

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

REPORT AND RECOMMENDATION OF HEARING OFFICER

05 MAY 11 AM 11:47

IN THE MATTER OF Marques E. Scott

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0043-LOD**

FINDINGS OF FACT

1. On or about May 23, 2002, Marques E. Scott ("Respondent" herein) submitted an application and related materials (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on March 9, 2004. At the Hearing, Respondent was represented by Scott A. Kossoudgi, Esq., and the Division was represented by Assistant Attorney General Daniel P. Jones, Esq. Diane Wagenbrenner, Esq., of the Division, was also present during part of the Hearing.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice. (Tr. Page 15)
5. As of the date of the Application, Respondent was employed as a loan officer by Randall Mortgage Services, Inc.

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 15) Respondent admitted that he failed to disclose the referenced criminal conviction in response to question 5 of the Application, testifying that he was "...unclear on the question." (Tr. Page 68) Respondent presented a revised application form utilized by the Division, but testified that he had not seen the revised application until preparation for the Hearing (Tr. Pages 84, 85)

Other than his own testimony, Respondent did not present any other evidence or testimony to explain why he failed to disclose the conviction in response to the referenced question in the Application.

Respondent presented the testimony of certain friends, customers, and business associates, as well as certain unsubstantiated written testimonials, in support of his contention that his contention that his character and fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. The witnesses testified as to their individual experience with Respondent, in general support of Respondent's honesty, work ethic, professional ability, and customer service.

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness

enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Respondent's criminal conviction does not, at first, appear to evidence a pattern of ongoing criminal behavior for which there should necessarily be a significant concern that Respondent's business would not be operated honestly and fairly, and in compliance with the Act. However, Respondent's admitted ongoing purchase and use of an illegal controlled substance, as recently as three weeks prior to the Hearing, calls into question whether the actions leading to the conviction truly represent one-time aberrant behavior by Respondent, or are part of an ongoing use of illegal controlled substances. (Tr. Pages 80, 81, 82) It is also inconsistent with Respondent's assertions regarding his character and general fitness and other factors under Ohio Revised Code section 1322.041(A)(5).

Based on his own admission, Respondent failed to disclose the criminal conviction as required by question 5 of the Application. The relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue, or require any evidence with respect to intent or require knowledge. Therefore, there is support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations.

Further, Respondent's failure to disclose the conviction in the Application calls into question Respondent's character and fitness, and whether Respondent meets the criteria contained in Ohio Revised Code section 1322.041(A)(5). Respondent testified that he had considered whether to disclose the conviction in response to question 5 of the Application, but affirmatively elected to omit the disclosure. (Tr. Page 87)

In light of Respondent's failure to provide sufficient evidence as to his character and general fitness under Ohio Revised Code section 1322.041(A)(5) to overcome the Superintendent's determination with respect to matters set forth therein, and Respondent's failure to disclose the conviction as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code section 1322.07.

RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,



Jeffery E. Smith, Hearing Examiner



Date