

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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INSTITUTIONS

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REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Mark T. Rogers

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 05-0082-LOD**

FINDINGS OF FACT

1. On or about December 2, 2004, Mark T. Rogers ("Respondent" herein) submitted an application (the "Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibits A.
2. On or about March 17, 2005, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on April 26, 2005. At the Hearing, the Division was represented by Assistant Attorney General Martine Jean, Esq., and Respondent appeared *pro se*.
4. As of the date of the Application, Respondent was employed by Total Mortgage, Inc.

The criminal conviction for Disorderly Conduct reflected in the Notice took place on November 12, 2004, just five (5) days prior to completion of the Application by Respondent. (Tr. Page 27) Respondent failed to disclose the conviction in response to question 5 of the Application. (State's Exhibit A)

Respondent was forthright and direct at the Hearing with respect to his criminal convictions and with regard to the very unfortunate personal and professional facts and circumstances surrounding those convictions. Respondent took full responsibility for the facts and circumstances leading up to the convictions, and appeared genuinely remorseful that the incidents in question had taken place. The convictions do not appear to reflect an ongoing pattern and practice of criminal behavior.

Respondent testified that the failure to disclose the convictions under question five was based on his interpretation that the crimes in question did not pertain to the disclosures sought by the question and that Respondent misinterpreted or miscalculated the question (Tr. Pages 11, 20, 21, 69), that he misstated his response (Tr. Page 56), that he reviewed and responded to the question quickly (Tr. Page 12), and that Respondent did not intend to misrepresent his criminal history. (Tr. Pages 12, 69)

However, Respondent's interpretation and intent is not a determining factor or a defense to failure to provide complete disclosure of Respondent's criminal record to the Division.

Other than his own testimony, Respondent did not present any other evidence or testimony to explain Respondent's failure to disclose the criminal convictions in response to the referenced question in the Application, or the factors set forth in Revised Code sections 1322.041(A)(5). There is therefore support for the Divisions assertion that Respondent's character and fitness are not consistent with the requirements of Ohio Revised Code Section 1322.041(A)(5).

In addition, Respondent's failure to disclose the convictions in response to question five of the Application may be construed as false, misleading, and dishonest with respect to Respondent's required disclosures. There is therefore support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to adequately disclose the criminal convictions, and in providing information which could be construed as false, misleading, and dishonest in conjunction with the Application. Again, the relevant statutory provision does not provide for a defense or excuse of mistake, misunderstanding or intent.

In light of Respondent's failure to disclose the referenced convictions, and the lack of objective evidence or testimony by Respondent to meet Respondent's statutory "character and general fitness" test and provide evidence to contradict the Superintendent's assertions under Ohio Revised Code Section 1322.07, Respondent has failed to provide evidence sufficient to overcome the Superintendent's findings under Ohio Revised Code Sections 1322.041(A)(5) and 1322.07(A)-(C).

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 154)

Respondent's criminal record includes convictions which the Superintendent alleges, together with Respondent's failure to disclose the offenses in the Application, adversely impacts the character and general fitness of the Respondent under Ohio Revised Code Section 1322.031(A)(5), and further result in violations of various subsections of Ohio Revised Code Section 1322.07.

At the Hearing Respondent presented only his own testimony in support of Respondent's general contention 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, and to contradict the assertions of the Superintendent that the failure to disclose the criminal convictions constitutes a violation of Ohio Revised Code Section 1322.07(A) through (C).

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted, \

Jeffery E.

Date