

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

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DIVISION OF FINANCIAL INSTITUTIONS
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In re: Diane Stone

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Case No. 04-0260-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 Diane Stone not be granted. The Division conducted an investigation and found:

- a. In 1972 the Court of Common Pleas of Cuyahoga County, Ohio, Ms. Stone was convicted of prostitution, a second offense;
- b. In or around 1972 in the Court of Common Pleas of Cuyahoga County, Ohio, Ms. Stone was again convicted of prostitution, a second offense;
- c. In or around 1982, in the Beachwood Mayor's Court, located in Cuyahoga County, Ohio, Ms. Stone was convicted of shoplifting;
- d. In or around 1986, in the Common Pleas Court of Cuyahoga County, Ohio, Ms. Stone was convicted of possession of criminal tools and receiving stolen property;
- e. In or around 1986 in the Court of Common Pleas of Cuyahoga County, Ohio, Ms. Stone was convicted of a violation of the drug laws, less than bulk amount, a felony of the fourth degree;
- f. In or around 1986, in the Court of Common Pleas of Cuyahoga County, Ohio, Ms. Stone was convicted of violation of the drug laws and receiving stolen property, forgery and uttering, all felonies of the fourth degree;
- g. In or around 1996, in the Court of Common Pleas of Cuyahoga County, Ohio, Ms. Stone was convicted of drug abuse, a felony in the third degree and attempted receipt of stolen property, a misdemeanor of the first degree.

2. As a result, the Division determined that Ms. Stone 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 theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3).

3. Ms. Stone's address for service is 18807 Libby Road, Maple Heights, Ohio, 44137. She is hereinafter referred to as the "Respondent." The Respondent is employed by Custom Fit Mortgage, 5311 Northfield Road, Suite 300, Bedford Heights, Ohio, 44146.

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 Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 10).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 10).

6. On February 20, 2004, the Division received a letter from the Respondent dated February 17, 2004 requesting a hearing in this matter. (Exhibit 11).

7. On February 20, 2004, the Division wrote a letter to the Respondent scheduling a hearing for 9:00 a.m. on March 1, 2004 and simultaneously continuing that hearing, on the Division's own Motion, until Thursday, April 1, 2004 at 3:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 12).

8. The hearing was conducted on April 1, 2004 beginning at 3:11 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. In attendance was Anthony D. Siciliano, Assistant Attorney General of Ohio in the Executive Agencies Section, and the Respondent, *pro se*.

9. 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 April 26, 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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "Yes" and wrote "See Attached".

4. Attached to the Application was a letter from the Respondent which reads as follows:

I, Diane Stone, am applying to the Ohio Department of Commerce, Division of Financial Institutions to continue my employment as a Loan Originator with Custom Fit Mortgage of Bedford Heights, Ohio.

Realizing I have a felony record, I am prayerfully hoping that you will allow me the opportunity to apply for licensing because of the following reasons:

I have turned my life over to God and have strived to do what is pleasing in His sight. I belong to Mount Pleasant Baptist Church where I serve in several capacities. I am a member and past secretary of The Mothers' Board, secretary of The Scholarship Fund Committee, vice president of The Missionary Society, and member of The Five Hundred Club. I became involved in a twelve-step fellowship six years ago and have become very involved in working with others who are suffering as I once have.

I became licensed as a real estate sales agent with the State of Ohio in September, 1999 and have become a successful sales agent under the brokerage of Ann Barber Realty. I became employed as a loan originator in June, 1999, and have worked in this capacity since that time. I have built a successful career and value my career highly.

In spite of the past record that I have, I have conducted my business in a professional and upstanding manner since being given another chance to live more according to God's will. I value the reputation I have gained in the community and will continue to serve with integrity, honesty, and the highest of ethics.

(Exhibit 1).

5. Also attached as part of the Application was a letter from Diane A. Wilson of Mountaineer Title Agency, Inc. Ms. Wilson wrote to state that the Respondent has been honest, forthright and of good character. Also attached to Exhibit 1 is a letter from Ann Barber of Ann Barber Realty.

6. As part of the Application, the Respondent executed a Consent to a National Background Check.

7. Following the submission of the Application, a report of the National Background Check was received by the Division. (Exhibit 2).

8. On January 7, 2003, the Division wrote a letter to the Respondent indicating that the Division was unable to make a decision as to whether to issue a license because of insufficient evidence. The Division cited eighteen separate criminal charges or convictions plus a probation violation and a notation that the Respondent was a "multi-state offender". (Exhibit 4).

9. The record contains a letter from the Respondent to the Federal Bureau of Investigation asking for background information under the Respondent's name as well as six other names used from time to time by the Respondent. (Exhibit 5).

10. The record contains a letter dated February 6, 2003 from the Respondent to the Division in which the Respondent seeks additional time to provide criminal background information. (Exhibit 6).

11. A similar letter was written by the Respondent on April 1, 2003 to the Division (Exhibit 7).

12. The record contains a letter dated April 3, 2003 from the Respondent, addressed probably to the Division, in which the Respondent states that she used various names more than twenty-five years ago and that her legal married name is Diane Stone and her legal maiden name is Diane Barber. (Exhibit 8).

13. On December 9, 2003, the Respondent wrote to the Division and enclosed various certified copies of dispositions of charges. (Exhibit 9). Part of that Exhibit was an explanation as follows:

I grew up in a loving and caring, middle-class, God-fearing family. I married at the early age of eighteen, right out of high school, forsaking my dreams of a college education. The marriage was extremely abusive and I became a battered wife. I was physically, emotionally, and mentally abused, and remained hopelessly in the unhealthy relationship for nineteen years. Early in the marriage I was beaten into submitting to prostitution. As a result of the shame, guilt, remorse and degradation of the lifestyle, to escape, I turned to drugs.

As evidenced by my arrest record, I suffered through many years of drug addiction in a state of hopelessness and fear. I thought there was no way out. My addiction caused me prostitute, lie, cheat, steal, manipulate and commit other crimes I never thought I would have involved myself with.

As a result of my two-month incarceration in Marysville in 1986, followed by a 90-day in-patient drug treatment program, I remained sober/clean and drug free. I became a productive member of society. My youngest son, aged 20 was involved in a motorcycle accident, being hit by a truck driver who went through a stop sign. My son remained in a coma for the next two and a half months, followed by his death. My mother suffered a stroke two weeks after the accident. Because I was not involved in a twelve-step program at that time, the only way I knew to escape the pain was drugs and alcohol, beginning a life of drug use and crime again.

My conviction of August, 1996, resulted in another court-ordered drug treatment program. My older son paid for a 30-day in-patient drug treatment program for me because he believed in me. In that treatment facility I was introduced to a twelve-step fellowship, which was the turning point of my life. The people I met in this program, who shared the same drug-induced criminal lifestyles that I

had, were now living drug-free lives. This gave me the hope that I could live a drug-free life as well. Because of the living examples of these people, the spiritual principles of the program, my commitment to working with newcomers, I have also been able to live and enjoy a drug-free and crime-free life. After serving approximately two and one half years of my five-year probation, I was released from probation. I am a productive member of society, evidenced by my property ownership, involvement in my church community, service involvement in a world-wide twelve-step fellowship, and steady employment for the past six and one half years. I have become very involved in my twelve-step program, always seeking to be of service; and for the past year I have been chairperson of the Hospitals and Institutions Committee, which is responsible for facilitating meetings in 28 hospitals, treatment facilities, and jails in the Cleveland area. Our sole purpose is to carry the message to the addict who still suffers: our message is that an addict, **any addict**, can stop using drugs, lose the desire to use and find a new way to live. Our message is that no addict need die from the horrors of addiction. It was in this way that I was introduced to a life-saving, life-giving fellowship. Because of my gratitude for the fellowship which not only saved my life but also has allowed me to live a better way of life, it is important for me to give back what has so freely been given to me.

In my church, Mount Pleasant Baptist Church, I serve on The Mothers' Board (secretary for two years), The Missionary Society (vice president for the past two years) and The Scholarship Fund (secretary for the past three years). I taught Vacation Bible School for two years.

(The twelve step fellowship in which I am involved is an anonymous program so I am unable to provide you with supporting documentation. I am, however providing some documentation of my church involvement, as well as character reference letters.

In closing, I can honestly say that while I am not proud of my past, I am proud of who I am today. I am grateful for my family who believed in me, I am grateful for the Judge who believed in me, and I am grateful for the probation officer who believed in me. These people believed in me when I couldn't believe in myself. If you will allow me licensing, I will be eternally grateful for the opportunity to continue being of service in my community.

(Exhibit 9).

14. The Respondent notes that the record contains copies of criminal case dispositions from various courts. (Exhibit 9).

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

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 offenses, 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.

3. Because the Respondent has been convicted of theft offenses, drug offenses, and offenses of receiving stolen property, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing she will commit such an offense again.

4. The Hearing Officer notes that the Division has not relied on Section 1322.041(A)(5) in this matter. (*See*, Exhibit 10).

DISCUSSION

1. The Respondent readily admits her involvement in a wide variety of criminal, and particularly drug-related criminal activities over a lengthy period of time, ending approximately eight years ago. She is ashamed, embarrassed and remorseful about it. (Tr. 25). She asserts that she is a different person today.

2. The Respondent has a valid Real Estate Sales License which she received from the Department of Commerce five years ago. (Tr. 24-25). She is celebrating eight years of being removed from drugs. (Tr. 24).

3. The Respondent submitted several letters in support of the Application. Monique Fields, Assistant Professor of Criminal Justice, at Saint Augustine's College wrote to state that the Respondent's reforms have been outstanding. (Respondent's Exhibit A). Dr. Fields is the Respondent's niece. (*Id.*). The Respondent also submitted a Bulletin from the Mount Pleasant Missionary Society for the Mission Sunday worship service held on March 30, 2003, where the Mistress of Ceremonies was the Respondent. (*Id.*).

4. Jennifer Wylie, M.Ed., Student Advisor/Adjunct Faculty at Cuyahoga Community College, wrote to state that the negative past life experiences encountered by the Respondent have been left behind and that the Respondent would succeed if given the opportunity. (*Id.*).

14. Testifying in support of the Respondent was her mother, Ann Buford. (Tr. 37, *et seq.*). Ms. Buford recounted the difficulties of having a child involved with drugs. Now, however, Ms. Buford is very pleased with the Respondent. (Tr. 40). The Respondent provided considerable help in 2001 when Ms. Buford was disabled following surgery. (Tr. 40). Ms. Buford now trusts her daughter. (Tr. 41). The Respondent has been working with her mother fully for five years. (Tr. 42). There have been no complaints at all from any customers. (Tr. 43). Ms. Buford believes that the Respondent's reputation is very good in the community and that she is honest and truthful. (*Id.*).

15. On one hand, the Respondent has a substantial criminal record. The offenses all revolve around drugs and the theft that is associated with them. The Respondent truthfully disclosed her convictions in the Application. In this proceeding, the Division is asserting that two convictions in 1972, a conviction in 1982, three convictions in 1986, and one conviction in 1996 are the basis for denying a license. Under Section 1322.041.(A)(3), the Respondent must show that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will commit another criminal offense involving theft or any criminal offense involving money, or securities. The Hearing Officer finds that the Respondent has met that burden of proof. Further, the Hearing Officer has had the opportunity to personally observe the Respondent, to listen carefully to her testimony and determines that she is indeed honest and truthful and of good reputation. The Hearing Officer finds that, to the credit of the Respondent, she has succeeded in her drug rehabilitation efforts and that there is no likelihood that she will commit another criminal offense involving theft, money or securities. All of the criminal offenses occurred some time ago and all of them involved the Respondent's use of drugs. None of those offenses involved the real estate or loan industries. The Respondent has been a license real estate agent for years without incident. The Respondent has demonstrated over the last several years that she has left that drug addicted part of her life behind and has become an upstanding and hard working member of society. Indeed, the Department of Commerce has issued a real estate license to the Respondent and the record is devoid of any information indicating that that license has been revoked or challenged. The Hearing Officer has not been asked to determine whether the requirements of Section 1322.041(A)(5) have been met.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
May 28, 2004