

STATE OF OHIO
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

PRESCOTT BIGELOW, IV

CASE NO. 04-0154-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued August 27, 2004

I. FINDINGS OF FACT

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 1:00 PM on March 25, 2004, at 77 South High Street, Room 1914, Columbus, Ohio.

The hearing was held at the request of Respondent Prescott Bigelow, IV (mistakenly identified on the NOH as Prescott Bigelow, II; see Tr. p. 4), of Cincinnati, Ohio, (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (herein "NOH"). Said NOH was based upon an allegation that Respondent was convicted in 1989 of Permitting Drug Abuse, a first degree misdemeanor, and, also, that Respondent failed to disclose the past criminal offense on the Application, 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, Deputy Attorney General Paula L. Paoletti. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 9 were admitted into the record as discussed in the transcript (herein "Tr."). Respondent did not offer any documentary evidence.

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 18, 2004. By letter dated February 19, 2004, the Division scheduled the hearing for March 1, 2004. The Division continued the hearing to March 25, 2004, on its own motion, 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. (Exhibit 7.)
2. Respondent is an individual who has never been a loan officer and may or may not wish to conduct business in Ohio as a Mortgage Loan Officer. (Tr. pp. 35-36, 42, 44.)
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 October 22, 2002, the Division received from Respondent a Loan Officer Application (herein the "Application"). (Exhibit 1.)
5. Respondent filled out and signed the Application on, or about, October 3, 2002. (Exhibit 1; Tr. pp. 39-40.)
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 ..." (Exhibit 1; Tr. p. 13.)
7. On, or about, March 10, 1989, 13 years prior to the submission of the Application, Respondent pled guilty to Permitting Drug Abuse, a first degree misdemeanor. (Exhibit 3; Tr. pp. 83-85.)

8. Respondent's explanation of the Permitting Drug Abuse conviction was that he was approached by a person who asked Respondent to find him drugs, specifically cocaine. Respondent introduce that person to someone who would sell him drugs. (Tr. pp. 21-25.)
9. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or to those offenses for which there is a record, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Section 1322.041, O.R.C.; Exhibit 1.)
10. Respondent's explanation of why he answered Question 5 on the Application as "No" when he knew he had a conviction on his record was that he must have not read the question completely; he acknowledged that his answer to Question 5 was a mistake but maintained that it was unintentional. (Tr. pp. 45, 48-50.)
11. Respondent knew, or should have known, the Loan Officer Application contained inaccurate information at the time that he signed it, to wit: In responding "No" to Question number 5 when Respondent knew he had been convicted of "any criminal offense."
12. Respondent's demeanor did not lend credibility to his testimony.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 1989, Respondent pleaded guilty to Permitting Drug Abuse, a type of offense not specifically cited in section 1322.041(A)(3), O.R.C., but inquired about on Question 5 of the Application.
3. To issue a license, the Division must make a finding that, inter alia, 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

sections 1322.01 to 1322.12 of the Revised Code. Section 1322.041(A)(5), O.R.C.

4. The drug conviction cited is far enough removed in time, given its lack of severity, that the conviction itself does not give rise to a recommendation that Respondent's application for a license be denied.
5. Even though Respondent's explanation of his response to Question 5 is accepted for lack of contrary evidence, it demonstrates an inability to carefully read an important document prior to his own attestation of the document's truthfulness, which shows Respondent's general fitness would not command the confidence of the public or that the business would not be operated in compliance with law due to a concern that the loan documents might not be accurately completed.
6. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail.
7. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
8. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the Application "No."
9. Respondent knew, or should have known, to disclose the past conviction which, under the circumstances, rises to negligence. His failure to respond to Question 5 accurately was a negligent, and therefore false, response. A respondent may not benefit from submitting a false license application, even if done so through negligence rather than deceit. The one act of Respondent may not be applied to find violations of all the three sections as they are in the nature of allied offenses of similar import and, thus, Respondent has violated either section 1322.07(A) or (B) or (C).

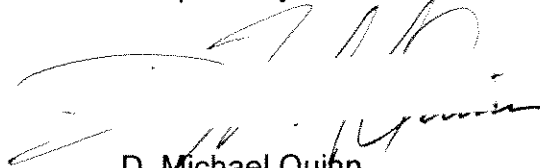
C. DISCUSSION

The criminal conviction was for a misdemeanor committed 13 years prior to the submission of the Application. However, because Respondent falsely answered Question 5 on the Application, he cannot show through his activities and employment record that he is honest and truthful, and 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 sections 1322.01 to 1322.12 of the Revised Code. The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees, not just from dishonest conduct but also from errors committed from lack of attention to detail.

III. RECOMMENDATION

The Division has proven Respondent did not disclose the prior criminal conviction on the Application. Respondent did not present sufficient evidence to prove 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 sections 1322.01 to 1322.12 of the Revised Code, and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO PRESCOTT BIGELOW, IV.**

Respectfully submitted,



D. Michael Quinn
Hearing Officer
August 27, 2004
Docket No. 04-DFI-029