

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2009 JUN 12 PM 2:40

IN THE MATTER OF: : CASE NO. M2008-550
:
BOOKER BURTON, : LISA M. FINNEGAN
dba QUIK FUNDING MORTGAGE : HEARING OFFICER
OF OHIO, Respondent. :
:

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 12, 2009

I. FINDINGS OF FACT

A. Background

1. This matter came before Lisa M. Finnegan, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Department of Commerce, 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 Division held the hearing on February 11, 2009 and on May 6, 2009, at 77 South High Street, Columbus, Ohio, 43215.

2. The Division held the hearing to consider the allegations in its December 11, 2008 Notice of Intent to Deny 2008 Renewal Application and Notice of Opportunity for a Hearing ("Notice of Intent"). In the Notice of Intent, the Division alleged that Booker Burton doing business as Quik Funding Mortgage of Ohio ("Respondent") provided untruthful information about his criminal background on his application for a mortgage broker certificate of registration in 2007 and 2008. The Division also alleged that the civil judgments assessed against Respondent show that he does not have the character and general fitness under the Mortgage Broker Act to hold a certificate of registration. The Division intends to deny Respondent's 2008 Mortgage Broker Certificate of Registration Renewal Application ("2008 Renewal Application") for the above-stated reasons.

3. Todd A. Nist., Esq., Assistant Attorney General with the Ohio Attorney General's Office, represented the Division at the February 11, 2009 hearing. Respondent appeared *pro se* at the hearing. The Hearing Officer advised Respondent of his right to counsel at the commencement of the hearing and Respondent elected to proceed without counsel. *February 11, 2009 Transcript ("Tr.")* at 7. Respondent stipulated to the authenticity and admissibility of State's Exhibits 1-A, 1, 2, 3, 4, 4-B, 5, 6, 7, 8, 9, 10 and 11 and the Hearing Officer admitted these exhibits into the record.

4. At the February 11, 2009 hearing, the Division called Respondent as a witness as if on cross-examination. After approximately one hour of testimony, Respondent moved for a continuance on the basis that his poor vision prevented him from seeing the documents the Division was questioning him about and on the basis that he wished to seek the advice of counsel. The Hearing Officer granted Respondent's continuance request. *February 11, 2009 Tr. at 29-32*. The Hearing Officer also granted Respondent's second request for a continuance based on health reasons. *State's Exhibit 1-B*.

5. The hearing re-convened on May 6, 2009. Jennifer S.M. Croskey, Esq., Assistant Attorney General with the Ohio Attorney General's Office, represented the Division at the hearing. At the commencement of the hearing on May 6, 2009, Respondent spoke via telephone from his home and stated that he had not obtained counsel and that he would not be attending the hearing. Respondent requested a continuance of the May 6, 2009 hearing. Respondent also requested leave to present his position in writing. The Hearing Officer denied a continuance of the hearing, but granted Respondent additional time to May 15, 2009 to present his position in writing. *May 6, 2009 Tr. at 4-9*.

6. Martha S. Rhea, an attorney examiner with the Division, testified on behalf of the Division on May 6, 2009. The Hearing Officer admitted State's Exhibit 1-B into the record. On May 15, 2009, Respondent submitted his position in writing to the Hearing Officer. The Hearing Officer marked Respondent's written statement as Respondent's Exhibit A and admitted it into the record. The Hearing Officer closed the record on May 15, 2009 at 5:00 p.m.

B. Jurisdiction and Procedural Matters

7. On December 11, 2008, the Division sent to Respondent a cover letter and the Notice of Intent specifying that the Division intended to deny Respondent's 2008 Renewal Application and that Respondent could request a hearing on the matter. *State's Exhibit 1-A*.

8. The Division sent the Notice of Intent to Respondent as the statutory agent for his sole proprietorship by certified mail, return receipt requested. On December 16, 2008, the United States Postal Service returned the Notice of Intent and the certified mail envelope marked "forward time expired, return to sender." *State's Exhibit 1-A*.

9. The Division also sent the Notice of Intent to Respondent's operations manager of record with the Division, Willia T. Burton, by certified mail, return receipt requested. On December 16, 2008, the United States Postal Service returned the Notice of Intent and the certified mail envelope marked "forward time expired, return to sender." *State's Exhibit 1-A*.

10. On January 6, 2009, the Division received Respondent's request for a hearing on the matter. *State's Exhibit 1-A*.

11. On January 9, 2009, Respondent received a copy of the Notice of Intent by personal service at his home address. *State's Exhibit 1-A; Testimony of Respondent, February 11, 2009 Tr. at 15-16; Testimony of Martha S. Rhea, May 6, 2009 Tr. at 32-33*.

12. On January 9, 2009, the Division sent to Respondent a letter scheduling the hearing on the Notice of Intent for January 16, 2009, and within the same notice, the Division continued the hearing on its own motion to February 11, 2009. *State's Exhibit B*.

13. The hearing commenced on February 11, 2009. After approximately one hour of testimony, Respondent moved for a continuance. The Hearing Officer continued the proceedings to March 31, 2009. *February 11, 2009 Tr. at 29-32*.

14. On March 30, 2009, Respondent requested a continuance of the March 31, 2009 hearing for health reasons. The Hearing Officer continued the hearing to May 6, 2009. On April 1, 2009, the Division sent a letter and the Order Continuing Hearing notifying Respondent of the May 6, 2009 hearing date. The Division sent the letter to Respondent's home address where he previously had received personal service of the Notice of Intent on January 9, 2009. *State's Exhibit 1-B*.

15. The hearing occurred on the date, time, and location specified in the Division's April 1, 2009 hearing notification letter.

C. Respondent's 2008 Renewal Application for Mortgage Broker Certificate of Registration

16. Respondent is a sole proprietor who holds a certificate of registration to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. *State's Exhibit 1-A; Testimony of Martha S. Rhea, May 6, 2009 Tr. at 15*.

17. On May 31, 2008, Respondent submitted his 2008 Renewal Application to the Division. *State's Exhibit 2*.

18. The Division alleged that Respondent did not disclose his June 14, 2007 conviction for having weapons while under disability on his 2008 Renewal Application. *State's Exhibit 1*.

19. According to the Case Summary of the Cuyahoga County, Court of Common Pleas, Respondent was arrested on December 19, 2006, indicted on February 23, 2007, and sentenced on June 14, 2007, for having weapons while under disability, a third degree felony. *State's Exhibit 11*.

20. In his May 15, 2009 written statement, Respondent denied that he was arrested on December 19, 2006. Respondent admitted that he was indicted on February 23, 2007 and that he plead guilty to having weapons while under disability on June 14, 2007. *Respondent's Exhibit A*.

21. The Division's 2008 Renewal Application contains the following question:

Within the past sixteen (16) months have any of the following occurred that were not reported to the Division:

2. Has the registrant or any owner, partner, 5% or more shareholder, member, officer, director or operations manager of the registrant been ***charged with, convicted of or pleaded guilty*** to any state or federal criminal offense including but not limited to theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities (excluding minor traffic violations)? *State's Exhibit 2*. [Emphasis added]

22. Respondent answered "no" to question number 2 on his 2008 Renewal Application and attested in a sworn statement that the information on the application constituted a "complete, truthful, and correct statement of all information requested herein." *State's Exhibit 2*.

23. In his May 15, 2009 written statement, Respondent acknowledged that he should have answered "yes" to question number 2 on his 2008 Renewal Application. Respondent raised the defense that he had lost his eyesight because of a stroke and relied on assistance in responding to the questions on the 2008 Renewal Application. Respondent instructed his assistant to refer to his 2007 Renewal Application to answer the questions on the 2008 Renewal Application. Because the 2007 Renewal Application contained an error in Respondent's answer to question number 2, the 2008 Renewal Application likewise contained the same error. *Respondent's Exhibit A*.

24. Respondent asserted that he had informed the Division about his background. Respondent sent the Division certified copies of his criminal background on November 4, 2008 after the Division requested that information in a letter dated August 14, 2008. *State's Exhibit 4-B; Respondent's Exhibit 1*. However, Respondent did not send the certified copies to the Division until after he submitted his 2008 Renewal Application. *Testimony of Martha S. Rhea, May 6, 2009 Tr. at 21-23; Testimony of Respondent, February 11, 2009 Tr. at 27-29*.

25. Respondent did not disclose his 2007 felony conviction on his 2008 Renewal Application when he was required to do so. Accordingly, the information that Respondent provided on the application was not complete, truthful, and correct.

D. Respondent's 2007 Renewal Application for Mortgage Broker Certificate of Registration

26. On May 30, 2007, Respondent applied to the Division to renew his mortgage broker certificate of registration ("2007 Renewal Application"). *State's Exhibit 1*.

27. The Division alleged that Respondent did not disclose his December 19, 2006 arrest or his February 23, 2007 charge of having weapons while under disability on his 2007 Renewal Application. *State's Exhibit 1*.

28. The Division's 2007 Renewal Application contains the following question:

Within the past sixteen (16) months have any of the following occurred that were not reported to the Division:

2. Has the registrant or any owner, partner, shareholder, member, officer, director or operations manager of the registrant been **arrested, charged, or convicted** by any state or federal authority of any criminal offense? *State's Exhibit 1.* [Emphasis added]

29. Respondent answered "no" to question number 2 on his 2007 Renewal Application and attested in a sworn statement that the information on the application constituted a "complete, truthful, and correct statement of all information requested herein." *State's Exhibit 1.*

30. In his May 15, 2009 written statement, Respondent acknowledged that he should have answered "yes" to question number 2 on his 2007 Renewal Application. Respondent raised the defense that he misinterpreted the question and that he did not intend to mislead the Division. *Respondent's Exhibit A.*

31. Respondent asserted that he had informed the Division about his background. Respondent sent the Division certified copies of his criminal background on November 4, 2008 after the Division requested that information in a letter dated August 14, 2008. *State's Exhibit 4-B; Respondent's Exhibit 1.* However, Respondent did not send the certified copies to the Division until after he submitted his 2007 and 2008 Renewal Applications. *Testimony of Martha S. Rhea, May 6, 2009 Tr. at 21-23; Testimony of Respondent, February 11, 2009 Tr. at 27-29.*

32. Respondent did not disclose his December 19, 2006 felony arrest or his February 23, 2007 felony charge on his 2007 Renewal Application when he was required to do so. Accordingly, the information that Respondent provided on the application was not complete, truthful, and correct.

E. Respondent's Civil Judgments

33. Respondent has the following civil judgments against him:

- a) Centurion Capital Corp. v. Booker Burton, Case No. 06CVF04620, Bedford Municipal Court (\$5,386.97 judgment);
- b) Discover Bank v. Booker Burton, Case No. CV JL06278197, Cuyahoga County Court of Common Pleas (\$13,318.66 judgment);
- c) Deutsche Bank National Trust Company v. Booker Burton, Case No. CV-07-620717, Cuyahoga County Court of Common Pleas (foreclosure);
- d) Chase Home Finance LLC v. Booker T. Burton, Case No. CV-08-655451, Cuyahoga County Court of Common Pleas (pending foreclosure);
- e) HSBC Bank v. Booker Burton, Case No. CV-06-607310, Cuyahoga County Court of Common Pleas (foreclosure).

State's Exhibits 6, 7, 8, 9, and 10; Respondent's Exhibit A.

34. At the February 11, 2009 hearing, Respondent contended that he had been unable to work and meet his financial obligations because of health problems, and that his income had decreased because of the downturn in the economy. Respondent maintained that the Division should not penalize him for his inability to maintain his income in circumstances that were beyond his control. *Testimony of Respondent, February 11, 2009 Tr. at 12-13.*

35. Respondent has been in touch with his creditors to develop a payment plan for his judgments. *Respondent's Exhibit A.*

II. CONCLUSIONS OF LAW

A. Jurisdiction

36. The Division has complied with the procedural requirements of R.C. Chapter 119 and has established jurisdiction over this matter.

B. Proposed Denial of Respondent's 2008 Mortgage Broker Certificate of Registration

37. The Division is responsible for the licensing and regulation of mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

38. Respondent is a mortgage broker who holds a certificate of registration through the Division.

39. R.C. Section 1322.04(B)(3) states that a certificate of registration may be renewed annually if the requirements of that section are met and if the applicant meets the conditions set forth in R.C. Section 1322.04(A)(2) through (10).

40. R.C. Section 1322.04(A) enumerates ten conditions to be met for the Superintendent of the Division to issue a mortgage broker certificate of registration. One of those conditions, as set forth in R.C. Section 1322.04(A)(10), requires that the "applicant's financial responsibility, experience, 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."

41. R.C. Section 1322.07 states that no mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under R.C. Sections 1322.01 to 1322.12 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 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.

42. O.A.C. Rule 1301:8-7-10 states that:

* * *

(G) Each question on the license application is material to the licensing process. Submitting false or incomplete information or omitting information in connection with a license application is grounds for denial or revocation of the license and may subject the applicant to civil or criminal penalties.

* * *

43. Respondent's failure to disclose his felony arrest and charge on his 2007 Renewal Application and his felony conviction on his 2008 Renewal Application constitutes an attempt to obtain a license through omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. Section 1322.07(A).

44. Respondent's failure to disclose his felony arrest and charge on his 2007 Renewal Application and his felony conviction on his 2008 Renewal Application constitutes making a false or misleading statement of material fact or omission of a statement required by state law in violation of R.C. Section 1322.07(B).

45. Respondent's failure to disclose his felony arrest and charge on his 2007 Renewal Application and his felony conviction on his 2008 Renewal Application constitutes engaging in conduct that constitutes improper, fraudulent, or dishonest dealings in violation of R.C. Section 1322.07(C).

46. R.C. Section 1322.10(A)(1)(a) authorizes the Division to refuse to renew a mortgage broker certificate of registration for failure to comply with any provision of R.C. Sections 1322.01 through 1322.12. Respondent violated R.C. Sections 1322.07(A), (B), and (C). Accordingly, the Division has the authority to deny Respondent's 2008 Renewal Application pursuant to R.C. Section 1322.10(A)(1)(a).

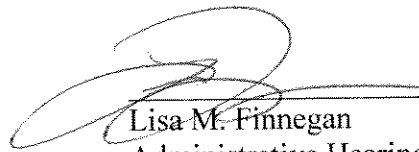
47. Respondent's civil judgments alone do not constitute sufficient reason under R.C. Section 1322.04(A)(10) to deny his 2008 Renewal Application. Respondent's failure to disclose his felony charge on his 2007 Renewal Application, and his felony conviction on his 2008 Renewal Application, however, demonstrate that Respondent's character and general fitness do not 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 the Ohio Mortgage Broker Act. Respondent has not met the requirement of R.C. Section 1322.04(A)(10) for the Division to renew his loan officer license under R.C. Section 1322.04(B)(3).

48. For the foregoing reasons, sufficient evidence exists for the Division to deny Respondent's 2008 Renewal Application pursuant to R.C. Sections 1322.10(A)(1)(a) and 1322.04(A)(6) and (10).

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for denying Respondent's 2008 Mortgage Broker Certificate of Registration Renewal Application pursuant to R.C. Sections 1322.10(A)(1)(a) and 1322.04(A). Therefore, the Hearing Officer respectfully recommends that the Division deny Respondent's 2008 Mortgage Broker Certificate of Registration Renewal Application.

Respectfully submitted,



Lisa M. Finnegan
Administrative Hearing Officer
June 12, 2009