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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

In re: Darrell R. Muncy

:

Case No. 04-0243-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Darrell R. Muncy not be granted. The Division conducted an investigation and found:

- a. In or around 1986, the Ohio Department of Commerce, Division of Real Estate suspended Mr. Muncy's real estate broker's license as a result of payment from the Ohio Real Estate Recovery Fund of a judgment against him;
- b. In or around 1991, the Ohio Department of Commerce, Division of Real Estate, suspended Mr. Muncy's real estate broker's license as a result of a finding Mr. Muncy violated Section 4735.18(A)(6) of the Ohio Revised Code;
- c. In or around 2002, the Ohio Department of Commerce, Division of Real Estate, revoked Mr. Muncy's real estate broker's license as a result of finding that Mr. Muncy violated Section 4735.18(A) of the Ohio Revised Code;
- d. In or around 1992, the Ohio Department of Commerce, Division of Real Estate, revoked Mr. Muncy's real estate license as a result of finding that Mr. Muncy violated Section 4735.18(A) of the Ohio Revised Code;
- e. In or around 1991, in the Court of Common Pleas of Montgomery County, Ohio, Mr. Muncy was convicted of two counts of theft over \$300, a felony in the fourth degree, two counts of grand theft over \$5,000, a felony of the third degree and one count of passing bad checks over \$300, a felony of the fourth degree; and
- f. In or around 1991, in the Court of Common Pleas of Montgomery County, Ohio, Mr. Muncy was convicted of two counts of grand theft over \$5,000, two counts of securing writings by deception over \$5,000 and one count of selling securities without a license, one count of selling unregistered securities, and one count of fraudulent acts in the sale of securities.

2. As a result, the Division determined:

- a. Mr. Muncy has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and (3) and Section 1322.041(A)(3);
- b. Mr. Muncy'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 as set forth in Revised Code Section 1322.041(A)(5) (Exhibit 8).

3. Mr. Muncy's address for service is 3600 Stoneview Court, Kettering, Ohio, 45429. He is hereinafter referred to as the "Respondent." The Respondent is employed by Kemper Mortgage, Inc., 240 W. Elmwood Drive, Suite 2010, Centerville, Ohio 45459. (Exhibit 8).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 23, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter. (Exhibit 8).

5. The Notice was delivered to the Respondent by certified mail. (Exhibit 8).

6. On February 6, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 9).

7. On February 11, 2004, the Division wrote to the Respondent to schedule a hearing for February 17, 2004, at 9:00 a.m. The Division simultaneously continued the hearing on its own motion until Wednesday, March 17, 2004 at 10:30 a.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 10).

8. The hearing on Wednesday, March 17, 2004, began at 10:30 a.m. in Room 1908 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. Attending were James M. Evans, an Assistant Attorney General of Ohio in the Executive Agencies Section, David M. Duwel, Esq. and the Respondent.

9. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On April 29, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

Have you, or has any company for which you have been an officer, or more than 5% owner or director ever been convicted of pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities? If the answer is Yes, furnish details.

Yes ☐ No ☐

3. In response to Question 5, the Respondent answered "Yes" and wrote:

I was a 50-55% owner in six corporations that invested in real estate. One of the corporations did not issue stock to investors within sixty days as law specifies. I had an attorney that provided services including issuing stock, but I was held responsible as President and CEO. That led to theft by deception convictions. I was ordered to divest myself of any ownership in over 45 Properties.

(Exhibit 1).

4. Following submission of the Application, the Division received the report of the National Background Check which disclosed a 1977 charge for passing bad checks, a 1991 set of charges for theft, passing bad checks, and selling securities without a license. (Exhibit 2).

5. On November 29, 2002, the Division sent a letter to the Respondent indicating that the Division was unable to make a decision as to whether to issue a license because of insufficient evidence. (Exhibit 3). The Division asked for copies of judgment entries evidencing two charges in Montgomery County in 1991, the one charge in 1985 in Montgomery County and the charges in Montgomery County in 1988. (Exhibit 3).

6. In response thereto, the Respondent sent the Division a written statement as follows:

RE: 1988CV04391

Quinton B. Richmond originated and owned the business known as Kettering-Oakwood Accounting.

Some time in the early 1980's Richmond sold the firm to Garald E. Lovorn.

Lovorn and I had been business partners in real estate investment. Lovorn decided to move to Texas and sold his interest in our properties to me. Lovorn also sold Kettering-Oakwood Accounting to me on August 18, 1986. I assumed approximately \$31,600 owed to Richmond.

On November 6, 1986 I entered into an agreement with David R. Wright to operate the business.

In April of 1987 Wright took approximately \$37,000.00 belonging to me. After a lawsuit I received a judgment against Wright on April 7, 1988 for \$37,702.00 plus \$5,499.50 being held in trust.

This financial loss caused me to become delinquent on my obligation to Richmond. I tried to negotiate a new repayment schedule and we had meetings on the subject. To protect his interest, Richmond became aggressive and received a judgment against me on April 4, 1989.

In further meetings with Richmond I was unable to meet his financial demands, so I agreed to turn the business back over to him as settlement.

I cannot find any recorded document of the settlement. I can show that he operated Kettering-Oakwood Accounting from 1989 until he sold the business again on January 18, 1996.

My parents have used the firm to do their taxes for many years. That is how I met Lovorn. My parents referred him to me as a tax preparer. My parents (Lawton and Juneth Muncy) used Richmond to do their taxes then Lovorn then Wright, while I owned the business, and then Richmond again. My parents still have their taxes done by a man who took over their account after Richmond in 1996.

Along with other documentation I am sending copies of my parents tax returns for the years 1989 through 1996.

Richmond re-acquired his business along with all equipment, client files, and office space and the matter was settled.

(Exhibit 4).

7. The Respondent also submitted the Termination Entry from the Montgomery County Court of Common Pleas dated October 8, 1991 in which the Court enters sentence on the convictions for grand theft, securing writings by deception, selling securities without a license, selling unregistered securities, fraudulent acts in the sale of securities, grand theft, and securing writings by deception. (Exhibit 5).

8. The Respondent also submitted a Termination Entry dated October 8, 1991, from the Court of Common Pleas of Montgomery County in connection with the offenses of theft, grand theft and passing bad checks. (Exhibit 6).

9. In the record is also the Finding Order and Grounds for Actions Taken by the Ohio Department of Commerce, Division of Real Estate in 1986 against the Respondent. (Exhibit 7).

10. The record also contains a copy of a docket in the 1991 criminal action showing a March 29, 2002 Motion for Expungement having been filed. (Exhibit 11).

11. There is also in the record an Objection from the Montgomery County Prosecutor to the Expungement which was filed with the Montgomery County Court of Common Pleas dated April 17, 2002. (Exhibit 12).

CONCLUSIONS OF LAW

1. 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 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.

2. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or pled guilty to any criminal offense described in division (A)(2) of Section 1322.031 of the Revised Code, or if the applicant has been convicted of or pleaded guilty to such offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records since the conviction show that the applicant is honest, truthful and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

...

- (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 Section 1322.01 to 1322.12 of the Revised Code.

3. Because the Respondent has been convicted of theft offenses, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his convictions show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

DISCUSSION

1. The Respondent acknowledges a finding, after a trial, of guilty of the charges set forth in Exhibits 5 and 6. (Tr. 17).

2. These convictions arose out of a plan to get investors together and then buy and sell real estate for profit. (Tr. 18). When the market turned negative, the investors complained. (Tr. 18). The Respondent acknowledges not having issued shares of stock in a timely manner. (Tr. 21). He also acknowledges having been convicted of passing bad checks. (Tr. 22). There were, at the time of the convictions, about 50 properties involved that were owned by 40 separate corporations in which the Respondent had between a 50 and 60 percent interest. (Tr. 24). The Respondent acknowledges that his application for expungement was denied. (Tr. 25).

3. Following the Respondent's release from incarceration, he attended the University of Dayton for two and one-half (2½) years. (Tr. 29). He took a job with Add Pro selling advertisement specialties like pens, coffee mugs and the like. (*Id.*). Then he started his own business selling the same merchandise. (*Id.*).

4. The Respondent testified about his difficulty in finding work because of his prior felony conviction. (Tr. 31). He was able to land a job with an advertising company called JB Dollar Savers, a coupon newsletter. (*Id.*). He began work for Kemper Mortgage in 1991. (Tr. 31). He has had no complaints from customers since that time. (Tr. 32).

5. Respondent, since his release from incarceration, has been involved in the raising of his three children, now 31, 23 and 20 years of age. (Tr. 32). He coached a son in baseball and a daughter in softball. (Tr. 32). He was also a football coach. (*Id.*). He also belonged to a rotary club for at least two years but had to drop out because of attendance requirements conflicting with his work. (Tr. 33).

6. The Respondent has completed his probation arising from his criminal convictions and has had no further involvement in the criminal justice system since then. (Tr. 37-38). The Respondent acknowledges that there is a civil judgment for \$5,773.00 outstanding against him which is unpaid. (Tr. 39). The Respondent also has several IRS liens filed against him dating from the 1980's and 1990's. (Tr. 40 *et. seq.*).

7. Testifying in support of the Respondent was Christopher W. Rines, Operations Manager for Kemper Mortgage, Inc. (Tr. 45 *et. seq.*). He has worked for Kemper Mortgage for five years. (Tr. 46). Mr. Rines stated that the Respondent has worked for Kemper Mortgage for just shy of three years. (Tr. 46). During that time, Mr. Rines has had no work performance problems with the Respondent. (*Id.*). Likewise, he has had no customer complaints or problems with the Respondent's truthfulness or honesty. (*Id.*). Mr. Rines has no contact with the Respondent outside of his work environment. (Tr. 48). Mr. Rines was unaware that the Respondent had an outstanding civil judgment against him. (Tr. 51).

8. Testifying in support of the Respondent was James M. Messer, CEO of Kemper Mortgage. (Tr. 57 *et seq.*). Mr. Messer has known the Respondent for four or five years. (Tr. 57). Mr. Messer met the Respondent in the community through friends, through sports and other connections. (Tr. 57-58). Mr. Messer is unaware of any complaints against the

Respondent. (Tr. 58). When Mr. Messer learned of the Respondent's criminal involvement in the past, he began supervising the Respondent closely. (Tr. 59). That monitoring did not disclose any problems. (*Id.*).

9. The Respondent submitted letters of support from Kathy Cataldo, the Respondent's ex-wife. (Respondent's Exhibit A). She stated that the Respondent's legal problems were not caused by illegal or dishonest behavior but by association with unscrupulous business associates who took advantage of him. (*Id.*).

10. Daniel W. Harmon and Kathy McEuen Harmon wrote in support of the Respondent and noted his commitment to athletic opportunity for the children in Miamisburg where he was a youth football supporter. (Respondent's Exhibit B).

11. The criminal convictions of the Respondent go to the heart of the foundation of the financial community. He was convicted of offenses involving fraud, securities law violations, passing bad checks and theft. Because of the theft and passing bad checks conviction, the Respondent must establish that his activities and employment record since the conviction show that he is honest, truthful and of good reputation and that there is no basis to believe that he will commit such an offense again. While there is some evidence in the record to show the Respondent's activities and employment records since his conviction, the Hearing Officer does not find that, by a preponderance of the evidence, that the Respondent has shown that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft, money or securities. The fact that an un-satisfied civil judgment is outstanding, and that there is uncertainty over whether full restitution required by the Montgomery County Court of Common Pleas has been made, gives the Hearing Officer doubt on this standard.

12. Further, the Division has established, by a preponderance of the evidence, that the 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, fairly and in compliance with the purposes of the Ohio Mortgage Broker Act. The Respondent's prior business was selling syndicated real estate interests in violation of criminal and civil statutes. For that he stands convicted. That conviction occurred approximately thirteen years ago. Further, the Division of Real Estate has revoked the Respondent's real estate licenses for violations of law. Those offenses are serious and are in the relatively recent past. There is adequate evidence in the record to support a finding by the Superintendent of the Division that the 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.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
May 13, 2004