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STATE OF OHIO
DEPARTMENT OF COMMERCE

CASE NO. 04-0266-LOD

IN THE MATTER OF: EVE L. MAJSTRUK

REPORT AND RECOMMENDATION OF THE HEARING OFFICER
William R. DamschroderI. Findings of FactA. Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on April 22, 2004, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division regarding Eve J. Majstruk, an individual, because Eve J. Majstruk has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact for believing that she will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities, and that Ms. Majstruk's character and general fitness do not command the confidence of the public and warrant the belief that she would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Anthony Siliciano. The Division did not present any witnesses. Eve L. Majstruk ("Respondent") did appear in person and was not represented by counsel at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Respondent on February 12, 2004, and served it upon Respondent by certified mail. Respondent signed the certified mail receipt form on February 14, 2004. The certified mail receipt form was received by the Division on February 17, 2004. (State's Exhibit #3)
2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny Respondent a license. (State's Exhibit #4)
3. By letter of March 16, 2004, the Division notified Respondent that the requested hearing was to be held on March 22, 2004. By subsequent letter of March 30,

2004, the Division notified Respondent that the hearing was to be held on April 22, 2004. (State's Exhibit #5, #6)

4. Respondent attended the hearing and represented herself *pro se*. (Tr. p. 5)

C. Respondent's Loan Officer Application and Criminal Convictions

1. On or about December 18, 2003, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. Respondent admitted on her application that she had a criminal conviction. Respondent included a narrative explanation of the facts and circumstances that led to her conviction, as directed by the application. (State's Exhibit #1)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. The Division obtained documentation from the Ohio Bureau of Criminal Identification & Investigation indicating that Respondent had no arrest record. (State's Exhibit #1)
5. In response to a request from the Division, Respondent submitted copies of the documents from Parma Municipal Court indicating that she had plead no contest to, and been found guilty of, theft. Respondent was fined and sentence to thirty (30) days in jail, with twenty-nine days of that jail sentence suspended. Respondent was also placed on probation for twelve months. (State's Exhibit # 2)
6. Respondent testified that she was shopping in a grocery store, attempting to purchase, among other items, three packs of cigarettes. She testified that she placed the cigarettes in the child seat portion of her shopping cart, and, during the process of shopping for additional items, placed her purse in the child seat on top of the packs of cigarettes. Respondent proceeded to the checkout line and paid for all the items in her shopping cart except for the cigarettes, which were obscured from her view by her purse. As Respondent started to leave the grocery store a security officer stopped her and uncovered the cigarettes on the child seat of the shopping cart. The security guard took Respondent to the grocery store's office and called the police, who issued a summons to appear in court. When Respondent went to court, she pleaded no contest and was found guilty. (Tr. pp. 18-21)
7. Respondent testified that she had no intention to steal the cigarettes, as evidenced by the fact that she paid for all of the other groceries in her shopping

cart. She testified that she had the money to pay for all of the items. Respondent estimated that the value of the cigarettes was \$18. (Tr. pp. 20-21)

8. Respondent testified that she had no criminal convictions prior or subsequent to her theft conviction in Parma Municipal Court. (Tr. pp21-22)
9. Respondent testified, and the record reflects, that she was not represented by counsel when she appeared in court on the theft charge. (State's Exhibit #1, Tr. p.16)
10. Respondent testified that when she applied for a position as a loan officer with Equity Consultants she disclosed to the company that she had been arrested and charged with theft, and that Equity Consultants did not think it was a problem. (Tr. pp. 22-23)
11. Respondent testified that, prior to working for Equity Consultants, she was a staffing coordinator for a health care staffing company, and that she was responsible for the background checks on most of the nurses hired by her company. She was laid off from that company in April of 2003. (Tr. pp. 27-28)

II. Conclusions of Law

A. Jurisdictional and Procedural Matters

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. *Reed v. State Med. Bd.* (1988) 40 Ohio App. 3d 124, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is 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 R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show she is entitled to a license.
4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. 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 or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of

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.

- (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.
5. R.C. Section 1322.031(A)(2) requires that an applicant provide to the Superintendent, among other things, "[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[.]"
6. The Division has proved that Respondent has been convicted of the offense of theft, which is, in normal circumstance, of legitimate concern to the Division. The circumstances surrounding Respondent's conviction, however, are not normal, and must lead to the conclusion that there is no basis for believing that the Respondent will commit such an act again. The evidence presented indicates that any "concealment" of the cigarettes occurred as the result of a hurried trip through a grocery store. Respondent's conviction resulted from behavior that was, at worst, accidental or inadvertent. There is no evidence that her behavior was intentional. When coupled with the fact that Respondent has no prior legal difficulties, and no legal problems subsequent to this theft conviction, the Superintendent has every to believe that Respondent is honest, truthful and of good reputation, and that her character and fitness command the confidence of the public. The Superintendent should have every reason to believe that Respondent will conduct her business affairs honestly and in compliance with all statutory requirements. For this reason, Respondent clearly meets the requirements for licensure, as set forth in R.C. 1322.041.
7. The Division has met its burden of proof of showing that Respondent has a criminal conviction.
8. Respondent has presented evidence of sufficient weight to meet her burden of proof that she is entitled to a license.

II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Eve L. Majstruk be found to have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions approve Ms. Majstruk's application for a Loan Officers License.

William R. Damschroder, Esq.
Hearing Officer

4/16/05
Date