

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL INSTITUTIONS
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	:	
PETER J. FORMICA	:	Case No. 04-0068-LOD
	:	
	:	

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued July 8, 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 1:00 P.M. on April 28, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Peter J. Formica (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 1991, Respondent pleaded guilty to and was convicted of Trafficking in Marijuana, a misdemeanor 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 Emily A. Smith. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 12 were admitted into the record. Respondent's Exhibit's A through E were admitted into the record, over the Division's objection on hearsay grounds, subject to the limited weight afforded the documents, as discussed in the transcript (hereinafter "Tr.") and below.

B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. The Respondent requested a hearing, which was received by the Division on February 20, 2004. On February 23, 2004, the Division scheduled the hearing for March 1, 2004. The Division, upon its own motion continued the hearing to April 2, 2004. On April 2, 2004 Assistant Attorney General Emily A. Smith requested a continuance on behalf of the State until April 28, 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. (Exhibit 5).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a loan processor. (Tr.p.9).
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 14, 2003, 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, February 10th, 2003. (Exhibit 1).
6. Within the Application Respondent answered "yes" 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 1990, 14 years prior to the submission of the Application Respondent was charged by the Kent Police with one count of trafficking in marijuana. (Exhibit 2; Tr.pp.12-13)
8. In 1991, 13 years prior to the submission of the Application Respondent was charged in Portage County with one count of trafficking in marijuana and one count of conspiracy(Exhibit 2; Tr.pp. 12-13)

9. Respondent submitted letters of reference to attest to his character. (Exhibit 10; Exhibit11; Tr.pp. 16, 20).
10. Respondent submitted reference letters that Respondent drafted and signed without knowledge of the person that supposedly wrote the letter. (Exhibits 10 -11;Tr.pp.16-18, 21).
11. Respondent's Exhibits A-E were sufficiently cogent and believable that Exhibit A-E have been accepted to be what they purport to be and have been admitted into the record, subject to being afforded limited weight. (Tr.pp.24-26).

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 yes 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. In providing character references Respondent forged two separate letters of reference.

DISCUSSION

1. The Respondent stated that he is currently employed by two different employers. (Tr.p.9). Respondent stated he is a licensed real estate agent with Potz Real Estate Investment Company and a loan processor for Consumers' Choice Mortgage Inc. (Tr. p.9; Exhibit 1).
2. The Respondent testified that in 1990 he was found guilty of trafficking marijuana and served one year, part in the Lorain Correctional and part in the Pickaway Correctional prisons. (Tr. p.13; Ex.2).
3. The Respondent did admit to having this criminal charge on his mortgage loan application. (Ex. 1). This conviction was 14 years ago. (Tr.13;Ex.1).
4. Even though it appears that the Respondent has had no involvement with the criminal justice system since his release from prison in 1992, there is a current issue that Respondent falsely submitted letters of recommendations without the express authorization or knowledge of the individuals when applying for his loan officer license (Tr. pp. 17-21; Ex. 10-11)

5. Though Melissa Lendvay supplemented the application with an affidavit stating she knew Respondent and has had many business dealings with Respondent, as well as avowing their friendship, she stated she did not authorize the letter Respondent sent to the Division. (Ex.12).

6. Respondent states in his testimony that he forged the letter from Melissa Lendvay because "I had basically about a week and Ms. Lendvay was not available at the time". (Tr.p.18). Respondent further testifies that " I sent it in and really didn't give it an afterthought".(Tr.p.18).Respondent acknowledges that in the mortgage loan business he frequently faces time constraints and time pressures (Tr. p. 19)

7. When questioned by Emily Smith regarding the Divisions concerns with respect to the forgeries Respondent testified "this whole process,it's about trust, doing things the right way. And I 100% understand why I'm sitting here today.you can probably see that I was reasonable and I understood the whole process." (Tr. p 20).

8. 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
July 8, 2004