

STATE OF OHIO
DEPARTMENT OF COMMERCE

CASE NO. 05-0085-LOD

IN THE MATTER OF: JOHN R. DOMANICK

REPORT AND RECOMMENDATION OF THE HEARING OFFICER
William R. Damschroder

I. Findings of Fact

A. 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 September 22, 2005, 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 to John R. Domanick, an individual, because Mr. Domanick is not honest, truthful, and of good reputation, and there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities, and that Mr. Domanick's character and general fitness do not command the confidence of the public and warrant the belief that he 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 James Evans. John R. Domanick ("Respondent") appeared in person and represented himself pro se.

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 or about April 5, 2005, and served it upon Respondent by certified mail. The letter was signed for by Respondent on April 14, 2005. The signed certified mail receipt was received by the Division on April 18, 2005. (State's Exhibits #5)
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. This request was received by the Division on April 28, 2005. (State's Exhibit #6)

2. By letter of May 4, 2005, the Division notified Respondent that the requested hearing was to be held on May 9, 2005, but in the same letter continued the hearing until May 24, 2005. By subsequent letter of August 4, 2005, and as a result of a request for continuance from Respondent, the Division notified Respondent that the hearing was to be held on July 6, 2005. By letter of June 22, 2005, the Division continued the hearing upon its own motion until further notice. Finally, by letter of August 4, 2005, the Division notified Respondent that the hearing was to be held on September 22, 2005 at 1:15 p.m. (State's Exhibits #7, #8, #9, #10)
3. Respondent did attend the hearing and indicated on the record that he was aware of his right to legal counsel and his desire to proceed *pro se*. (Tr. p. 5)

C. Respondent's Loan Officer Application and Criminal Convictions

1. On or about February 3, 2005, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. In completing the application, Respondent indicated by answering "Yes" on question #5, that he had been convicted of a criminal offense, specifically petty theft, a first degree misdemeanor. He made no mention of any other convictions. (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. In response to the Division's request, Respondent submitted documentation from the Mentor Municipal Court providing the Division with the details concerning his petty theft conviction, which occurred on December 21, 2004, as well as details of convictions for assault and criminal damaging, which occurred on January 23, 2002, and a written explanation of the circumstances surrounding these convictions. (State's Exhibit #4)
5. Respondent's written explanation indicated that his 2004 petty theft conviction stemmed from leaving a gas station without paying for gasoline. Respondent stated that he used a debit card at the pump but the card did not register. He stated that he left the gas station believing that he had paid for the gasoline. When contacted by the police, he attempted to pay the gas station but they refused, pressed charges, and Respondent pleaded guilty. (State's Exhibit #4, Tr. pp. 24-28, 38-40)
6. Respondent's written explanation indicated that his 2002 convictions for assault and criminal damaging stemmed from a fight with two men. Respondent stated that he was attacked by the men, fought back to defend himself, but was

prosecuted based upon the witness statements of the two other men. Respondent admits that in the ensuing scuffle he kicked the car of the other men, which lead to the criminal damaging charge. (State's Exhibit #4, Tr. pp. 22-23)

7. Respondent testified that he answered Question #5 in the manner noted, only including information about his petty theft conviction and not including information about his assault and criminal damaging convictions, on the advice of his boss at the mortgage company, who advised him while completing his loan officer license application. Respondent testified that he was advised to not include information about the assault and criminal damaging convictions because the Division was only going to be interested in finding out information about his theft conviction, given the nature of the crime. (Tr. pp. 32-33)
8. Respondent testified that he disclosed all of his past criminal difficulties to his future boss at the mortgage company he applied through. (Tr. p. 33)
9. Under questioning from the Division, Respondent testified to the fact that the application submitted to the Division for consideration, which lead to this hearing, was not signed under oath and in the presence of a notary public, as required by the terms of the application. Respondent testified that he was familiar with swearing an oath in front of a notary public, and no such oath was sworn prior to signing and submitting his loan officer application. (Tr. pp. 45-50)

II. Conclusions of Law

A. Jurisdictional and Procedural Matters

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her 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.
6. The Division has proved that Respondent answered question #5 incompletely by failing to include a disclosure of, and explanation for, his assault and criminal damaging convictions.
 7. Since a theft conviction has been proved, Respondent bears the burden of showing that, since his conviction, he is honest, truthful, and of good reputation, and that his actions since his conviction demonstrate that he is not likely to commit another criminal offense.
 8. With respect to the answer to Question #5, concerning criminal convictions, it is incumbent upon Respondent to offer some explanation for the obviously incomplete answer provided in his application.
 9. Respondent's explanation for his incomplete answer to Question #5 is plausible, but troubling. Respondent essentially ignored the wording of the question itself and relied upon guidance from his future boss. While this may be understandable, it does not speak highly of his ability to decipher written instructions. On the other hand, the nature of the offenses is not substantial enough to warrant any finding that they materially impair Respondent's character and fitness for a license.
 10. Likewise, given the inconsequential nature of the petty theft offense, Respondent's efforts since that time are convincing proof that he is honest, truthful and of good reputation, and not a threat to commit another criminal offense.
 11. Unfortunately for Respondent, none of the above findings matter in this situation. Based upon his own testimony, Respondent failed in submitting an application that meets the requirements for consideration. As he testified, Respondent's signature was not sworn and attested to by a notary public. This procedural

defect renders the application invalid, and makes any additional consideration of the specifics of this matter meaningless. Since the Respondent failed the requirement of submitting a valid application, the Division has no alternative but to deny Respondent's request for licensure.

12. The Division has met its burden of proof of showing that Respondent is not entitled to a license.
13. Respondent has failed to present any evidence to meet his burden of proof that he is entitled to a license, due to his failure to submit a valid application for consideration by the Division.

II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that John R. Domanick be found to not have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions **deny** Mr. Domanick's application for a Loan Officers License.



William R. Damschroder, Esq.
Hearing Officer

4/27/06

Date