

IN THE MATTER OF: : CASE NO. 04-0425-LOD
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:
David L. Shook : James J. Lawrence, Hearing Officer

I. FINDINGS OF FACT

1. 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 as required by R.C. 1322.041(A) (5);
2. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose criminal convictions on his loan officer application filed in May of 2004.

Monica L. Rausch, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits A through F and Respondent's Exhibits 1 – 2 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on October 4, 2004 by certified mail return receipt requested. (Exhibit D.) The Division received the Respondent's hearing request on October 22, 2004. (Exhibit E.) The Division scheduled the hearing for November 1, 2004 and, on its own motion, continued it to November 16, 2004. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit F.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on May 10, 2004. (Exhibit A.)
2. Question 5 of that application asked the following question:
 5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "No." (Exhibit A.)
4. Respondent signed the application on April 29, 2004 before a notary public. Directly above the applicant signature line, the application states:

"Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit A.)
5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check revealed that the Respondent had been charged with failure to comply with a lawful order in 2000. By letter dated May 20, 2004, the Division requested the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing the disposition and sentence for the charge. (Exhibit C.)

6. The Respondent submitted a Journal Entry from the Portage County Municipal Court in Case No. CR-B-180-R that shows that in January of 2001 the Court convicted the Respondent of the offense of failure to comply with a lawful order, in violation of R.C. 2921.331(A), a first degree misdemeanor. (Exhibit B.)
7. The Respondent explained that in September of 2000, as he drove home on State Route 5, he accelerated to pass a truck. Shortly after passing the truck and while still traveling at the high rate of speed needed to pass the truck, he passed an oncoming cruiser from the Sheriff's office. He slowed down but continued driving, turning off the State Route, then turning onto the road where his house is located. He pulled into the driveway and noticed that the Sheriff's cruiser passed by as he got out of his car. Before he could enter his house, a Deputy Sheriff who lived two doors down the street, approached him and told him to get on the ground. He was arrested and charged with failure to comply with a lawful order or direction of a police officer. (TR at 16 – 20.) He subsequently pleaded guilty and was fined \$200.00 plus court costs. (Exhibit B; TR at 19.)

D. Respondent's Failure to Disclose Conviction

1. The Respondent did not disclose the conviction on his loan officer application. (Exhibit A.)
2. The Respondent stated that he did not intentionally withhold information when he filed his application. (TR at 21 - 22.) He failed to disclose the conviction because at the time that he completed the application he believed that he had been convicted of a misdemeanor 4 and that this conviction was therefore, a "minor misdemeanor traffic offense." (TR at 20.) He filled out and filed the application at the Hondros College branch in Greene, Ohio. At the time, he was unsure how to answer Question 5 and asked the worker behind the counter. She listened to his story and agreed that "No" was the correct answer. Further, he proceeded with the procedures for submitting to a background check fully knowing that the Division would discover the conviction. (TR at 20 – 21.)

E. Respondent's Reputation and Character.

1. Chuck Dindia testified on behalf of the Respondent. Mr. Dindia hired the Respondent in 2002 to work as a loan officer with his company, Aegis Lending Corporation (Aegis), a lending company. Mr. Dindia testified that the Respondent has been an exemplary employee. (TR at 36.) Mr Dindia testified that Aegis has a thorough auditing program that includes calling and surveying customers after loans are closed. When a customer comments

positively on a loan officer's performance, Aegis awards the loan officer a certificate. The Respondent produced two certificates that have been awarded to him in the past month. (Exhibits 1 & 2; TR at 36 - 38.) Finally, Mr. Dindia testified that he has received no complaints about the Respondent's performance as a loan officer. (TR at 42.)

2. The Respondent testified that as a member of the United States Marine Corps Reserves he needed a clearance to work with weapons and explosives. (The Respondent is currently assigned to the Individual Reserve Regiment.) As a result of his conviction, he had to appear before his commanding officer and undergo another background investigation. Ultimately, the Marine Corps approved his clearance. (TR at 46 - 47.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

1. R.C. 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.
2. R.C. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent of the Division of Financial Institutions requires. Pursuant to this provision, in question 5 of the application the Superintendent asks for information about convictions for any criminal offense.
3. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 or the Revised Code.

* * *

(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. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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, omissions of 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.

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

* * *

5. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the Portage County Municipal Court of the offense of failure to comply with a lawful order and failed to disclose that conviction on his loan officer application.
2. The Division alleges that the Respondent's failure to disclose the conviction on his loan officer license application shows that his 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. However, the Respondent

explained that the failure to disclose the conviction occurred because he believed that he was convicted of a "minor misdemeanor" traffic offense. The record supports his assertion that he did not intend to mislead the Division or conceal the fact of his conviction. It is doubtful that at the time that he completed the application, the Respondent believed that the conviction would cause the Division to not give him a loan officer license. Moreover, the Respondent knew that the Division planned to conduct a criminal background check as part of the application process. He knew that simply answering "No" to question 5 would not prevent the Division from discovering his criminal history. While his failure to disclose the conviction may show that he did not put enough thought and effort into completing the application, the facts in this record show that the Respondent's failure to correctly answer question 5 on the application was not done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.


3. The Division alleges that when the Respondent failed to disclose his conviction on his loan officer application, he violated R. C. 1322.07(A), in that he made a substantial misrepresentation in his license application; he violated R.C. 1322.07(B) in that he made a false or misleading statement of a material fact or omitted a statement required by state law; he violated R.C. 1322.07(C) in that he engaged in improper, fraudulent or dishonest dealings. When the Respondent failed to disclose his conviction, he violated R.C. 1322.07 (A) and (B) in that he did, albeit unintentionally, misrepresent his criminal record and omit a material fact or statement required by state law. However, the record does not support the Division's allegation that he engaged in improper, fraudulent or dishonest dealings.
4. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent of Financial Institutions (Superintendent) may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts in the record show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading and/or a misunderstanding of the question and were not done with any attempt to deceive or mislead the

Division. In light of the unintentional nature of the Respondent's violation and considering the evidence of his past and ongoing exemplary record as a loan officer, the purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,


James J. Lawrence
Hearing Officer
December 8, 2004