

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

09 FEB 20 PM 2:13

IN RE:	:	CASE NO. M2008-599
	:	
EDWARD J. ELDRIDGE,	:	DELORES EVANS
RESPONDENT	:	HEARING OFFICER

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued February 20, 2009**

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, 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 Code ("O.A.C.") and Ohio Revised Code ("O.R.C.") Chapter 119. The hearing was held on January 15, 2009, at 77 South High Street, Room 1936, in Columbus, Ohio. This matter was heard simultaneously with In re Eldridge Mortgage Company, Inc., Case No. M2008-600. However, two separate decisions will be issued.

The Division held the hearing to consider the allegation that Edward J. Eldridge ("Respondent") failed to disclose to the Division on his 2008 loan officer license renewal application ("2008 Renewal Application") that he was convicted of Attempted Drug Possession in August 2007. The Division intends to deny Respondent's 2008 Renewal Application.

Jason Boyd, Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori Massey, Esq., an attorney examiner with the Division, testified at the hearing. Jameel S. Turner, Esq., represented Respondent. State's Exhibits A, B, C, D, F, G, H, I, and J were stipulated to by the parties for authenticity and were admitted into the record. State's Exhibit K and L were also introduced and admitted into evidence. Respondent's Exhibit 1 was introduced and admitted into evidence. The parties also stipulated to the existence of *Hockenberry v. Ohio Dept. of Commerce*, 10th Dist. No. 06AP-1058, 2007-Ohio-5555. The record was closed at the end of the day on January 15, 2009.

B. Jurisdiction and Procedural Matters

1. On November 18, 2008, the Division issued a Notice of Intent to Deny Loan Officer License Renewal Application & Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2008 Renewal Application pursuant to O.R.C. 1322.10(A)(1)(a). Respondent had 30 days to request a hearing. The Division sent the NOH to Respondent via certified mail, return receipt requested. The United States Postal Service returned the NOH and certified mail envelope to the Division marked "unclaimed." *State's Exhibit B*
2. O.R.C 119.07 provides that when a party fails to claim certified mail, an agency may send notice by ordinary mail to the party's last known address and obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned for failure of delivery.
3. On December 31, 2008, the Division sent a copy of the NOH via ordinary mail to Respondent's last known address and obtained a certificate of mailing. *State's Exhibit B*
4. On December 17, 2008, the Division received Respondent's hearing request. *State's Exhibit A*
5. On December 18, 2008, the Division sent a hearing notice to Respondent. The Division scheduled the hearing for January 15, 2009. *State's Exhibit A*
6. Respondent acknowledged receipt of the NOH and hearing notice. *Testimony of Respondent*

C. Respondent's Activities

7. Respondent has held an Ohio mortgage broker loan officer license (# 3654) since June 1, 2002, when the Division began regulating loan officers. *State's Exhibit K*
8. On August 16, 2007, Respondent was convicted of Attempted Drug Possession, a first degree misdemeanor, in the Court of Common Pleas in Cuyahoga County, Ohio. The Journal Entry reflects that Respondent was in open court with counsel that day and was fully advised of his constitutional rights and penalties. Respondent was sentenced to time served and costs were waived. *State's Exhibit F*
9. Respondent explained the events surrounding his conviction. On or around December 20, 2006, Respondent met a friend for a social gathering in a high crime neighborhood. After their meeting, Respondent and his friend entered Respondent's vehicle. Respondent intended to take his friend home. While en route to his friend's home, Respondent observed a police cruiser following them.

Shortly after his friend's arrival home, Respondent was stopped by the police for a traffic infraction. During questioning, the police officer observed a package containing drugs in plain sight in Respondent's vehicle. Respondent was arrested and charged with felony drug possession. Respondent explained to the prosecutor that the drugs belonged to his friend. The charge was reduced to Attempted Drug Possession, a first degree misdemeanor. Respondent pled guilty to the crime based upon counsel's advice. Respondent would not have pled guilty had he known that the conviction would pose problems for him in the future. *Testimony of Respondent*

10. Lori Massey, an attorney examiner with the Division, testified at the hearing. Ms. Massey reviews the files of loan officers and mortgage brokers to verify their compliance with O.R.C. Chapter 1322. Ms. Massey reviewed Respondent's loan officer file. *Testimony of Ms. Massey*
11. Respondent underwent colon surgery and was hospitalized between April 22 and May 1, 2008. *Testimony of Respondent*
12. On or around May 8, 2008, Respondent completed, signed, and submitted his 2008 Renewal Application. *State's Exhibit C; Testimony of Respondent*
13. On May 14, 2008, the Division sent a letter to Respondent informing him that the Division received his 2008 Renewal Application. The letter also indicated that the Division had not received Respondent's FBI background results, which was needed to further process Respondent's 2008 Renewal Application. *State's Exhibit D*
14. Respondent was convalescing when the Division issued the May 14, 2008 letter and therefore was unable to immediately provide the Division with the requested information. Subsequently, Respondent submitted the information to the Division. *Testimony of Respondent*
15. No evidence was introduced with respect to the date Respondent submitted the information to the Division.
16. Upon receipt of Respondent's FBI background results, the Division discovered Respondent's August 2007 conviction. *Testimony of Ms. Massey*
17. No evidence was introduced concerning whether the Division requested additional information about the conviction from Respondent.
18. On November 18, 2008, the Division issued the NOH. *State's Exhibit B*
19. The Division contended that Respondent did not disclose his 2007 conviction to the Division on his 2008 Renewal Application in violation of O.R.C. 1322.07(A), (B), and (C). The Division asserted that Respondent's non-disclosure indicates

his lack of good character to command the confidence of the public that would warrant the belief that his business would be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

20. In response to question # 2 on the 2008 Renewal Application, Respondent answered "No." Question # 2 reads "Have you 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 C*
21. Respondent is a 64 year-old male who owns and operates Eldridge Mortgage Company, Inc. ("Eldridge Mortgage"). *State's Exhibit C; Testimony of Respondent*. At the time Respondent filed his 2008 Renewal Application, he owned 65% in the company, but now holds a 100% interest in the company. Respondent also serves as president and operations manager of the company. *Testimony of Respondent*
22. Respondent also owns and operates Eldridge Tax Services, a tax consulting and preparation business, which has been in existence for over 35 years. He also serves as Assistant Treasurer of a Masonic Lodge and is an alternate trustee at his church. *Testimony of Respondent*
23. Respondent was diagnosed with colon cancer in 1999 and has undergone a number of surgeries over the years. The colon cancer has affected Respondent's liver and pancreas. Respondent is also a diabetic, who has been hospitalized repeatedly and has been prescribed various medications. *Testimony of Respondent*
24. Respondent did not consult anyone prior to submitting his 2008 Renewal Application. However, Respondent indicated that he performed an internet search on the definition of the term "crime." *Respondent's Exhibit 1*. Respondent believed that the term "crime" referred only to felonies and not to misdemeanor offenses. *Testimony of Respondent*
25. Respondent misunderstood question # 2 on the 2008 Renewal Application to include a misdemeanor Attempted Drug Possession conviction. Respondent indicated that he now understands that he should have disclosed his 2007 conviction on his 2008 Renewal Application. *Testimony of Respondent*
26. Respondent did not intend to lie or mislead the Division concerning his 2007 conviction. Respondent explained that since the conviction he is more careful about his associations and requested the opportunity to retain his loan officer license. There are no other complaints or blemishes against Respondent's record. *Testimony of Respondent*

II. CONCLUSIONS OF LAW

27. The Division has procedurally complied with O.R.C. Chapter 119 and jurisdiction over this matter has been established.
28. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, O.R.C. Chapter 1322.
29. Respondent is an Ohio licensed loan officer and is subject to the laws in O.R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
30. O.R.C. 1322.07(A), (B), and (C) state:

No mortgage broker, registrant, licensee, or applicant for a certificate of or license under sections 1322.01 to 1322.12 of the Revised Code 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.

31. According to O.A.C. 1301:8-7-10(G), each question on the license application is material to the licensing process. If an applicant submits false, incomplete information, or omits information in connection with a license application, such is grounds for denying or revoking the license.
32. Ohio's Mortgage Broker Act charges the Division with the protection of the public from harm by denying, suspending, or revoking a loan officer license if the evidence establishes that licensing standards have not been met. O.R.C. 1322.041(A) and 1322.10(A). A home is generally the most valuable asset owned by an individual. Mortgage lenders have access to an individual's confidential personal and financial information and they play a critical role in the financing process. Thus, the Division is charged with protecting the integrity of the licensing process and preserving the public interest and confidence in the

mortgage industry. It is for this reason that only the Division has the authority to issue a mortgage broker loan officer license in Ohio.

33. Respondent failed to disclose on his 2008 Renewal Application that he had been convicted of misdemeanor Attempted Drug Possession in August 2007.
34. Respondent's failure to disclose on his 2008 Renewal Application that he had been convicted of Attempted Drug Possession in August 2007 constitutes an omission of a material fact required by state law in violation of O.R.C. 1322.07(A).
35. Respondent's failure to disclose on his 2008 Renewal Application that he had been convicted of Attempted Drug Possession in August 2007 constitutes an omission of a statement required by law in violation of O.R.C. 1322.07(B).
36. Respondent's failure to disclose on his 2008 Renewal Application that he had been convicted of Attempted Drug Possession in August 2007 constitutes improper conduct in violation of O.R.C. 1322.07(C).
37. O.R.C. 1322.10(A)(1)(a) authorizes the Division to refuse to renew an applicant's mortgage loan officer license if the Division finds that the applicant has violated or failed to comply with any provision of O.R.C. Sections 1322.01 through 1322.12.
38. The Division has met its burden of proof for denying Respondent's 2008 Renewal Application.
39. However, this Hearing Officer finds that the Division should grant Respondent leniency in this case. Respondent's non-disclosure should not constitute a bar to him holding a loan officer license
40. There is no provision that prohibits the Division from granting Respondent a license simply because of an incorrect response to a question on a license application. The Division has the authority to weigh the evidence and to grant a license if it determines that the applicant has sufficient character, credibility, and honesty to hold a license. *Hockenberry v. Ohio Dept. of Commerce*, 10th Dist. No. 06AP-1058, 2007-Ohio-5555.
41. Even though the law may not require the Division to consider an applicant's intent with respect to violations of O.R.C. 1322.07(A),(B), and (C), this Hearing Officer finds "intent" to be an inherent element in the decision-making process, with respect to violations, character, and fitness.
42. The Division's assertion, that an untrue response automatically disqualifies an applicant, belies the protocol that requires the Division to review each application on its own merits. The Division relies upon its determinations of character and


fitness, discretionary standards in its own right, to determine whether to grant an application: Such discretion is better exercised when balanced in favor of an effective reconciliation of the competing issues.

43. In this case, I find Respondent was credible in his testimony concerning the circumstances of his conviction. I also find no evidence that Respondent intended to lie, mislead, misrepresent, or defraud the Division concerning his conviction. Respondent misunderstood the question and answered the question incorrectly. I do not find a sufficient basis to warrant a denial of Respondent's 2008 Renewal Application because of an incorrect answer to a question.
44. Moreover, Ms. Massey testified that the Division's NOH was based solely upon Respondent's non-disclosure of the conviction and not the conviction itself. It appears that the Division does not consider Respondent's conviction to have been so egregious as to warrant denying Respondent's 2008 Renewal Application on that basis alone. Respondent provided a reasonable explanation of the circumstances surrounding his non-compliance and made no demonstrable attempts to avoid disclosure.
45. Based on the above, I further find that Respondent's character still commands the confidence of the public to warrant the belief that his business will be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. *O.R.C. 1322.041(A)(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 Renewal Application pursuant to O.R.C. 1322.10(A)(1)(a). However, based upon the circumstance of this case, this Hearing Officer respectfully recommends that the Division grant Respondent leniency and approve Respondent's 2008 Renewal Application.

Respectfully submitted,


Delores Evans
Hearing Officer
February 20, 2009

