

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS
MAY 11 AM 11:31

In re: Charles A. Howard

:

Case No. 04-0178-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Charles A. Howard not be granted. The Division conducted an investigation and found:

- a. In or around 1996, in the Lyndhurst Municipal Court, Cuyahoga County, Ohio, Mr. Howard was convicted of theft, a misdemeanor of the first-degree; and
- b. In or about 1998, in the Court of Common Pleas, Cuyahoga County, Ohio, Mr. Howard pleaded guilty to and was convicted of Assault on a Peace Officer, a fourth-degree felony.

2. As a result, the Division determined:

- a. Mr. Howard has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Howard'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Mr. Howard violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Mr. Howard violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and
- e. Mr. Howard violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Howard's address for service is 13004 Rexwood Avenue, Garfield Heights, Ohio 444105. He is hereinafter referred to as the "Respondent." The Respondent is employed by First National Lending. (Tr. 46) (Exhibit 11).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 12).

5. Thereafter, the Respondent submitted a Hearing Request Form. (Exhibit 13).

6. On February 17, 2004, the Division wrote to the Respondent acknowledging receipt of the Request for Hearing and scheduling a hearing for 9:00 a.m. on February 27, 2004. (Exhibit 14). The Hearing was simultaneously continued on the Motion of the Division until March 17, 2004 at 3:00 p.m. in Room 1924 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. (Id.).

7. The hearing was held beginning at 3:00 p.m. on March 17, 2004, in Room 1924 of the Vern Riffe Center, 77 S. High Street, Columbus, Ohio. Attending the Hearing was Paula Luna Paoletti, Deputy Attorney General Ohio in the Executive Agencies Section, and the Respondent, Pro Se.

8. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On April 26, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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? If answer is yes, furnish details.

Yes ☐ No ☐

3. In response to Question 5, the Respondent answered "Yes" and wrote "See attached details).

4. On April 17, 2003, the Respondent provided a writing to the Division as follows:

Regarding charges number 5 and 6 dated October 12, 1997 and December 4, 1997 this charge was a felony assault on a police officer and is for the

same arrest. This incident happened when my 88 year old father was rushed to the hospital in Garfield Heights, Oh. Upon reaching the hospital only moments later in a separate vehicle I was informed that since I did not ride in the ambulance I could not see him until the doctor did. I was very upset about my father's condition and pushed past the security guard and proceeded to see my dad. The receptionist called the police and I argued and pushed one of the police officers and was arrested in Garfield Heights and since the case was a felony I was then taken to the Cuyahoga County courts where I received 2 years probation and some community service which I completed, as listed on the attached journal entry.

(Exhibit 2).

5. The Respondent also submitted a writing, undated, to the Department as follows:

This addendum is being included to address the issue of my October 1997 arrest and felony conviction. I would appreciate the opportunity to explain the circumstances which occurred, in 1997 my 88 year old father was rushed to Marymount Hospital this wasn't out of the ordinary since for the last few months my father had been rushed in several times. His health was deteriorating from old age and the whole family knew it including him. The only difference is the last time he'd gone to hospital the doctor called my mother and myself to the side and set up some test due to an internal loss of my father's blood. After the test we were told our family had two choices we could consent to exploratory surgery for my father or take him home to enjoy the rest of his time with his present quality of life. We considered his age and the rehabilitation time and decided to take him home. After many discussion's with my father he requested and almost begged that if he did go back to the hospital that we not allow them to insert a tube in his nose to reach his stomach to see if there was blood in his stomach which they did almost every other time we went, I promised him I wouldn't let them. So the night in question just as I arrived to my parents house a ambulance was taking him away I followed it to the hospital and upon arrival I was asked did I ride in the ambulance and I answered truthfully, no I was then told I would have to wait until the doctor saw my father before I could speak to the doctor I told the security guard I needed to relay some information to the doctor before he started with my father but was again denied access to my dad I must admit being a only child I felt it my duty to see no harm or unnecessary pain came to my father so I made a decision that now in some ways I do regret. I pushed past the guard spoke to the doctor and returned to the waiting room where I was upset, argued and then arrested by the Garfield heights police. After the incident I apologized to the officer's and the guard. I wanted to go before a jury to hear my case but was strongly advised by my attorney at the time to just plea because I'd never win since the police were involved I now no this was a mistake. I was not sentenced to prison but did have two years probation which I completed without incident my

probation officer was Mr. Gary Avord 216-443-7900 and then I was transferred to Mr. John Bilinsky 216-443-7891 I received positive referrals from both and hope that you can find the time to contact them and verify my conduct with them. I would also like to state that my life has changed and I'm no the same person I was one year ago I grow every year and although my past in no way is spotless it is the past. I have also included a copy of the police report, which I retain to verify these circumstances to potential employers.

(Exhibit 3).

6. The Respondent also submitted the Garfield Heights Police Department Offense/Incident Report involving the felonious assault charge. (Exhibit 4).

7. In addition, the Journal Entry of the Cuyahoga County Court of Common Pleas was submitted for the Assault on a Peace Officer offense. (Exhibit 5).

8. The Respondent also appears to have been convicted of petty theft, a first degree misdemeanor, in the Lyndhurst Municipal Court in May, 1996. (Exhibit 7). To this charge, the Respondent submitted the following writing:

Here is the last journal entry requested by your office. I'd like to briefly address this charge per your request, I worked for a store in the Richmond Heights area, and I'd worked there about 1 month and 2 days. When I was hired I was told I had to wait a week in the hole before being paid then at two weeks was told I'd have o wait two weeks in the hole before being paid , then was told there'd been in error in payroll and to just wait one more week and I'd be paid. I confronted the person who hired me and demanded he pay me an argument started and I told him I'd just keep the money he'd given me to purchase supplies and that I quit, which of course was wrong but I let my emotions get the better of me. Please keep in mind this was 10 years ago and I'd never had any trouble about it in the past which is why I'd basically forgotten about it. And after going to court for it the judge simply fined me, I paid the fine and never served and time for this offense I know this was a stupid thing to do but I felt cheated. I'd like you to know I'm looking into getting this charge expunged since I don't feel it was a theft it was the only pay I ever got for a months work. I am now 41 years old and I'm engaged to a lady with 3 children and have 3 of my own. I'd like you to know I've matured a lot since this incident and nothing like this had ever happen before or after. I value my career as a loan officer and would never do anything to jeopardize it. I consider myself a very moral, responsible and ethical person with strong religious beliefs in regards to doing the right thing. I move here 3 years ago to become a loan officer and I'd be more than happy to provide you with contact names and numbers of former employers, co-workers and people I've done loans for to prove I'm a upstanding, stable and moral loan officer. All I ask is that you give me a chance and an opportunity to

continue doing what I love. In closing I'd just like to state that my past is in my past and I can assure you and all concerned parties this type of thing will never happen again.

(Exhibit 6)

9. The Respondent has submitted to the Division four License Transfer Applications (Exhibits 8, 9, 10, and 11).. The Respondent is currently working for First National Lending Corp.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant 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.

2. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead guilty to any criminal offense described in division (A)(2) of Section 1322.031 of the Revised Code, or if the applicant has been convicted of or pleaded guilty to such offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

...

- (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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration 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 misrepresentations 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[.]

....

4. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and 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 well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent submitted numerous letters in support of his Application. Paul G. Gray, Gray Mortgage & Consulting, LLC wrote to state that he has known Mr. Howard personally since 1999 and worked with him as a loan officer for seven months. Mr. Gray urged the Division to grant the Loan Officer License. (Respondent's Exhibit A).

2. Barry and Denise Brooks wrote favorably about the Respondent's work in connection with the financing of their home. (Respondent's Exhibit B).

3. Charles Derrer, Operations Manager for Jericho Mortgage Co. wrote to state that the Respondent always handled business transactions with the highest standards and moral ethics. Mr. Derrer had never received any complaints from customers about the Respondent during his employment. (Respondent's Exhibit C).

4. Craig Wise, Vice President of AmeriFirst Mortgage wrote to indicate that the Respondent worked at AmeriFirst dba Mortgatopia in 2001 and that there were never problems with the Respondent or his customers. (Respondent's Exhibit D).

5. Samuel John McConnell, an Appraiser, wrote to state that he has known the Respondent for four years and that the Respondent is professional, ethical and moral. (Respondent's Exhibit E).

6. Probation Officer John Bilinski wrote to state that the Respondent completed two years of probation in connection with the Assault of a Peace Officer. Mr. Bilinski stated that the

Respondent would not allow himself in the future to get himself involved like this again. (Respondent's Exhibit F).

7. Chris Knapp submitted a hand-written note dated March 16, 2004, indicating that the Respondent was ethical and fair. (Respondent's Exhibit G).

8. The Respondent submitted the letter of Hans A. Schell, a State Farm Insurance Agent, indicating that he has known the Respondent for four years and is a frequent referrer of professional business. He spoke favorably of the Respondent's integrity. (Respondent's Exhibit H).

9. Alfred Gunkler of Weltman, Weinberg & Reis, a law firm, wrote of his knowledge of the Respondent over six years, both personally and on a business level. (Respondent's Exhibit I).

10. Cynthia L. Bell, a Pension Administration Consultant with Hewitt and Associates, LLC wrote favorably about the Respondent in connection with her personal loan application process. (Respondent's Exhibit J).

11. Damien Forshe wrote to state that the Respondent had refinanced Mr. Forshe's home on two occasions and felt that he had been well represented and fairly treated. (Respondent's Exhibit K).

12. Michael Mazer, Loan Consultant with Washington Mutual Home Loans states that his experience with the Respondent at Consec Financial was very positive and that the Respondent possesses a strong sense of ethics and a fine moral character. (Respondent's Exhibit L).

13. Lisa Scherzer, President of First National Lending Corp., wrote favorably about the Respondent and his work there since January, 2004. (Respondent's Exhibit M).

14. The Respondent graduated from Max S. Hayes Vocational School in Cleveland in 1980. (Tr. 60). He initially took a job as a tool and die apprentice. (*Id.*). He began work later in the Cuyahoga County Auditor's Office in the Special Assessments Department and later moved to the Appraisal Department. By 1996, he was working at Chase Manhattan. (Tr. 61). The Respondent believes that he has a good reputation in the community and that he is a good person. (Tr. 61).

15. The Respondent readily admits his involvement in two separate criminal matters. (*See* Tr. 30). He attributes the episode involving the assault on a Police Officer to a unique set of circumstances involving a final illness of his father. (*Id.*) He regrets the episode involving the petty theft. (Tr. 30).

16. The assault incident was adequately disclosed in the Respondent's Application. However, the 1996 misdemeanor theft offense was not disclosed. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show, by a preponderance of the evidence, that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such an offense again. Based on the record before him and

the opportunity to observe the Respondent in person, the Hearing Officer, is convinced that there is indeed no basis to believe that the Respondent will commit a petty theft again. However, The evidence in the record is not adequate to sustain the Respondent's burden of proof with respect to his honesty, truthfulness and good reputation. The failure to disclose the petty theft conviction is recent evidence of dishonesty. While not dispositive, it remains the evidence. Hearing Officer is further concerned that the Respondent's good reputation is somehow marred by two episodes involving a lack of control of the Respondent's own emotions.

17. Likewise, the Hearing Officer believes that the Division has met its burden of proof in establishing that the Respondent does not command the confidence of the public and warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. The failure to disclose a conviction on the Application, in the eyes of the Division, is recent history of dishonesty, which constitutes evidence that the Respondent does not possess the character and general fitness to command the confidence of the public and to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. These are strictly interpreted standards on the part of the Division. According to the Division, the failure to disclose is not affected by the seriousness of the offense or by the amount of time that has passed since conviction. In this case, the assault on a police officer was serious and both offenses occurred within the past ten years.

18. Accordingly, the Hearing Officer determines that the Applicant has not met his burden here to show that his activities and employment record since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact to believe that the Applicant will commit such an offense again. Likewise, the Hearing Officer finds that the Division has established that the 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. Further, considering that the Applicant has failed to answer Question 5 truthfully, the Hearing Officer cannot conclude that the record shows that the Superintendent can find that the 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 the Ohio Mortgage Broker Act.

19. RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
May 2, 2004