; TR at 26-28.)
19. Mr. Young's letter was not the subject of testimony or authenticated by him at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibit B was considered but afforded less weight than it would have been if Mr. Young had testified and been available for cross examination.

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.

3. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

(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.

R.C. 1322.041(A)(3) and (5).

4. Respondent was convicted of passing a bad check in 1996 and attempted forgery in 1997. Both of these convictions are for offenses specifically referenced in R.C. 1322.031(A)(2).
5. Once the passing a bad check conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the conviction show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
6. Instead, the evidence indicates a 1997 attempted forgery conviction that was not disclosed on the Application. His explanation for not disclosing that conviction was not credible. The record includes little independent evidence to establish that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such an offense again. While his testimony about himself and the documents he provided were favorable, that evidence without more is not enough to meet the burden of proof given the nature of the offenses involved.

7. The evidence likewise does not establish that Respondent'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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has not established the conditions 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 not issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,


Jane Stempel Arata
Administrative Hearing Officer
July 15, 2004