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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL
	:	INSITUTIONS
	:	
	:	
John E. Kobal	:	Case No. 04-0105-LOD
	:	
	:	

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

Issued July 30, 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 3:00 P.M. on May 24, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent John E. Kobal (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 1989, Respondent was convicted of Trafficking In Food Stamps a felony, 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 Dan Jones. Respondent appeared and was represented by Attorney Norman E. Incze.

At the hearing, State's Exhibits 1 through 14 were admitted into the record. Respondent's Exhibit's 1- 6 were admitted into the record, over the Division's objection on hearsay grounds, subject to the limited weight afforded the documents, as discussed in the transcript (herein after "Tr.") and below. Respondent brought one witness to testify as to Respondent's character and honesty.

B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. The Respondent requested a hearing, which was received by the Division on February 20, 2004. On March 2, 2004, the Division scheduled the hearing for March 5, 2004. The Division, upon its own motion continued the hearing to May 24, 2004 at which date 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. 11).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a loan officer (Tr. p. 17).
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 April 29, 2002, 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, April 23, 2002. (Ex. 1).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you . . . ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, . . . fraud... or any criminal offense involving money . . ." (Ex. 1).
7. In 1989, fifteen years prior to the submission of the Application Respondent was charged with and convicted of Trafficking in Food Stamps, A Felony. (Tr. p. 26; Ex. 2).
8. Respondent's Exhibit 1 is an authenticated Judgement of Expungement of Conviction of the 1989 Trafficking in Food Stamps charge dated May 14, 2004. (Tr. pp. 19-22; Res.Ex.1).

9. Respondent did bring a witness to testify to his general character and honesty.

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 "no" 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. The Attorney for Respondent put Respondent on direct examination as well as a witness for the Respondent in proving that Respondent's character and fitness command the confidence of the public by a preponderance of the evidence. (Tr. pp 17-23, 30-33; Res.Ex.1).
7. Respondent also testified that Respondent has been acting as a loan officer for the past three years and has been allowed to do so as he is considered to be grandfathered under the law. (Tr.p.35; Ex.1).

DISCUSSION

1. The Respondent stated that he is currently employed as a mortgage loan officer. (Tr. p.17; Ex. 1).
2. The Respondent testified that in 1989 he was found guilty of Trafficking in Food Stamps and was sentenced to a year in prison with sentence being suspended as long as Respondent retained full time employment and paid costs. (Tr. p.18 ; Ex. 5).
3. The Respondent testified that he had opened a neighborhood bar and as a way to generate business he extended bar credit to customers but customers were not paying their bar tabs so he starting asking for collateral. (Tr.pp23-24).
4. Respondent stated that one of his employees accepted thirteen dollars worth of food stamps as collateral. (Tr.p.24).
5. Respondent further testified that he entered into a plea agreement to the charge to avoid lengthy and costly litigation, but that Respondent was under the impression that an expungement was part of the plea agreement. (Tr.pp.25-26).
6. Respondent testified that he had applied for other employment positions in which background checks were conducted and he was never notified that his criminal record had not been expunged so he believed it had. (Tr.pp. 20-21).

7. Respondent did discuss with his boss, Brian Cole, his criminal record but explained that it had been expunged. Based upon the belief that it had been expunged Mr. Cole told him to answer "No" to Question 5. (Tr.pp.21-22, 31-32).

8. Mr. Cole testified that he knew of Respondent's past criminal conviction and that they had discussed in detail and that he believed that Respondent thought the record had in-fact been expunged and based upon that information and belief, Mr. Cole advised Respondent to answer "No" to Question 5. (Tr.p 31).

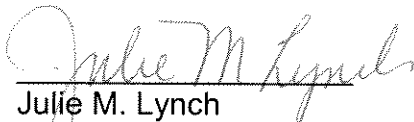
9. Respondent submitted five letters of reference and this Hearing Officer believes they are what they purport to be. Each letter attests to Respondents good character and to his integrity and honesty. (Res.Ex. 2-5).

10. Based upon Respondent's testimony, witnesses who testified at hearing, 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
July 30, 2004