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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0043-LOD
: :
WENDY M. JAKLITSCH : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued September 26, 2006

I. FINDINGS OF FACT

A. Background.

This matter was heard by Jane S. Arata, an attorney licensed to practice law in Ohio, who was 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 on September 13, 2006, at 77 South High Street, Columbus, Ohio. The hearing was initially requested by Respondent Wendy Jaklitsch ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH"). Respondent's maiden name is Wendy Moysey.

The Division alleges that Respondent was convicted of petty theft in 1986. The Division further alleges that she violated R.C. 1322.07(A), (B), and (C) by failing to disclose her criminal conviction on her loan officer license application. Therefore, the Division asserts 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 her criminal conviction on her application;
2. Respondent has not proven that she is honest, truthful, and of good reputation, and that there is no basis in fact to believe that she would not commit such an offense involving theft, money or securities 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).

James Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Neither Respondent nor counsel representing her appeared at the hearing. State's Exhibits 1 through 10 and Exhibit A were admitted into the record during the hearing.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on February 13, 2006, and served it upon her by certified mail. (State's Exhibit 6.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to her by certified mail. (State's Exhibit 7.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing continued twice before it was set for September 13, 2006. Respondent was notified in writing of the date, time, and place for all scheduled hearings in this matter. (State's Exhibits 8 and 9.)
4. Respondent wrote the Division asking to cancel the hearing set for September 13, 2006. Her letter also stated that she did not want the hearing to be rescheduled. The Division did not cancel the hearing and notified Respondent of this during an August 31, 2006 telephone conference between Respondent, the Division's counsel, and the Hearing Officer. Respondent was aware that the hearing was going forward on September 13, 2006, and did not make any request for a continuance. (Exhibit A; Hearing Transcript ("TR") at 1, 5-6, 27-28.)
5. The hearing was held on the date and at the location set forth in the Division's notice letter and the Continuance Order issued in this matter. The hearing started at least 30 minutes after the time set forth in those documents to make sure that the Respondent was not just late. (State's Exhibit 9; TR at 1, 5-6.)
6. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of the hearing.

C. Respondent's Loan Officer Application and Criminal Conviction.

7. 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).
8. Respondent applied for an Ohio mortgage loan officer license in December of 2005. (State's Exhibit 1.)

9. Respondent answered "No" to Question 6 on the Application, which asked:

Have you 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?

(Application, State's Exhibit 1.)

10. Respondent's signature in the Attestation on the Application is notarized. Directly above that signature, 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." (Application, State's Exhibit 1.)
11. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
12. Respondent was convicted of petty theft in 1986. (State's Exhibit 5.)
13. Respondent explained the 1986 petty theft conviction as follows:

The reason for the incident is due to my life circumstances at that time. I was under an extreme amount of stress in regards to finding employment, paying bills and also attempting to give Christmas gifts to my family.

I used extremely poor judgment in resorting to theft as a way of resolving my problems. As a result of my actions, I only resulted in contributing more difficulties to an already difficult situation.

Since that time, I have matured, learned from my mistake, and try to resolve issues within the constraints of what is right.

(Respondent's January 25, 2006 Letter to the Division, State's Exhibit 5.)

D. Respondent's Character and Reputation.

14. The Respondent was nineteen years old at the time of the conviction. She is now thirty-nine years old. There is no evidence in the record indicating that she has any other criminal convictions. Twenty years without incident indicates that it is not likely that the Respondent will commit another crime involving theft, money or securities again. (State's Exhibit 1.)

15. Respondent did not disclose her conviction on the Application. The record contains no evidence from the Respondent explaining why she failed to disclose the petty theft conviction on her Application.
16. Question 6 of the Application clearly asks an applicant to disclose a conviction for any criminal offense involving theft without any restriction as to the time of the conviction. (State's Exhibit 1.)
17. Respondent's inaccurate response to Question 6 reflects negatively on her honesty, truthfulness, and ability to be a loan officer. It also raises concerns about whether Respondent's business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
18. Respondent's Application and her letter to the Division are the only materials in the record with information pertaining to her reputation and character. They do not establish that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation. They likewise do not establish that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. (State's Exhibits 1 and 5.)

II. CONCLUSIONS OF LAW

A. Jurisdiction 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 NOH properly notified the Respondent that she was entitled to request a hearing and was served upon her by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of her right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once a date is set. This was done in writing for every hearing set in this matter.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
4. Additionally, Respondent was notified that the September 13, 2006 hearing would go forward during the August 31, 2006 telephone conference held to ensure that she knew that the hearing was not being cancelled.

5. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place for the hearing in this matter.
6. The Respondent received proper notice of the hearing. Therefore, it was appropriate for the hearing to proceed in her absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124,125-26, 532 N.E.2d 189, 191.
7. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

8. 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.
9. 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.

(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).

10. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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. Respondent's petty theft conviction is for a "criminal offense involving theft" for the purposes of R.C. 1322.031(A)(2).

11. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
12. 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.
13. Respondent's response to Question 6 on the Application indicating that she did not have any criminal convictions when in fact she had been convicted of petty theft in 1986, was a substantial misrepresentation in that Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that she did not have any criminal convictions when in fact she was convicted of petty theft in 1986, in violation of R.C. 1322.07(B).
14. Respondent violated R.C. 1322.07(B) by omitting the statement regarding her petty theft conviction required to be in an application by R.C. 1322.031(A)(2).
15. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
16. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by indicating on the Application that she did not have any criminal convictions when in fact she was convicted of petty theft in 1986.
17. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her 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).
18. Once the 1986 petty theft conviction was proven by the Division, the burden of proof shifted to Respondent to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
19. The evidence established that after the conviction, she failed to disclose it on her Application. Although it is not likely that the Respondent will commit another crime involving theft, money or securities again, she did not prove that she is honest, truthful, and of good reputation. Therefore, she has not established that she meets the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3).

20. For the reasons described above, the evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
21. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to any applicant who does not meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

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 that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
September 26, 2006