

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

WILLIAM CLAY SARGENT, III

CASE NO. 04-0204-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued September 14, 2004

I. FINDINGS OF FACT

A. BACKGROUND

The above 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 PM on March 30, 2004, at 77 South High Street, 19th Floor, room 1908, Columbus, Ohio.

The hearing was held at the request of Respondent William Clay Sargent, III, of Cleveland, Ohio (hereinafter "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 allegation that Respondent pleaded guilty in 1993, in Cuyahoga County, Ohio, to Passing Bad Checks 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 John A. Izzo. Respondent appeared and was represented by Alex Rakic, Esq., Brunswick, OH.

At the hearing, State's Exhibits 1A, 1B, 1C, and 2 through 5 were admitted into the record by stipulation. Respondent's Exhibits A through L were admitted into the record, over objections of hearsay, and given the weight deemed appropriate by the hearing officer, as noted in the transcript (hereinafter "Tr."). Respondent and three witnesses testified on Respondent's behalf. The Division did not offer any witnesses.

B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. There is no evidence when the NOH was sent to Respondent, but the copy of the return receipt indicates Respondent received the NOH on February 4, 2004. Respondent requested a hearing, on a Division Hearing Request Form, which was received by the Division February 10, 2004. On February 19, 2004, the Division scheduled the hearing for February 23, 2004, but continued the hearing, on its own motion, to March 30, 2004, at 1:00 PM, at which time the hearing went forward.

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 wishes to be licensed to conduct business in Ohio as a Mortgage Loan Officer. (Exhibits 1, 5; Tr. pp. 17, 21.)
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 29, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 3.)
5. On or about March 25, 2002, Respondent signed the Application and the signature was notarized. (Exhibit 1; Tr. pp. 17, 29.)
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" and provided detail of a Passing Bad Check conviction. (Exhibit 3; Tr. p. 17.)

7. Respondent attested in a sworn statement on the Application that his responses, including his response to Question 5, were truthful. (Exhibit 3.)
8. As part of the application process, the Division conducted a background check and determined that Respondent had entered a plea of no contest in the Parma Municipal Court, on June 3, 1993, to Passing Bad Checks, a misdemeanor. (Exhibit 4.)
9. Respondent's explanation of the Passing Bad Checks conviction was that in December of 1992, while working at a bank as a teller and 20 years old, he had a cashiers check made out so he could take it to, in part, pay college tuition. Respondent made full restitution to the bank, paid the court costs and fine and served a year on probation. (Exhibit 5; Tr. pp. 18-20, 30-33, 36-39.)
10. During the hearing Respondent indicated that he had been arrested for disorderly conduct in 1996, but did not list the offense on the Application on the advice of his manager that it was not a financial crime and not what the Division was interested in considering. The Division did not list that offense as a reason to deny the Respondent his license. (Exhibit 1A; Tr. pp. 29, 34-35.)
11. Respondent's explanation of the 1996 disorderly conduct charge was that, at a time when he was employed as a "bouncer" at a bar in the Flats of Cleveland, two men got in a fight. After Respondent broke up the fight, Respondent made a sarcastic remark to a police officer who had been watching the fight but not intervening. Respondent states that the officer took offense and charged Respondent with disorderly conduct. (Tr. pp. 18, 35-36.)
12. The Application does not limit the response sought on Question 5 to felonies, or to financial crimes, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit 3.)
13. There is no evidence in the record that Respondent was arrested for disorderly conduct, or that the arrest resulted in a conviction or guilty plea, except Respondent's own statements. There is no evidence that Respondent is or was sufficiently versed in the law and legal system that he knows and understands the distinction between arrested, charged and convicted.

14. Respondent offered significant evidence in the form of letters of recommendation, two of which were notarized, and testimony of three witnesses, and himself, supporting Respondent's character and fitness as a loan officer. (Exhibits A-L; Tr. pp. 50-73.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 1993 Respondent pleaded guilty to Passing Bad Checks. The Division argues that this conviction is sufficient to deny Respondent a loan officer's license.
3. Passing Bad Checks is one of the offenses listed in Section 1322.041(A)(3), O.R.C., the conviction for which requires a respondent to prove by a preponderance of the evidence that the respondent's "activities and employment record 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."
4. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division offered that, on or about October 3, 2003, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application omitted information, to wit: the "Yes" response to Question 5 did disclose the passing bad checks conviction but not disclose the disorderly conduct conviction.
5. The Division has not proven that Respondent's response to Question 5 was not truthful, and the Division has not proven that on October 27, 2003, Respondent submitted an untruthful statement to the Division in the form of his response to Question 5 because there is doubt whether Respondent was, in fact, ever convicted in 1996 of disorderly conduct.

6. The Division did not present evidence that Respondent was convicted of the disorderly conduct charge other than Respondent's testimony. Given that Respondent is not in a position to be completely familiar with the legal system the disorderly conduct charge may not have lead to a conviction. The Division has not set forth sufficient evidence indicating that the disorderly conduct arrest resulted in a conviction of any crime.
7. Even if Respondent was convicted of disorderly conduct in 1996, Respondent's explanation that he relied on the advice of his manager to not include the disorderly conduct in his response to Question 5 was plausible and credible. Respondent appeared sincere in his relaying the explanation. It is highly improbable that Respondent would disclose the most disadvantageous conviction – i. e. the financial crime – and try to hide a conviction that is relatively minor in terms of evaluating his license application. The more likely event is as Respondent relayed: that he omitted the conviction because it was not a financial crime and a minor matter.
8. Respondent's unchallenged statement that, after Respondent sent in his Application, he voluntarily provided the Division with a separate letter disclosing the disorderly conduct conviction was credible. Respondent could not produce a copy of the letter but it is not unlikely that he would not have kept a copy. There was no Division testimony that such a letter was or was not in the Division files since there were no Division witnesses.
9. The undisputed facts presented by Respondent regarding the disorderly conduct arrest suggest selective enforcement at the least and false arrest at the worse. Even accepting Respondent's understanding of the legal process as accurate juxtaposed to an inherent bias in Respondent's recollection of the events, there appears no justification to withhold Respondent's loan officer's license on the basis of any disorderly conduct conviction, let alone any disorderly conduct arrest.
10. The failure to disclose the disorderly conduct conviction was not part of the charges in the NOH, but the testimony regarding the arrest has been considered in determining honesty and truthfulness.
11. The 1993 passing bad checks conviction cited is far enough removed in time, occurring at a time when Respondent was still somewhat immature, so that Respondent's explanation in combination with his own demeanor during the hearing, and with the testimony of witnesses, is sufficient to meet Respondent's

burden to show that he is honest and truthful, of good reputation, and that there is no basis in fact for believing that he will commit such an offense again.

12. To issue a license, the Division must make a finding that, inter alia, 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 in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code. Section 1322.041(A)(5), O.R.C.
13. Respondent offered sufficient evidence to demonstrate 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 in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code. Witnesses with sufficient contact with Respondent over the last two-year period while Respondent worked in the mortgage loan business, and other contacts, spoke highly of Respondent's character and reputation. Testimonial letters, two of which were notarized, provided some weight to demonstrate Respondent's character and general fitness and good reputation. No counter-evidence was introduced except for Respondent's 11-year old conviction.
14. Respondent did provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.

C. DISCUSSION

Respondent disclosed the 1993 Passing Bad Check conviction on the Application and gave sufficient proof that he would not commit such a crime again. As the offense is now 11 years old, sufficient time has elapsed to allow Respondent to demonstrate that he is not likely to commit criminal activities again, and Respondent has so proven.

During the hearing, the Division focused on the 1996 charge of Disorderly Conduct. There was insufficient evidence presented by both sides on the issues surrounding the disclosure of this charge. Respondent may or may not have submitted a letter to the Division disclosing this charge and the Division did not present sufficient evidence to prove the arrest lead to a conviction, on whatever charge. Consequently, no factual or legal conclusions may be drawn on the incomplete information and the 1996 arrest, if such occurred, is not considered, although findings of fact and conclusions of law were incorporated herein in the

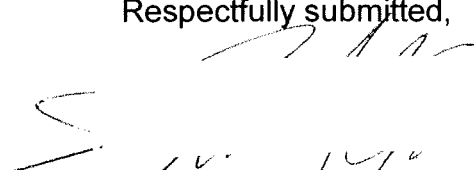
event the ultimate decision-maker disagrees with the prior statement. Of considerable weight is Respondent's explanation why the disorderly conduct was not disclosed on the Application because the facts support Respondent's statements.

Ultimately, this is a situation where an applicant for a loan officer's license was convicted of one offense 11 years ago, which was disclosed on the Application. Evidence presented demonstrates that, for the last 11 years, Respondent has been known as an honest and hard-working individual, including while working as a loan officer.

III. RECOMMENDATION

Based on the record available, it must be concluded that the Respondent proved that, since the conviction, he has been honest and truthful and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again. Evidence shows 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 in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO WILLIAM CLAY SARGENT, III.**

Respectfully submitted,


D. Michael Quinn
Hearing Officer
September 14, 2004
Docket No. 04-DFI-021