

STATE OF OHIO
DEPARTMENT OF COMMERCE

DEC 14 2005 9:49

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

KEVIN K. KROSKEY

CASE NO. 05-0071-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued December 9, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 10:30 AM on August 16, 2005, at 77 South High Street, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Kevin K. Kroskey, of Akron, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent was convicted of a drug trafficking offense and, also, that Respondent did not comply with the continuing education requirements form 2002, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Deputy Attorney General Timothy C. Loughry. Respondent appeared pro se.

At the hearing, State's Exhibits A through F were admitted into the record. Respondent's Exhibits 1 through 6 were admitted into the record, 4, 5 and 6 over the Division's objections, and all subject to the weight deemed appropriate to afford the documents. No witnesses appeared to testify other than Respondent. Respondent was afforded an opportunity to keep the record open until August 22, 2005, so that he might submit as Exhibits documents he understood had been previously sent to the Division (See Transcript (hereinafter "Tr.") pp. 48-53). The record remained open until August 26, 2005, for the Division to file any response, but a response was not filed. As a result, two additional exhibits were received into the record and identified as Respondent's Exhibits 7 and 8. Exhibit 7 is comprised of two documents. The first is a letter dated May 18, 2005, addressed to Mark Rhea at the Division, from Kristine M. Lorentz, U.S. Probation Officer, indicating that Mr. Kroskey's sentence was amended and he was released from custody and, later, supervised release was terminated early. Attached to the letter, as part of Exhibit 7, is a Notice of Discharge from the Northern District of Ohio. Exhibit 8 is a photocopy of a Certificate of Completion indicating that Kevin Kroskey completed the Drug Abuse Education Program, dated August 28, 2003, regarding which testimony had been received.

B. JURISDICTION

The Division issued the NOH against Respondent on February 24, 2005. Respondent requested a hearing, which was received by the Division on March 17, 2005. On March 17, 2005, the Division scheduled the hearing for March 28, 2004, but continued the hearing to April 7, 2005, on its own motion. At Respondent's request, the hearing date was continued to August 16, 2005, at which time the hearing went forward. The record was kept open until 5:00 PM on August 22, 2005, as noted above.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit C.)
2. Respondent is an individual who wishes to be licensed to conduct business in Ohio as a Mortgage Loan Officer. (Exhibits B, E; Tr. p. 13.)
3. On or about July 7, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit B.)
4. Respondent signed the Application on, or about, June 14, 2004. (Exhibit B.)

5. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (highlighted in original) (Exhibit B; Tr. pp. 14-15.)
6. In conjunction with Respondent's submission of the Application, he sent multiple attachments to the Application to provide a full explanation of the conviction which caused him to respond "Yes" to Question 5. (Exhibit B; Tr. p. 15.)
7. On, or about, February 10, 2003, Respondent was convicted of a felony drug trafficking offense in United States District Court, Western District of Pennsylvania, in case number CR 02-00099-010, for activities arising during 2000. (Exhibit B.)
8. The Division background check did not reveal that Respondent had been convicted. (Exhibit B.)
9. Respondent's explanation of the facts leading to the drug conviction was, during the period between May 2000 and October 2000, he was a college student working at a bar and became involved using and, eventually selling, the drug ecstasy. (Exhibits B, E; Tr. pp. 15-17.)
10. Respondent was arrested in May 2002 at the conclusion of a federal investigation although the Prosecutor recognized that Respondent's activities only encompassed the period during 2000. Respondent was found guilty on or about February 10, 2003 and sentenced to incarceration. (Exhibits B, E; Tr. pp. 15-19.)
11. On, or about, March 8, 2004, the District Court amended the judgment to reduce the incarceration to time served and placed Respondent on probation. (Exhibits B, E.)
12. On, or about, May 17, 2005, The Federal District Court terminated Respondent's term of supervised release early "due to the completion of all ordered conditions and his outstanding compliance." (Exhibit 7.)
13. Respondent acknowledges his commission of the offense and takes responsibility for his past actions. (Exhibits B, 2; Tr. pp. 15-22, 41, 49.)
14. Respondent testified that before his arrest his drug involvement had already changed due to maturing and dissatisfaction with his

current lifestyle. He had discontinued the use of drugs after October 2000, left the employment at the bar and begun student teaching while working on his degree. (Exhibit B; Tr. pp. 18, 20-22, 49.)

15. Respondent has received treatment counseling for substance abuse while he was in prison. Respondent voluntarily undertook additional counseling. (Exhibits B, 7, 8; Tr. pp. 43-47.)
16. Respondent completed post-release supervision with no signs of drug or alcohol abuse. (Exhibit 7.)
17. During 2002, Respondent applied for, and received, a 2002 Loan Officer's License. (Exhibit A.)
18. The 2002 license was issued by the Division on May 30, 2002. (Exhibits A, 1.)
19. On, or about, June 3, 2002, four days after the Division issued Respondent's 2002 license, Respondent's prospective mortgage loan employer, North Coast Capital Funding, Inc., sent a letter to the Division, received by the Division on June 13, 2002, returning the licenses for Respondent and one other individual. North Coast Capital Funding indicated that Respondent decided to not be a loan officer and that the issued licenses were being returned. (Exhibits A 1; Tr. pp. 32-33.)
20. During 2002, Respondent did not complete any 2002 continuing education requirements in order to renew his loan officer's license in 2003. (Exhibit F, the Division's affidavit.)
21. Respondent's explanation why he never completed the continuing education requirements in 2002 was that he was never made aware that the license was received by the prospective employer and, therefore, he was never aware that he had continuing education requirements to fulfill. (Tr. pp. 13-14, 22-25, 32-33.)
22. Section 1322.052, O.R.C., cited in the Division's affidavit, does not appear applicable to this case. There has been no evidence put forth that Respondent was designated as the operations manager for a mortgage broker business. (Exhibit F.)
23. Section 1322.041(B), O.R.C. describes the requirements for renewal of a loan officer's license, which section states that, on and after January 1, 2003, one requirement for renewal is to have completed at least six hours of continuing education.

24. Respondent did not seek to renew his 2002 license in 2003 and the license terminated automatically by virtue of the language on the face of the license. (Exhibit A, F, 1.)
25. Respondent demonstrated through his University of Akron transcript and letters received into evidence that Respondent is of good reputation. (Exhibits 3, 4, 5, 6, 7.)
26. Respondent has demonstrated through letters received and his testimony that he is not likely to commit a similar offense again. (Exhibits B, 4, 5, 6, 7, 8; Tr. pp. 12-50.)
27. Respondent's repentant, candid, straight-forward responses and attitude throughout the hearing gave significant weight to the credibility of his testimony.
28. Respondent's co-workers and parole officer believe Respondent to be honest, trustworthy and of good reputation. (Exhibits 4, 5, 6, 7.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. Respondent has been proven to have been convicted of a drug trafficking offense in 2003, for acts which took place in 2000. The drug offense is an offense specifically cited in section 1322.041(A)(3) O.R.C.
3. The drug trafficking offense is in the category which automatically requires the Respondent to prove, by a preponderance of the evidence, that the Respondent'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." Section 1322.041(A)(3), O.R.C.

4. The Division also charged that 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.
5. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's drug conviction and that Respondent did not complete his 2002 continuing education requirements for an operations manager pursuant to section 1322.052, O.R.C.
6. Respondent's Exhibits 4 through 7 are letters from Respondent's co-workers and his former parole officer, all of whom were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to be heard without the formalities or expense of a trial, Respondent's Exhibits were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, Respondent's Exhibits have been afforded reduced weight. However, 2 letters (Sherman and Blatnik) were notarized statements of some specificity, and one of the letters was written by person involved with his probation supervision and rehabilitation (Lorentz), which caused the weight given the statements to be enhanced. The Howell letter, although it was not notarized, contained sufficient detail to allow it to be given some weight but the relationship between the letter-writer and Respondent caused the weight to be reduced.
7. Respondent's treatment efforts, his demeanor during the hearing, the written statements he supplied and the absence of a new offense preceding the hearing all support his contention that he has the general fitness to command the confidence of the public and gives rise to a belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
8. Respondent demonstrated, through testimony and documentary evidence, that he has been rehabilitated and not likely to commit such an offense again.
9. In eliciting evidence whether Respondent's character is honest, the Division demonstrated that, on or about June 14, 2004, Respondent signed an application under oath and filed that

application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained truthful information, to wit: the “Yes” response to Question 5 and, also, that Respondent supplied sufficient documentation to fully show those convictions, even though the Division’s own background check did not show the past conviction.

10. Filing an accurate Application is demonstrative of an applicant’s character and general fitness and that the business will be operated honestly and fairly in compliance with law.
11. The Division brought into question Respondent’s character and general fitness to 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 by bringing forth evidence Respondent did not complete his continuing education requirements as an operations manager for 2002.
12. Because Respondent was not an operations manager, the continuing education requirements of 1322.052, O.R.C., did not apply. There were no continuing education requirements for 2002 applicable to Respondent.
13. Because Respondent did not receive his license from the Division, the Division did not put him on notice that he was in the category of persons for whom the continuing education requirements apply. Because the employer immediately returned Respondent’s license to the Division, the Division was on notice that the continuing education requirements for 2002 did not apply to Respondent and his license was either abandoned or not to be renewed pursuant to section 1322.041(B), O.R.C. Respondent cannot be held responsible for the failure of others to notify him.
14. Respondent did not seek to renew his 2002 license in 2003 and, therefore, the continuing education requirements for renewal, contained in section 1322.041(B), O.R.C., are not applicable.
15. Respondent did provide sufficient evidence to overcome the Division’s evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.

C. DISCUSSION

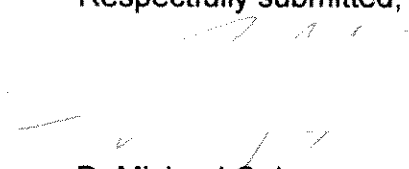
The Division's concern regarding the failure to complete the continuing education requirements have been sufficiently demonstrated to not be applicable to Respondent, for multiple reasons.

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Respondent's criminal conviction was not greatly removed in time. However, Respondent's contrite behavior during the hearing and his treatment for substance abuse, buttressed by the submission of the college transcript and numerous detailed letters on his behalf, have demonstrated that he has moved to change his behavior and seeks a fresh start. A tendency toward leniency for the non-financial nature of the crime would be appropriate, for this type of license, but only because he has successfully undertaken treatment for substance abuse. Also, because Respondent did answer Question 5 on the Application honestly, even including the court records to provide the Division with specific information regarding the convictions, he shows that he is taking responsibility for his past actions and it goes to demonstrate honesty and truthfulness, and that his 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 the Ohio Mortgage Broker Act. Respondent has proven, by a preponderance of the evidence, that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again.

III. RECOMMENDATION

The Division has proven the prior criminal conviction. Respondent did present sufficient evidence to prove by a preponderance of the evidence that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO KEVIN K. KROSKEY.**

Respectfully submitted,


D. Michael Quinn
Hearing Officer
December 9, 2005
Docket No. 05-DFI-088