

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

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS

2004 NOV -9 AM 11:11

In re: Cynthia M. Feliciano

:

Case No. 04-0367-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 Cynthia M. Feliciano not be granted. The Division conducted an investigation and found:

- a. In or around 1982, in the Parma Municipal Court, Cuyahoga County, Ohio, Ms. Feliciano (then known as Cynthia M. McMicheaux) was convicted of petty theft, a first-degree misdemeanor;
- b. On or around October 1, 2003, Ms. Feliciano attested in a sworn statement that information she provided about her criminal background check on her loan officer license application submitted to the Division was complete and truthful when it was not; and
- c. On or around October 9, 2003, in an attempt to obtain a loan officer license, Ms. Feliciano provided untruthful information about her criminal background check to the Division.

2. As a result, the Division determined:

- a. Ms. Feliciano's actions, as listed above in Paragraph 1a, show that she has not proven that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will commit another criminal offense involving theft or any criminal offense involving money or securities. See R.C. 1322.031(A)(2) and 1322.041(A)(3);
- b. Ms. Feliciano's actions, as listed above in Paragraph 1a, shows her 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. See R.C. 1322.041(A)(5);
- c. Ms. Feliciano's actions, as listed above in Paragraph 1b, show her 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. See R.C. 1322.041(A)(5).

- d. Ms. Feliciano's actions, as listed above in Paragraph 1c, shows her 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. See R.C. 1322.041(A)(5).
- e. Ms. Feliciano's actions listed in Paragraph 1b violated R.C. 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application[.]"
- f. Ms. Feliciano's actions listed in Paragraph 1c violated R.C. 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application[.]"
- g. Ms. Feliciano's actions listed in Paragraph 1b violated R.C. 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statement required by state law[.]"
- h. Ms. Feliciano's actions listed in Paragraph 1c violated R.C. 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statement required by state law[.]"
- i. Ms. Feliciano's actions listed in Paragraph 1b violated R.C. 1322.07(C), which prohibits a loan officer applicant from "[e]ngage[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings."
- j. Ms. Feliciano's actions listed in Paragraph 1c violated R.C. 1322.07(C), which prohibits a loan officer applicant from "[e]ngage[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings."

3. Ms. Feliciano's address for service is 59 Landings Way, Avon Lake, Ohio, 44012. She is hereinafter referred to as the "Respondent." The Respondent is employed by Heartland Home Finance, Inc. dba Heartland Home Finance, 7123 Pearl Road, Suite 303, Middleburg Heights, Ohio, 44130.

4. This matter was initiated by the Superintendent of the Division by the issuance on April 15, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 6).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 6).

6. Thereafter, the Division received a Hearing Request Form from the Respondent (Exhibit 7).

7. On May 21, 2004, the Division wrote to the Respondent acknowledging the hearing request and scheduled a hearing for Friday, May 28, 2004, at 9:00 a.m. in the offices of

the Division at 77 S. High Street, Columbus, Ohio, and simultaneously continuing that hearing until a later date. (Exhibit 8).

8. On June 9, 2004, the Division wrote to the Respondent scheduling the Hearing for Friday, July 9, 2004, at 1:00 p.m. in Room 1918 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. (Exhibit 9).

9. On July 13, 2004, the Division wrote to the Respondent indicating that her request for a continuance had been granted and that the hearing would now take place on August 27, 2004, in Room 1918 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. (Exhibit 10).

10. The hearing did take place beginning at 1:35 p.m. on Friday, August 27, 2004. Attending were James Evans, Assistant Attorney General of the Ohio in the Executive Agencies Section and the Respondent, *pro se*.

11. 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 October 1, 2003, 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 or 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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No". (Exhibit 1).

4. Following the submission of the Application, the Division received the report of the National Background Check which disclosed a 1982 arrest in Parma County, Ohio for theft. (Exhibit 2).

5. On February 16, 2004, the Respondent signed a second Loan Officer Application (the "Second Application"). (Exhibit 3).

6. Question 5 of the Second 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances, which gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

7. In Response to Question 5 of the Second Application the Respondent answered "No". (Exhibit 3).

8. On November 3, 2003, The Division wrote to the Respondent indicating that the Division was unable to make a decision regarding the issuance of the loan officer license and asking for a detailed explanation of the facts and circumstances that gave rise to the charge as well as copies of the appropriate journal entries. (Exhibit 5).

9. In the record is a copy of the case file card from the Parma Municipal Court indicating that the Respondent (then known as Cynthia Marie McMicheaux) was convicted in March, 1982 of one count of petty theft. (Exhibit 5).

#### 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 plead 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. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 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 misrepresentations in any registration or license application;
- (B) Make 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[.]

....

4. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing she 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 honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

#### DISCUSSION

1. The Respondent is a forty-one year old woman who graduated from high school and attended classes at Cuyahoga Community College. (Exhibit 1, Tr. 27). She has been married for nearly twenty years (Tr. 27). Her prior employment includes having worked for the Cleveland Indians where she did the budget and handled money (Tr. 29), and worked for the City of Cleveland Health Department. (Tr. 30). In both of those positions she was bonded. She has also served as a volunteer for the Catholic Youth Organization and has handled money in that position. (Tr. 30).

2. In 1982, when the Respondent was 19 years of age, she stole approximately \$250.00 worth of clothing from a retail store. (Tr. 23). The Respondent readily admits to having

been involved in the incident, which arose out of a dare given her by her sister. (*Id.*). She actually left the store with the merchandise but turned around and reentered the store to confess her involvement. (Tr. 23-24). The police were called and ultimately she appeared in Parma Municipal Court. (Tr. 24).

3. The Respondent appears to have had no other involvement, other than traffic matters, with the criminal justice system. The Respondent answered Question 5 of the Application in the negative because she believed that the conviction had been expunged. (Tr. 20).

4. The Respondent submitted letters of support from several people. First, Lee Ellis, Vice President of Dana Capital Group, Inc. has known the Respondent for approximately fifteen years. (Respondent's Exhibit A). Mr. Ellis described the Respondent as being honest. He went on to describe her mentoring children through her work with the CYO.

5. A letter of support was also submitted by Linda Gency. (Respondent's Exhibit B). Ms. Gency wrote in appreciation of the work that the Respondent did in connection with a loan transaction.

6. A letter of support was submitted by Larry A. Randall who has known the Respondent for many years. He described the Respondent as very professional and ethical in business dealings. (Respondent's Exhibit C).

7. Carolyn George submitted a letter of support arising out of a loan transaction. Ms. George has referred six business associates and four family members to the Respondent for loan services. (Respondent's Exhibit D).

8. A letter of support was submitted by Darren Martemus. (Respondent's Exhibit E). This letter also arose out of a loan transaction performed by the Respondent.

9. Finally, the Respondent submitted a letter from Leola Neal. (Respondent's Exhibit F). Ms. Neal wrote to express her appreciation for the work that the Respondent did in connection with a loan transaction.

10. The Respondent submitted the Second Application after she left Assured Mortgage. (Tr. 40). She had gone to work for Heartland Home Finance. At her supervisor's suggestion, the Second Application was submitted (Tr. 40). The Respondent denies that she received, prior to the submission of the Second Application, any correspondence from the Division in connection with the denial of the Application. (Tr. 42).

11. The Respondent has three civil judgments outstanding against her according to the information records submitted through counsel for the Respondent. One is in favor of Great Seneca Financial in the amount of \$2,569 (Exhibit 11); the second is in favor of Diversified Ltd, in the amount of \$655; and the third is in an undisclosed amount from Lakewood Hospital. The three judgments were issued in 2004, 2003 and 2002, respectively.

12. The Respondent also has a not insubstantial driving record. In 1992, twelve years before the hearing in the matter, the Respondent was convicted of DUI in Cuyahoga County.

(Exhibit 12). There is some indication in the record that the Respondent's driver's license may be under noncompliant suspension based on lack of insurance coverage. (Exhibit 12).

13. The Hearing Officer has had an extensive opportunity to observe the Respondent and to listen to her answer questions posed to her. The Hearing Officer believes that the Respondent is a hard working individual. The Respondent is clearly dedicated to her family. The Hearing Officer believes that the Respondent has met her burden to show that she is of good reputation and that she is unlikely to commit a theft offense again.

14. Nonetheless, the Respondent did not disclose the criminal conviction in either the Application or the Second Application. The Respondent also failed to disclose the DUI conviction in the Second Application despite clear instructions to do so. The Hearing Officer cannot find that the failure to disclose the convictions is justified.

15. This failure to disclose is evidence of recent dishonesty and lack of truthfulness and that the Respondent does not possess the character and general fitness to be a loan officer. Accordingly, the Hearing Officer finds that the Respondent has not met her burden of proof to show that her activities and employment record since the conviction show that she is honest and truthful. The convictions, especially as to the DUI on the Second Application, should have been disclosed.

16. Likewise, the Hearing Officer believes that the Division has met its burden of proof to show 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.

17. The Division has also met its burden of proof under Ohio Revised Code Section 1322.07(A), (B) and (C). The Respondent did make false substantial misrepresentations and statements as well as engaged in improper, fraudulent or dishonest dealings.

#### 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  
November 5, 2004