

5:20 ... 9:03

CASE NO. 05-0018-LOD

At the hearing, State's Exhibits 1 through 3 were admitted into the record. One witness appeared and gave testimony for the Division.

B. JURISDICTION

The Division issued the NOH against Respondent on June 2, 2005. Respondent timely requested a hearing on June 9, 2005, that the Division scheduled for June 20, 2005, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to October 4, 2005, on which date the hearing went forward. (Exhibit 3.)

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 3.)
2. Respondent is an individual who wishes to be licensed as a mortgage loan officer in Ohio. (Exhibit 1.)
3. On March 11, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the "Application") which Respondent signed, under oath, on March 8, 2005. (Exhibit 1.)
4. 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 ... passing bad checks ..." (Exhibit 1.)
5. On March 13, 1979, in the Village of North Randall, Respondent was found guilty of passing a bad check, a misdemeanor offense, on Respondent's No Contest plea. (Exhibit 2.)
6. Respondent's explanation as to why she responded to Question 5 inaccurately was that it was an oversight due to her stress of dealing with a terminally ill father and the length of time since the event in question. (Exhibit A.)
7. Respondent's written statement of the facts leading to the Bad Check conviction was as follows: 26 years before the submission of the Application, she overdrew on her bank account. She contested the penalty charges which resulted in the matter being resolved in the courts. (Exhibit A.)
8. Respondent was 23 years old when convicted. (Exhibits 1, 2.)

9. Respondent did submit a written statement and an attached reference letter into the hearing record. However, the letter cannot replace sworn testimony and there was no possibility of cross examination so it was not given significant weight. The Respondent did not present evidence that she would be unlikely to commit such an offense again, or of her honesty, truthfulness or good reputation, other than her own sworn written statement. (Exhibit A.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

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

B. LICENSE APPLICATION

2. The Division has proven that in 1979 Respondent was convicted of a passing bad checks offense.
3. O.R.C. section 1322.041(A)(3) states, inter alia, that, if Respondent has been convicted of any criminal offense involving certain named offenses, including passing bad checks, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
4. Because Respondent has not submitted only limited evidence into the record it cannot be concluded that Respondent proved by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
5. In presenting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about March 8, 2005, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained inaccurate information, to wit: the “No” response to Question 5.

6. Because the Application submitted by Respondent contained an inaccurate response, the Division was able to demonstrate that Respondent's activities since the offenses show that the Respondent has not been honest or truthful. The rebuttable presumption is that Respondent knew, or should have known, that she had been convicted of a crime.
7. The Division also charged that 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.
8. The Division sought to bring into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's inaccurate response to Question 5.
9. 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. The public expects loan officers to be detail oriented in order to accurately navigate through the paperwork relating to a real estate loan.
10. Because Respondent has only submitted limited evidence into the record it cannot be concluded that Respondent has refuted the Division's assertions that Respondent's character and general fitness do not command the confidence of the public nor warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Section 1322.041(A)(5).
11. 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."
12. Intent is required for a finding of any of the three provisions and the Division has not proven such intent. The court in Webb v. State Med. Bd., 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001) noted that intent is required for a finding of fraud, misrepresentation, or deception when it observed "The trial court properly concluded that the Ohio medical board committed error when it adopted a conclusion of

law that indicated that appellant's intent was irrelevant." In Powell v. Administrator, 1984 Ohio App. LEXIS 10467 (Ohio Ct. App. 6th Dist., 1984), the court stated that:

A careful examination of the record fails to disclose substantial, credible evidence going to the specific intent to improperly secure unemployment benefits required to be proven under the definitions of false misrepresentation provided by the appellees. *** Both of the definitions adopted by the appellees, supra, require "knowledge" of the falsity on the part of the claimant. Once again, appellant's actions subsequent to receiving a profit from his arcade business negate any knowledge on his part that he was in fact self-employed.

C. DISCUSSION

A 26 year-old conviction would not necessarily be a bar to Respondent obtaining her license. However, Respondent did not meet the preponderance burden placed on her by section 1322.041, O.R.C. Respondent also did not adequately explain why her answer to Question 5 was inaccurate.

III. RECOMMENDATION

The Division has proven the Respondent has a passing bad check conviction which was not disclosed. Respondent did not submit sufficient evidence to prove that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again or 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 the Ohio Mortgage Broker Act. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO CONCETTA GORDON.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
January 18, 2006
Docket No. 05-DFI-093