

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0387-LOD
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:
Vakeeta L. Simmons : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
November 8, 2004

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on September 16, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Vakeeta L. Simmons (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of aggravated assault and domestic violence in 1999 and that she failed to disclose these convictions on her loan officer application filed on March 17, 2004. Therefore, 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'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);

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2. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose criminal convictions on her loan officer application filed in March of 2004.

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 8 and Respondent's Exhibits A – G were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on July 22, 2004 by certified mail return receipt requested. (Exhibit 6.) The Division received the Respondent's hearing request on August 13, 2004. (Exhibit 7.) The Division scheduled the hearing for August 25, 2004 and, on its own motion, continued it to September 16, 2004. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit 8.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on March 17, 2004. (Exhibit 1.)
2. Question 5 of that application asked the following question:
 5. 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?
3. In response to Question 5, the Respondent answered "No." (Exhibit 1.)
4. Respondent signed the application on March 16, 2004, however, she did not sign the attestation to the application.
5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check revealed that the Respondent had been charged with domestic violence and felonious assault in 1999. By letter dated April 5, 2004, the Division requested the Respondent to submit a detailed explanation of the facts and circumstances

which gave rise to the charges and a certified copy of the judgment entry evidencing the disposition and sentence for each charge. (Exhibit 2.)

6. The Respondent submitted a Journal Entry from the Euclid Municipal Court in Case No. 99CRB00437 that shows that in May of 1999 the Court convicted the Respondent of the offense of domestic violence in violation of city ordinance 537.17, a first degree misdemeanor. The Respondent also submitted a Journal Entry from the Cuyahoga County Court of Common Pleas in Case No. CR 378940 that shows that in November of 1999 the Court convicted the Respondent of the offense of aggravated assault in violation of R.C. 2903.12, a fourth degree felony. (Exhibits 4 & 5.)
7. The Respondent explained that in 1999 she was living with her boyfriend, the father of her two daughters. One evening, on the way home from a sporting event, she and her boyfriend argued. He parked the car and they both got out and he punched her and she defended herself by punching back. A bystander called police and they were both charged with domestic violence. (Exhibit 3.) With respect the conviction for aggravated assault, later in 1999, she and her boyfriend got into a fight at home. She grabbed a kitchen knife to defend herself. He tackled her and wrestled her to the floor. In the ensuing struggle, he was cut by the knife but the cut did not require stitches. (Exhibit 3.) He called the police and she was charged with assault.

D. Respondent's Failure to Disclose Convictions

1. The Respondent did not disclose either conviction on her loan officer application. (Exhibit 1.)
2. The Respondent stated that she did not intentionally withhold information when she filed her application. She failed to disclose the convictions because she misread the question. Specifically, she interpreted "including" as meaning "for example" or "as for instance." (Exhibit 7.) Thus, as she read the question, she had to answer "yes" only if she had been convicted of one of the offenses listed in the question. Since the offenses that she had been convicted of were not listed in the question she believed that "no" was the appropriate response. (TR at 27.) She contends that she had no reason to attempt to deceive the Division by concealing her convictions. She states that she had disclosed her criminal record to her employer and others who needed to know. Further, she proceeded with the procedures for submitting to a background check fully knowing that the Division would discover the convictions. In support of her contention, the Respondent submitted a copy of her application for employment with Charter One Financial, Inc. (Exhibit A) and a copy of her Sales Examination Application

filed with the Department of Commerce, Division of Real Estate, in which she disclosed her past criminal convictions (Exhibit B.)

E. Respondent's Reputation and Character.

1. In 1999, after being charged with assault, the Respondent separated from her boyfriend. The Respondent has worked for Charter One Bank since early in 2000. She began as a mortgage processor fulfillment specialist and was recently promoted to customer care representative. (Exhibit F.) The Respondent testified that she has performed her duties without any complaints (TR at 25 - 26.)
2. The Respondent submitted three letters from her supervisors at Charter One Bank. Each attested to her positive job performance and her determination to succeed. (Exhibits D, E & F.)

II. CONCLUSIONS OF LAW

A. Jurisdictional 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. R.C. 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. R.C. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent of the Division of Financial Institutions requires. Pursuant to this provision, in question 5 of the application the Superintendent asks for information about convictions for any criminal offense.
3. R.C. 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 or 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.

4. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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 any 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.

* * *

5. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the Euclid Municipal Court of the offense of domestic violence and in the Cuyahoga County Court of Common Pleas of the offense of aggravated assault.
2. The Division alleges that these convictions show 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. However, the Respondent established that the convictions occurred due to circumstances in the Respondent's life which do not exist today. In both cases, the behavior that led to the convictions occurred due to her relationship with the father of her daughters. That relationship ended four years prior to her application for a loan officer license. As such, the convictions are not particularly strong evidence regarding the Respondent's character and fitness today. Moreover, any negative inference from these convictions is offset by the Respondent's four years of employment in the financial services industry without complaint. In the absence of any other evidence that reflects adversely on the Respondent's general fitness and character, the Division has not 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.

3. The Division alleges that the Respondent's failure to disclose the convictions on her loan officer license application shows that her 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. However, the Respondent explained that the failure to disclose the convictions occurred because she misread question 5 of the application and misunderstood its meaning. The Respondent's contention that she did not intend to deceive the Division is supported by the fact that she had previously disclosed the convictions to her employer in her application for employment and to the Department of Commerce in her application for a real estate license. It is doubtful that at the time that she completed the applications, the Respondent believed that the convictions would cause the Division to not give her a loan officer license. The Division of Real Estate had granted her a license after she had disclosed the convictions in her application for a real estate license. Moreover, the Respondent knew that the Division planned to conduct a criminal background check as part of the application process. She had to know that simply answering "No" to question 5 would not prevent the Division from discovering her criminal history. Her failure to disclose the convictions may show that she did not put enough thought and effort into completing the application. The facts in this record show that the Respondent's failure to correctly answer question 5 on the application was not done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that she will not

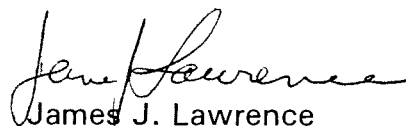
conduct herself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

4. When Respondent failed to disclose her convictions on her loan officer application, she did violate R. C. 1322.07(A), in that she omitted a material fact required by state law from a license application.
5. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading of the question and was not done with any attempt to deceive or mislead the Division. The purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,



James J. Lawrence
Hearing Officer
November 8, 2004