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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0034-LOD  
: :  
T. ANDREW MURRAY : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued June 12, 2006

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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 April 27, 2006 and May 10, 2006 at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent T. Andrew Murray ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH").

The Division alleges that Respondent violated R.C. 1322.07(A), (B), and (C) because he did not properly complete his loan officer license application. For that reason, and because Respondent has a 1990 disorderly conduct conviction, the Division also alleges that his 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 as required by R.C. 1322.041(A)(5).

Timothy Loughry, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 3 and Respondent's Exhibits A through D were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on February 6, 2006, and served it upon him by certified mail. (State's Exhibit 1.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to him by certified mail. (State's Exhibit 1.)
3. The Division initially scheduled the hearing for a date more than seven and less than fifteen days after the date it received the hearing request. The hearing was continued once and then set for April 27, 2006. The hearing continued to May 10, 2006, to accommodate the schedule of a witness. The Respondent was notified of the date, time, and place for all scheduled hearing dates. (State's Exhibit 1.)
4. Respondent received the NOH by certified mail and notice of the date, time, and location for each scheduled hearing date.

**C. Respondent's Loan Officer Application.**

5. Respondent is an Ohio resident who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 2.)
6. On September 14, 2005, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on September 16, 2005. (State's Exhibit 2.)
7. 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.
8. 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 or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

(Application, State's Exhibit 2.)

9. Respondent's signature in the Attestation on the Application is notarized. Directly above that signature, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Application, State's Exhibit 2.)
10. As part of the application process, the Division conducts a criminal background check of each applicant as required by R.C. 1322.031(B). The Respondent agreed to submit to a criminal background check as part of the application process and knew this would be done when he completed his application. He thought this check would provide the Division with the information it needed about his background as well. (Application, State's Exhibit 2; April 27, 2006 Hearing Transcript ("TR1") at 35-36.)
11. Sometime after Respondent filed his Application, he received a letter from the Division requesting information on criminal charges in 1990 and 2002. He promptly replied to the Division and provided information on two Ohio disorderly conduct misdemeanor convictions in 1990 and in 2002. Those are Respondent's only criminal convictions. The first conviction stems from a fight he had with a friend when he was 19 years old and intoxicated. He has not used drugs or alcohol since 1990. The second conviction was the result of an incident with his brother. He and his brother were staying at his grandfather's lake cabin when the incident occurred. His brother, who had been out drinking the night before, became irate when Respondent, who was getting up early to golf, woke him up early the next morning. Respondent and his brother quarreled and hit each other. Respondent left the cabin and tried to get his gear and go. His brother would not calm down or let Respondent get his gear so Respondent called the police. By the time the police arrived, Respondent had cleaned himself up. The police officer told Respondent that he was arrested because his brother looked worse than he did and due to concerns about liability if the police went to check on a domestic dispute and did not make an arrest. (State's Exhibit 2; TR1 at 22-28.)
12. The Respondent struggled with whether he needed to disclose the convictions on his application and in fact filled out multiple applications. He did not disclose the 1990 conviction because he mistakenly thought he did not need to disclose it because he was less than 21 years old at the time. The 2002 conviction was also not disclosed. Respondent testified that he thought he had disclosed it but, looking at the Application at the hearing, realized he sent in the wrong application. Respondent provided documentation verifying that he had prepared multiple applications in his efforts to provide the information required. (State's Exhibit 2; Respondent's Exhibit D; TR1 at 20-25, 27-28; May 10, 2006 Hearing Transcript ("TR2") at 18-20.)

13. Based upon his understanding of Question 5, Respondent answered it truthfully but incorrectly. He made a mistake but he did not try to hide the convictions from the Division or make any statement that he thought or knew was false on his Application.
14. Respondent's confusion in responding to Question 5 is understandable. The wording of that question is confusing.
15. Respondent was convicted of misdemeanor disorderly conduct in Ohio in 1990 and 2002 but has not 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. Respondent provided detailed information on these two convictions to the Division before it made any decision on Respondent's Application. (State's Exhibit 3; Respondent's Exhibit C; TR1 at 28.)
16. The Division's current loan officer license application ("Current Application") only requires an Ohio resident applicant to disclose 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," "a defendant in a criminal action in the Federal court system," or "convicted of or pleaded guilty to any criminal offense in a state other than the state where you currently reside." The Current Application does not require an Ohio resident applicant to disclose an Ohio conviction for disorderly conduct. Ohio Loan Officer Application, Revised 12-27-2005, Questions 6, 7, and 8; [www.com.state.oh.dfi](http://www.com.state.oh.dfi). The Hearing Officer takes administrative notice, the equivalent of judicial notice, of the Current Application on the website maintained by the Ohio Division of Financial Institutions and available to the public. (Copy of Relevant Portion of Current Application attached.)

**D. Respondent's Reputation and Character.**

17. The Respondent has worked in the mortgage loan industry for almost two years as a computer network administrator. During that time, he has been trusted with access to confidential customer and company financial information without incident. His past work experience includes many positions in which he has had financial responsibility and handled funds without incident. He is not aware of any time that his integrity has been questioned. (Respondent's Exhibit C; TR1 at 18-19, 33-34.)

18. Armand W. Consenza, Respondent's supervisor during the past year, testified about Respondent's experience in the industry and his character. He has known the Respondent through work during the past year. Mr. Consenza is the Secretary and Treasurer of Commonwealth Financial Services, Inc., an Ohio licensed mortgage broker. He has also served as the President of the Ohio Association of Mortgage Brokers and the National Association of Mortgage Brokers in the recent past. Mr. Consenza spoke favorably of Respondent's work ethic, reputation with his coworkers, and ability to be a loan officer. He has no reason to doubt Respondent's character or general fitness to work in the mortgage loan industry. (Respondent's Exhibit A; TR2 at 8-14.)
19. Respondent submitted notarized letters from three individuals who have known him professionally and socially. One of those individuals has known him for the past 18 years. All are favorably impressed with his character and abilities in the mortgage lending industry. They describe Respondent as hardworking, trustworthy, professional, and of good character. (Respondent's Exhibit C; TR2 at 15-17.)
20. The authors of the three notarized letters did not testify at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, those three letters in Respondent's Exhibit C were considered but afforded less weight than they would have been if their authors had testified and been available for cross examination.
21. The Hearing Officer finds that the 1990 conviction at issue in this matter does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer. It is a sixteen-year-old misdemeanor conviction that is not one of the enumerated financial or drug related convictions listed in R.C. 1322.031(A)(2). Whether it was disclosed in a response to Question 5 likewise does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer.
22. The 2002 conviction is not one of the enumerated financial or drug related convictions listed in R.C. 1322.031(A)(2) and the NOH only alleges that nondisclosure of this conviction, but not the conviction itself, is a basis for license denial. Whether it was disclosed in a response to Question 5 does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer.
23. The Hearing Officer finds that Respondent's overall activities and employment record show that he is hardworking, trustworthy and of good reputation. There is no reason to believe that he will commit any criminal offense again.
24. The Hearing Officer also finds 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.

## **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.

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(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. In this case, no nexus exists between the 1990 conviction and qualifying for the license sought. That conviction itself does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer. It is a sixteen-year-old misdemeanor conviction that is not one of the enumerated financial or drug related convictions listed in R.C. 1322.031(A)(2). The Division does not even contend that the 2002 disorderly conduct conviction itself warrants license denial. Therefore, the Hearing Officer concludes that the 1990 disorderly conduct conviction does not provide any legal basis for denying Respondent's Application.

4. This leaves the Division with claims based upon the Respondent's incorrect response to a question no longer used by the Division on its loan officer license application. Respondent would not have to disclose either conviction on the Current Application if he applied for a license today. The nondisclosure of convictions no longer required to be disclosed on an application is not a legally sufficient basis for denying a loan officer license. Nondisclosure and incorrect application responses are part of the totality of the circumstances to be considered to when determining whether a person should be licensed as a loan officer. Other factors, including a person's overall work history, character, reputation, trustworthiness, integrity, and ability to be a loan officer, must also be considered.
5. 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.
6. Question 5 on the Application requests information on "any criminal conviction" and seeks disclosure of criminal convictions, like the one at issue, not required to be disclosed on a loan officer license application by 1322.031(A)(2). The Division may consider convictions not enumerated in that section as a part of its determination of an applicant's "character and general fitness." R.C. 1322.041(A)(5). Extending that consideration to look at the nondisclosure of convictions not statutorily required to be disclosed on an application and no longer required to be disclosed by Ohio residents on the Current Application in this licensing process is problematic.
7. The authority to seek information from license applicants does not permit the Division to go on a fishing expedition seeking information about convictions that have no bearing on whether someone will make a competent loan officer. The fact that an Ohio resident applicant applying today would not have to disclose an Ohio disorderly conduct conviction evidences that failing to disclose such a conviction does not bear any significant relationship to being a loan officer.
8. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He answered truthfully based upon his understanding of the question. More importantly, the failure to disclose convictions that the Current Application no longer requires an Ohio resident applicant to disclose is not a substantial misrepresentation for the purposes of this licensing process.

9. 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 Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He answered truthfully based upon his understanding of the question. He made a mistake but he did not try to hide the convictions from the Division or make any statement that he thought or knew was false on the Application. Furthermore, the failure to disclose any conviction that the Current Application no longer requires an Ohio resident applicant to disclose is not material for the purposes of this licensing process.
10. 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 the convictions at issue in this matter to be disclosed on an application for a loan officer license. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his Application.
11. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent made a mistake but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on his Application. He did not disclose two misdemeanor Ohio convictions that the Current Application no longer requires an Ohio resident applicant to disclose. This alone does not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C. 1322.07(C).
12. There is no basis for establishing any violations of R.C. 1322.07(A), (B), or (C) by the Respondent.
13. 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).
14. Based upon a consideration of all of the evidence in the record, the Hearing Officer concludes that the 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

Respondent meets the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). The alleged failure to meet those requirements was the only basis for the proposed denial. 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  
June 12, 2006