

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 04-0255-LOD
)	
THOMAS D. WILSON)	<u>DIVISION ORDER</u>
903 Raymond Street)	Denial of Loan Officer License Application
Akron, Ohio 44307)	&
_____)	Notice of Appellate Rights

Respondent, Thomas D. Wilson, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on April 2, 2002. On January 22, 2004, the Division notified Wilson that it intended to deny his Application because: (1) he had been convicted of passing bad checks, and he 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 not commit another offense involving passing bad checks or any criminal offense involving money or securities; (2) he violated R.C. 1322.07(A) by failing to disclose his conviction on his Application; (3) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; (4) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (5) because his character and general fitness did 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 R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Wilson requested an administrative hearing which was held on March 4, 2004. A Report and Recommendation (“Report”) was filed with the Division on March 25, 2004, recommending that the Division deny Wilson’s Application. Wilson filed timely objections to the Report.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, Respondent’s objections, the transcript of testimony and exhibits as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner’s Report and Recommendation is attached).

Paragraph 6 on page 2 of the Report states that the hearing was scheduled for February 6, 2004. This is a typographical error as the hearing was scheduled for February 16, 2004. (Exhibit 9). Paragraph 6 on page 2 is modified to reflect the change.

The last sentence of paragraph 7 on page 2 of the Report states "Also attending were Brian Tober, a witness for the Respondent, in addition to a member of the public and three high school students." The transcript and the exhibits admitted into evidence are void of any mention of these persons. As a result, the Division strikes the last sentence of paragraph 7 on page 2 of the Report.

Paragraph 5 on page 3 of the Report references Wilson's written explanation as Exhibit 2 when in fact it is Exhibit 3. The Report is modified accordingly.

The Division modifies the last sentence of paragraph 4 on page 4 of the Report and the second sentence of paragraph 3 on page 5 of the Report.

It is the Division's burden to show that Wilson'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 Ohio Mortgage Broker Act. [See R.C. 1322.041(A)(5)]. Both paragraphs are modified to reflect the accurate legal burden.

The Division disapproves the last sentence of paragraph 1 on page 5 of the Report.

The Ohio Mortgage Broker Act does not characterize passing bad checks as a minor offense, but rather classifies it as an offense, regardless of the degree of the conviction, which requires Wilson to prove by a preponderance of the evidence that his employment record and activities since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he would commit such an offense again. [See R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3)].

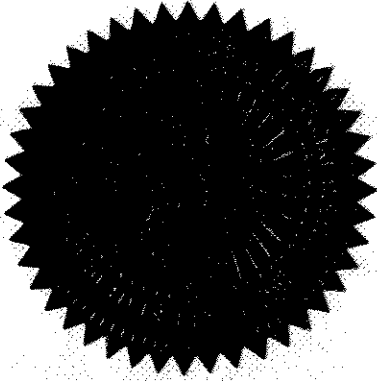
Upon consideration of the hearing officer's Report and Respondent's objections, the Division confirms and adopts the recommendation. Accordingly, Respondent's Application is hereby denied.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.

Signed and sealed this 20th day of April 2006.



ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

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

2004 MAR 25 PM 4: 17

In re: Thomas D. Wilson

: Case No. 04-0255-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 Thomas D. Wilson not be granted. The Division conducted an investigation and found:

- a. In or around 1975, Mr. Wilson was convicted of passing bad checks in the Mount Vernon Municipal Court, Knox County, Ohio.
- b. Mr. Wilson failed to disclose his criminal convictions on his license application. (Exhibit 7).

2. As a result, the Division determined:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3);
- ii. that Mr. Wilson's character and general fitness do not command the confidence of the public to 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 Section 1322.041(A)(5);
- iii. that Mr. Wilson violated Ohio Revised Code Section 1322.07(A) which prohibits a loan officer license applicant from making any substantial misrepresentation in any registration or license application;
- iv. that Mr. Wilson violated Ohio Revised Code Section 1322.07(B) which prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law; and
- v. that Mr. Wilson violated Ohio Revised Code Section 1322.07(C) which prohibits a loan officer applicant from engaging in conduct that constitutes improper, fraudulent or dishonest dealings. (Exhibit 7).

3. Mr. Wilson's address for service is 903 Raymond Street, Akron, Ohio 44307. He is hereinafter referred to as the "Respondent". The Respondent is employed by Flagship Mortgage Corporation (Exhibit 7).

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 License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibits 6 and 7).

5. Thereafter, the Respondent wrote to the Division requesting a hearing. (Exhibit 8).

6. On February 9, 2004, the Division wrote to the Respondent acknowledging receipt of the request for a hearing, scheduling a hearing for February 6, 2004 and re-scheduling the hearing for March 4, 2004 at 3:00 p.m. in Room 1918 of the Vern Rife Center, 77 South High Street, Columbus, Ohio 43215 (Exhibit 9).

7. The hearing was held beginning at 3:30 p.m. on March 4, 2004 and was attended by: Paula Luna Paoletti, Deputy Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; and Monica Roush, Assistant Attorney General and Mark Rhea, Staff Attorney for the Division. Also attending were Brian Tober, a witness for the Respondent, in addition to a member of the public and three high school students observers.

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 March 27, 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 the answer is yes, furnish details.

Yes ☐ No ☒

3. In response to Question 5, the Respondent answered "No". (Id.).

4. Following submission of the Application, the Division contacted the Respondent by letter seeking an explanation about the discrepancy between the Respondent's answers to Question 5 and his background check. (Exhibit 2).

5. In response to that letter, the Respondent submitted a written explanation as follows:

This letter is in regard to my mortgage broker license. When the application was completed I checked no to the question if you have ever been convicted of a crime. I had totally forgotten about the case in Mt. Vernon, Ohio in July of 1975. There was no intent to falsify the application in any way. It was a total forgetfulness on my part. There have been no other cases since then. The certified copy from the Mt. Vernon court as well as the letter from the court is enclosed. I trust this will be satisfactory and I can be issued a license.

(Exhibit 2).

6. The Respondent also submitted an appropriate copy of the docket page for criminal conviction from the Mount Vernon Municipal Court. (Exhibit 4).

7. On April 23, 2003, the Division wrote to the Respondent warning him of an "automatic disqualification" for a license based on his theft conviction (Exhibit 5).

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 offense, 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 sections 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 the misdemeanor offense of theft, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that there is no basis in fact for believing that he will commit another 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. The failure to disclose the criminal conviction also caused the burden of proof to shift to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

DISCUSSION

1. The Hearing Officer notes that the Respondent was convicted of a misdemeanor offense 28 years ago. At that time, he was given a \$50.00 fine, and was required to spend two days in jail. A minor offense that occurred such a long time ago ordinarily would not prevent favorable consideration for a license.

2. The Respondent, however, did not attend the hearing scheduled in this matter. (Tr. 7).

3. In this matter, the Respondent must establish that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such an offense again. Likewise, the Respondent must establish that his character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In connection with the requirements of Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of a "disabling offense"; namely, passing bad checks. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again as set forth in the applicable statutes. In this case, the offense occurred a long time ago and was a misdemeanor. However, the Hearing Officer has no basis in the record for establishing that the Respondent has met his burden of proof.

4. The Hearing Officer is also greatly troubled by the failure of the Respondent to answer Question 5 correctly. The failure to disclose a criminal offense on the Application is a false or fraudulent representation of a material fact. (See Ohio Revised Code Section 1322.07(A)). The failure to disclose also constitutes the making of a false or misleading statement required by Ohio Revised Code Section 1322.07(B). The Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to its Application questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market. Full, complete and truthful answers should be expected. Question 5 on the Application is unambiguous in its applicability to this Respondent. The failure to answer Question 5 fully and truthfully is unacceptable. Again, however, there is no record before the Hearing Officer to support a finding that the Respondent has met his burden.

5. In this instance, the Hearing Officer cannot conclude that the Respondent has met his burden of proof in this matter. Respondent has not established to the satisfaction of the Hearing Officer that, by a preponderance of the evidence, the Applicant's activities and employment records since the convictions show that the Applicant is honest, truthful and of good reputation, that there is no basis in fact for believing that the Applicant will commit such an offense again. Further, the Hearing Officer cannot find that 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.

RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion 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
March ~~24~~, 2004

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