

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0017-LOD
: :
JOHN QUINLAN : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 7, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on March 30, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent John Quinlan ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of driving under the influence and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserted that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application; and
2. 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).

John Izzo, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Thomas Raisbeck represented Respondent at the hearing. Respondent, Lori Schenk and Nina Marx testified on behalf of the Respondent. The Division and the Respondent stipulated to the authenticity and admissibility of State's Exhibits 1A, 1B, 1C, 2, 3, 4, and 5. Those exhibits and Respondent's Exhibit 1 were admitted into the record. The Division is to redact any Social Security Numbers from those exhibits. Social Security Numbers are not relevant to any issues in this proceeding and the protection of them is key to the prevention of identity theft.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 11, 2004. The Division scheduled the hearing for February 23, 2004, and continued it until March 30, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Conviction for Driving Under the Influence.

1. Respondent is an individual residing in Kentucky who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 3; TR at 18.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B). According to the application materials provided to Respondent, Ohio residents submit fingerprints for a background check performed by the Bureau of Criminal Identification and Investigation. Out-of-State Applicants are instructed as follows:

If your place of residence is located outside Ohio, fingerprint cards are not used. Instead, you must furnish a statewide criminal history report from your state's law enforcement department. The records check must be verified on the law enforcement agency's stationery or computer printout. The reporting agency must send the report directly to the Division of Financial Institutions.

(Application Background Check/Fingerprints Explanation and Instructions Respondent's Exhibit 1, emphasis in the original; TR at 35-36, 70.)

4. On September 5, 2003, Respondent signed the form to request a criminal background check in Kentucky and submitted it to the appropriate Kentucky authorities. (Respondent's Exhibit 1, TR at 36.)
5. The day before, on September 4, 2003, Respondent signed his Loan Officer Application. (State's Exhibit 3.) State's Exhibit 3 contains pages 3 and 4 of Respondent's Application. The Division received those pages of the Application on September 11, 2003. (State's Exhibit 3.)
6. Respondent answered "No" to Question 5 on the Application, which asked:

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.)

(Application, State's Exhibit 3, emphasis and boldface type in original; TR at 19.)

7. The Kentucky criminal history record showing the 1988 driving under the influence conviction was sent to Respondent as opposed to the Division. That record indicates that it was printed on October 3, 2003. The Respondent forwarded that record to the Division when he received it and before he received any communication from the Division about his Application. (TR at 36.)
8. State's Exhibit 3, two pages of Respondent's Application, was stamped with "Received in Legal on October 21, 2003." (State's Exhibit 3.)
9. On October 31, 2003, the Division sent a letter to Respondent stating that "{t}he Division is unable to make a decision as to whether to issue you an Ohio mortgage loan officer license at this time" and asking him to provide more information on the 1988 driving under the influence conviction. (State's Exhibit 4.)
10. The dates on the documents independently verify Respondent's testimony that he sent the Division the information on the conviction before the Division contacted him for an explanation. This also occurred before the Division acted on his Application. (TR at 36.)
11. Based upon these facts, this Hearing Officer finds that the Respondent's Application was not complete until it included the Kentucky criminal history record showing the 1988 driving under the influence conviction. Therefore, the Application in question disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly.

12. Respondent admitted that he had been convicted of driving under the influence in 1988. Respondent explained the conviction in a letter he sent to the Division prior to the issuance of the NOH as follows:

The charge was operating a motor vehicle under the influence of intoxicating beverage. This took place April 4th 1988 in Lexington {Kentucky.}

I was, as mentioned, a young man, in college leaving a University of Kentucky football game and had {too} much to drink. I was pulled over for taking a wide right turn and asked to take a sobriety test, which per the conviction of guilty, I did not pass.

(State's Exhibit 5.)

13. Respondent has no other criminal convictions. (TR at 22-23.)

D. Respondent's Incorrect Response to Question Five.

14. The reason the Division proposed the license denial is Respondent's incorrect answer to Question 5 on page 4 of the Application. The Respondent consistently and credibly explained that he made an inadvertent mistake because he did not completely read the question. He explained that if he had read it accurately, he would have disclosed the driving under the influence conviction. (State's Exhibit 3; TR at 19-21, 38-39.)
15. The Hearing Officer finds that Respondent made a mistake on the Application but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on the Application. The Application, when completed and acted on by the Division, included the Kentucky criminal history record showing the 1988 driving under the influence conviction sent to the Division by the Respondent.

E. Respondent's Reputation and Character.

16. Respondent has been working as a mortgage broker since 2000 and has worked on approximately 100 loans. As far as he knows, there have been no complaints about any of those loans. He has worked with companies in Ohio and Kentucky. He seeks an Ohio license to work as a mortgage broker with Allied Home Mortgage Company in Cincinnati. Most of his business comes from referrals. He takes great care to treat his clients with respect and make sure that they understand the available programs. (TR at 26-30.)
17. Lori Schenk, a sales associate with Title First, testified about her experience closing Respondent's loans. She has known him for twenty years. During the past two years, she has reviewed and done the closings on approximately ninety

of his loans. Respondent attends all of his closings and does a good job of explaining the loans to his customers. Ms. Schenk refers customers to him because he works hard to find the best deals for his customers. He is very truthful and honest in his business dealings. She has received no complaints about him or his loan files. (TR at 57-62.)

18. Nina Marx, currently the head of Title First's Cincinnati Commercial Division and formerly a Regional Vice President for Title First responsible for southwest Ohio and Kentucky residential and commercial loans, testified about her experience with Respondent's loans. During the past two years, she has worked on some of his loans directly and reviewed the closed order reports on approximately thirty of his loans. In her opinion, Respondent is a very good loan officer. He waits until the Title First people working on a particular loan believe the title is correct and does not push them on closing dates. His customers are well informed about their loans and happy. He is very truthful and honest in his business dealings. She has received no complaints about Respondent or his loan files. (TR at 63-69.)

II. CONCLUSIONS OF LAW

A. Jurisdiction 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. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 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 of 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.

R.C. 1322.041(A)(2) and (5).

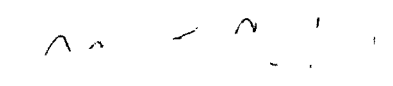
3. Respondent was convicted of driving under the influence in 1988.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Application included the Kentucky criminal record and disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He made an inadvertent mistake because he did not completely read the question. Even if it had not been disclosed, a 1988 driving under the influence conviction is not substantial for the purposes of this licensing process fifteen years later.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law. The Application included the Kentucky criminal record and disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He made an inadvertent mistake because he did not completely read the question. Furthermore, the existence of a 1988 driving under the influence conviction is not a material fact for the purposes of this licensing process fifteen years later.
6. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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. That Section does not require a conviction for driving under the influence to be disclosed on an application for a loan officer license. The Application included the Kentucky criminal record and disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his application.
7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." The Application included the Kentucky criminal record and disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly. Respondent made an inadvertent mistake because he did not completely read the question. These activities alone do not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C.1322.07(C).
8. There is no basis for establishing any violations of R.C. 1322.07(A), (B) or (C) by the Respondent.

9. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by 1322.041(A)(2).
10. The Respondent admitted that he made an inadvertent mistake because he did not completely read Question 5 on the Application. The Application in question disclosed the conviction despite the fact that Respondent answered Question 5 incorrectly. The old conviction relied upon by the Division and the fact that the Respondent did not completely read a question do not prove that the Respondent is not fit to work in an industry that he has worked in for the past three years. The Respondent's testimony, Ms. Schenk's testimony and Ms. Marx' testimony establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,


Jane Stempel Arata
Administrative Hearing Officer
May 7, 2004