

STATE OF OHIO  
DEPARTMENT OF COMMERCE 2004 DEC 13 PM 12: 48  
DIVISION OF FINANCIAL INSTITUTIONS

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF LaMuntz Heard, Jr.**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0391-LOD**

**FINDINGS OF FACT**

1. On or about May 6, 2003, LaMuntz Heard, Jr. ("Respondent" herein) submitted an application (the "First Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the First Application is attached and incorporated as Exhibit A. Before the Division issued its findings on the First Application, on or about February 17, 2004, Respondent submitted another application (the "Second Application") to the Division for the same purposes. A copy of the Second Application is attached and incorporated as Exhibit B. The First Application and the Second Application are sometimes referred to herein together as the "Applications".
2. On or about August 25, the Division notified Respondent that it intended to deny the Applications, and provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit C herein. The Notice charged that Respondent failed to meet certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on October 14, 2004. At the Hearing, the Division was represented by Assistant Attorney General Monica Rausch, Esq., and Respondent appeared *pro se*.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice and other documents. (Tr. Page 17)
5. As of the date of the Applications, Respondent was employed by Allstate Home Mortgage Company.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

## **DISCUSSION**

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 17)

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

At the Hearing, Respondent presented only his own testimony in support of the statutory factors considered under Ohio Revised Code sections 1322.041(A)(5) and 1322.07.

Respondent answered question five of both Applications in the negative, and failed to disclose his criminal record to the Division. Respondent testified that his failure to disclose the criminal conviction was an error, mistake, and misunderstanding. (Tr. Page 18) Respondent's failure to disclose the conviction in both Applications unfortunately calls into question Respondent's

character and fitness, and whether Respondent meets the criteria contained in Ohio Revised Code section 1322.041(A)(5).

In addition, Respondent's response to question five of both Applications may be construed as being false, misleading, and dishonest with regard to the referenced convictions. There is therefore support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal conviction, and in providing information which could be construed as false, misleading, and dishonest in conjunction with the Applications.

Other than his own testimony, Respondent did not present any other testimony or evidence: (i) to respond to the Division's contentions regarding his character and general fitness contained in Ohio Revised Code section 1322.041(A)(5); (ii) to respond to the Division's contentions regarding the failure to disclose the criminal conviction as required by Ohio Revised Code section 1322.07; or (iii) to explain generally his inaccurate response to the referenced question five in both Applications.

While Respondent's single criminal conviction does not appear to evidence a pattern of ongoing criminal behavior, the fact remains that Respondent unfortunately failed to disclose the conviction as required by the Applications. The purpose of the Hearing is not to reexamine whether the underlying criminal charge or conviction was, in fact, just or appropriate. The underlying criminal record stands on its own, and relevant provisions of Ohio law do not provide an excuse for non-disclosure to the Division due to mistake, or misunderstanding, or require in fact any evidence with respect to intent or knowledge.

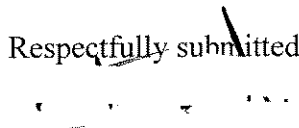
In light of the very limited testimony provided by Respondent, including the absence of supporting testimony at the Hearing from any other witnesses: (i) in support of Respondent's character and general fitness, or (ii) to explain Respondent's failure to disclose the conviction, Respondent has failed to provide evidence sufficient to overcome the Superintendent's findings under Ohio Revised Code sections 1322.041 and 1322.07.

There is therefore support for the Division's assertion that Respondent fails to meet the basic statutory criteria established by Ohio Revised Code sections 1322.041 and 1322.07.

### **RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

  
Jeffery E. Smith, Hearing Examiner

  
Date