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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2006-9991462
: :
AQUIL MAHDI : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued JANUARY 17, 2007

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, who was 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 November 1, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Aquil Mahdi ("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"). Respondent's previous name was Eddie Romar Cooper, Jr.

The Division alleges that Respondent's Application did not contain complete and truthful information about his criminal background. The Division further alleges that he violated R.C. 1322.07(A), (B), and (C) by failing to disclose criminal convictions on his loan officer license application. The Division asserts 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 his criminal convictions 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).

James M. Evans, 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. During the hearing, State's Exhibits 1 through 10 were admitted into the record. The record was left open for the Respondent to submit documents reflecting child support payments. After the hearing, documents were submitted, marked as Respondent's Exhibit 1 by the Hearing Officer, and admitted into the record without objection. All citations to the Ohio Mortgage Broker Act in this Report and Recommendation are to the Ohio Mortgage Broker Act effective prior to January 1, 2007, unless otherwise noted.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on June 6, 2006, and served it upon him by certified mail. (State's Exhibit 4.)
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 Exhibits 4 and 5.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing continued once and was set for November 1, 2006. (State's Exhibits 5 and 6.)
4. Respondent received the NOH by certified mail and notice of the date, time, and location for each hearing scheduled in this matter.

C. Respondent's Loan Officer Application and Criminal Convictions.

5. 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).
6. Respondent applied for an Ohio mortgage loan officer license in February of 2006. (State's Exhibit 1.)
7. 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 1, emphasis and boldface type in original; Hearing Transcript ("TR") at 25-26.)

8. 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 1.)
9. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
10. Respondent was convicted of a drug offense in 1988 and as a result, served six months in prison. He was also convicted of unauthorized use of a vehicle in 1991. (State's Exhibit 3; TR at 29-35.)
11. Respondent changed his name from Eddie Romar Cooper, Jr. to Aquil Mahdi on April 1, 1999. (State's Exhibits 1 and 3.)
12. Although a criminal nonsupport conviction was mentioned in the record, the evidence only establishes that Respondent was arrested on criminal nonsupport charges. It is undisputed that he is behind on child support payments. Respondent has made some payments on those obligations. There is no evidence in the record indicating that the Division has received a notice pursuant to R.C. 3123.43 pertaining to Respondent. The NOH only alleges the failure to provide accurate information on Respondent's criminal background as grounds for denying the Application. (State's Exhibits 3, 4, and 9; Respondent's Exhibit 1.)

D. Respondent's Failure to Disclose Convictions on Application.

13. Respondent did not disclose his criminal convictions on the Application. He testified that he did not think of disclosing any of them because he is not currently engaged in any criminal activity. He explained, "at the time I changed my name, I basically took on a different characteristic within myself, a different person. And a lot of my past, in order for me to move forward, I let it go." (TR at 28.) In addition, the fact that he was given a permit to carry a firearm, led him to assume that he was cleared. Later, he claimed that he had no conscious thought of the two convictions. Finally, he admitted that he really did not have any excuse. (State's Exhibit 1; TR at 26-29, 43-44, 64.)
14. The Respondent's testimony as to why he did not disclose the convictions was inconsistent and unconvincing.
15. Respondent's testimony about his response to Question 5 and the evidence in the record establish that he knew about the convictions at the time he filled out the Application and failed to disclose them. His false and inaccurate response to Question 5 reflects negatively on his honesty, truthfulness, and ability to be a

loan officer. It also raises concerns about whether Respondent's business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

E. Respondent's Reputation and Character.

16. The record contains very little specific information about Respondent's activities and employment record. The fact that Respondent failed to disclose any of his criminal convictions on his Application raises serious concerns about his honesty, truthfulness, and ability to be a loan officer. These concerns were not outweighed by the evidence of good character he provided in his letter and through his own testimony at the hearing. Therefore, the evidence in the record establishes 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

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. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
4. 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.
5. Respondent's response to Question 5 on the Application indicating that he did not have any criminal convictions when in fact he had been convicted of a drug offense in 1988 and unauthorized use of a vehicle in 1991, was a substantial misrepresentation in that Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions when in fact he had those convictions, in violation of R.C. 1322.07(B).
6. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
7. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the Application that he did not have any criminal convictions when in fact he had been convicted of a drug offense in 1988 and unauthorized use of a vehicle in 1991.
8. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by R.C. 1322.041(A)(2).
9. Respondent's testimony about his response to Question 5 and the evidence in the record establish that he knew about his convictions at the time he filled out the Application and failed to disclose them.
10. Therefore, the evidence in the record establishes 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
11. Although a criminal nonsupport conviction was mentioned in the record, the evidence only establishes that Respondent was arrested on criminal nonsupport charges. The NOH only alleges the failure to provide accurate information on Respondent's criminal background as grounds for denying the Application. Criminal convictions, but not criminal charges, are relevant to these allegations and appropriate for consideration. Therefore, no weight was given to the evidence pertaining to Respondent's child support obligations.

12. There is no evidence in the record indicating that the Division has received any notice pursuant to R.C. 3123.43 that pertains to the Respondent. If any such notice is received by the Division, the Division "shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate or license issued pursuant to [R.C. Chapter 1322]." R.C. 1322.101.
13. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A)(1). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

First, the Division should determine if it has received any notice pursuant to R.C. 3123.43 that pertains to the Respondent. If so, it should determine what, any, obligations it has pursuant to R.C. 1322.101. Assuming no such notice affects this proceeding, the Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041(A) and 1322.10.

Respectfully submitted,

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Jane Stempel Arata
Administrative Hearing Officer
January 17, 2007