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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

: DIVISION OF FINANCIAL
: INSTITUTIONS
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Donald R. Cowan

: Case No. 04-0368-LOD
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**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued August 12, 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 8:57 A.M. on June 15, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Donald R. Cowan (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 1988, Respondent pleaded guilty to and was convicted of Aggravated Trafficking in Drugs, a felony of the third degree, Aggravated Trafficking in Drugs With Specification, a felony of the third degree and Receiving Stolen Property with Specification, a felony of the fourth degree 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 James M. Evans. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 17 were admitted into the record. Respondent admitted no Exhibit's into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on April 14, 2004. The Respondent requested a hearing, which was received by the Division on April 20, 2004. The Division scheduled the hearing for April 30, 2004. The Division, upon its own motion continued the hearing to May 26, 2004. Respondent requested a continuance of hearing, which was granted and hearing was re-scheduled for June 15, 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. 8).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a loan officer. (Tr. p. 12).
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 March 26, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1).
5. Respondent filled out and signed the Application on or about, March 20, 2002. (Exhibit 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 . . . drug . . . trafficking . . ." (Exhibit 1).
7. In 1988, 16 years prior to the submission of the Application Respondent was charged and convicted of Aggravated Trafficking in Drugs, a felony of the third degree, Aggravated Trafficking in Drugs With Specification, a felony of the third degree and Receiving Stolen Property With Specification, a felony of the fourth degree. (Exhibit's 2, 8; Tr. pp. 7, 9)
8. Respondent submitted no letters of reference to attest to his character.
9. Respondent had no character witnesses.
10. Respondent presented no Exhibits at the hearing.

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. Respondent provided no character references.

DISCUSSION

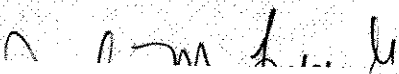
1. The Respondent stated that he is currently employed as a mortgage loan officer. (Tr. p.31; Exhibit 1).
2. The Respondent testified that in 1988 he was found guilty of aggravated trafficking and served three years probation. (Tr. p 15; Ex.8).
3. The Respondent did not admit to having this criminal charge on his mortgage loan application. (Ex. 1). This conviction was 16 years ago. (Tr. pp.7,13; Ex. 2).
4. Even though it appears that the Respondent has had no involvement with the criminal justice system since his release from prison, there is a current issue that Respondent failed to disclose his criminal past on his Loan Officer Application (Tr. pp.7,14; Ex.1).
5. Respondent further testifies that when asking his boss how he should answer question five his boss asked "him how long it had been since he committed the crime" and it was his boss who told him "any crimes committed longer then seven years ago the state doesn't look at it." (Tr. pp. 14 - 15; Ex.1).
6. Respondent states in his testimony that he has been a mortgage loan officer for five years. (Tr. p. 12).
7. When questioned by Asst. Attorney General Evans regarding his current financial state Respondent testified that he is considering filing bankruptcy because they have "nagging debt". (Tr. p.32).
8. Respondent testified that he earned approximately sixteen thousand dollars last year as a loan officer. (Tr. p. 34).
9. When questioned by the Hearing Officer as to why he did not bring any character witnesses or at least bring letters of character reference, Respondent testified "I didn't bring any character witnesses because I come down here to tell the truth. Everything I have said to the evidence and to yourself has been the truth." (Tr.p.39; Ex. 4, 5, 6).

10. Based upon Respondent's testimony his character and general fitness do not 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 deny a Loan Officer License to the Respondent.

Respectfully submitted,



Julie M. Lynch
Hearing Officer
August 12, 2004