

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0197-LOD  
: :  
ROMEO C. RADULICI : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued March 4, 2004

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I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, 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 Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held beginning at 3:00 p.m. on February 18, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Romeo C. Radulici ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of receiving stolen property and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserted 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 the conviction on his application;
2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
3. 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).

Paula Luna Paoletti, Deputy Attorney General, and James M. Evans, Assistant Attorney General, both from the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. The Respondent appeared and was represented by Kevin Osterkamp. At the hearing, State's Exhibits 1, 3 through 8, and Respondent's Exhibits A and B were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on January 27, 2004. The Division scheduled the hearing for February 6, 2004, and continued it until February 18, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

**C. Respondent's Loan Officer Application and Receiving Stolen Property Conviction.**

1. Respondent is an employee of United Mortgage Group who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 30-31.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}").
2. 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).
3. On July 15, 2003, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on July 21, 2003. (State's Exhibit 1; TR at 12-13.)
4. Respondent's signature on the Application is notarized. (State's Exhibit 1.) Directly above the applicant signature line, 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." (State's Exhibit 1; TR at 13.)
5. 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 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.

(Application, State's Exhibit 1; TR at 13.)

6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
7. Respondent's background check revealed a possible conviction for receiving stolen property in September of 2002. In response to the Division's inquiry, the Respondent submitted a certified copy of a Portage County Municipal Court record confirming the conviction. (State's Exhibits 3, 4, and 5; TR at 16-17.)
8. Respondent admitted that he was convicted of receiving stolen property in September of 2002. (TR at 17.)
9. The conviction resulted from Respondent's participation in a fraternity scavenger hunt while a freshman at Kent State University. Respondent and a few other people "had a list of things to accomplish, one of which was to grab a shopping cart – steal a shopping cart from Giant Eagle, bring it back to the house and bring it back to Giant Eagle without being detected." (TR at 21.)
10. The cart was loaded into the back of a pickup truck, and Respondent and the other two people with him started back to the fraternity house. They were pulled over by a police officer, handcuffed, and taken to the police station where they were put in a holding cell. (TR at 21-22.)
11. A few days later, Respondent appeared in front of a judge at Portage County Municipal Court, Kent Branch. (State's Exhibit 5; TR at 23.) The judge asked all of the participants to describe what happened with the shopping cart and they did so. (TR at 24.)
12. Respondent recalled that the judge then stated, "Well, with something like this, you would usually have up to a \$1,000 fine and some jail time, but I am going to waive all of that. I'll just give you a \$100 fine, [have you] pay your court costs and have a nice day." (TR at 24.)
13. Respondent testified that all of this occurred because "the man at Giant Eagle wanted to press charges against us." (TR at 24.)
14. He understood that the fine was "punishment for stealing a shopping cart." (TR at 25.)

**D. Respondent's Failure to Disclose Conviction on Application.**

15. The Respondent did not disclose the receiving stolen property conviction on his Application. (State's Exhibit 1; TR at 13-14.)

16. Respondent thought about the shopping cart incident when he read Question 5 and consulted a friend about it. (TR at 33.) He claims he was confused about the meaning of convicted and thought it meant a "major crime." (TR at 40-41.)
17. The Respondent further explained that he did not disclose the conviction because he misunderstood Question 5 on the Application. (TR at 20, 40-41.) He testified that he thought that question did not apply to him because he did not "plead guilty" to receiving stolen property. He further stated that he believed that he had not been "convicted" of a crime because that can only follow a guilty plea. (TR at 41.)
18. Earlier, Respondent stated that he knew taking the cart was wrong, and testified, unconvincingly, that he was confused as to whether he had been in a civil or criminal court. (TR at 26.)
19. Respondent did not contact anybody from the Division of Financial Institutions or an attorney to try to clarify his confusion about Question 5. (TR at 41.)
20. Respondent's claims of ignorance are inconsistent with his testimony indicating detailed knowledge of the legal system. He knew there might be an issue with his response to Question 5 yet took no steps to ensure that it was accurate and truthful.
21. This Hearing Officer finds Respondent's claim that, after being arrested, handcuffed, and locked up, he thought the proceeding was in civil court, incredible. The Respondent knew he was in criminal court and that "stealing" a shopping cart was a criminal offense well before he filled out his loan officer license application.
22. Respondent knew that he had a receiving stolen property conviction that should have been disclosed on the Application and his explanations for not doing so were not credible to this Hearing Officer.

**E. Respondent's Reputation and Character.**

23. Gary Habeeb, the owner of United Mortgage Group, testified about Respondent's experience working for him as a telemarketer. (TR at 58-59.) Mr. Habeeb testified that Respondent is honest, reliable, and hardworking. (TR at 61-63.) He does not think that the Respondent would ever commit a criminal offense again. (TR at 64-65.)
24. Andrea Healey, the mother of Respondent's best friend, testified about his reputation in the community. (TR at 50-56.) She has known him for six years and finds him to be respectful, reliable and thoughtful. (TR at 50-52.) She has left Respondent in charge of her tanning salon on a few occasions. (TR at 50-

51.) She believes that he is a good person caught in a bad situation who would not commit a crime in the future. (TR at 53.)

## **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 1322.031(A)(2) requires a loan officer license application to include 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.
3. 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.

(3) The applicant has not been convicted of or pleaded 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 an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record 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.

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(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), (3), and (5).

4. Respondent was convicted of receiving stolen property, an offense specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. 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.
7. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions, was a substantial misrepresentation in his 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, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his receiving stolen property conviction required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
10. Respondent has engaged in improper and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that he did not have any criminal convictions on his loan officer license application.
11. 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 1322.041(A)(2).
12. Once the receiving stolen property conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the convictions show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
13. Instead, the evidence established that he failed to disclose a very recent receiving stolen property conviction on his Application. Question 5 of the Application explicitly mandates disclosure of receiving stolen property convictions without any limitation. The Respondent's failure to disclose the conviction as well as his lack of credibility when explaining this failure, preclude him from establishing that he is honest, truthful, and of good reputation.

14. Despite favorable character testimony, the Respondent did not establish that it is unlikely that he will commit a similar offense in the future. This burden of proof is hard to meet when, as in this situation, the crime is very recent. It is hard to predict the future and extremely difficult to prove that someone is unlikely to commit a similar crime in the future when the crime being considered occurred less than two years ago.
15. Respondent did not prove by a preponderance of the evidence that he is honest, truthful and of good reputation. He also failed to prove by a preponderance of the evidence that there is no basis in fact to believe that he will commit the criminal offense of which he was convicted again. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
16. The conviction for receiving stolen property and Respondent's failure to disclose it on his Application, establish that his 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).

### III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,

  
Jane Stempel Arata  
Administrative Hearing Officer  
March 4, 2004