

STATE OF OHIO
DEPARTMENT OF COMMERCE

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

2004 DEC 21 PM 2:01

IN THE MATTER OF: : DIVISION OF FINANCIAL
: : INSTITUTIONS
: :
Thomas P. Gilmartin : Case No. 04-0061-LOR
: :
: :

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH

Issued December 16, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This 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 3:00 P.M. on October 27, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Thomas P. Gilmartin, Jr. (hereinafter the "Respondent") to consider the Division's Notice of Intent to Revoke Loan Officer License. A Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1994, In the United States District Court for the Northern Division of Ohio, Respondent pleaded guilty to and was convicted of: Three (3) counts of conspiracy to commit fraud; Eight (8) counts of frauds and swindles; Five (5) counts of fraud by wire, radio or television; Three (3) counts of laundering of monetary instruments; One (1) count of transportation of stolen goods, securities, moneys, fraudulent state tax stamps, or articles used in counterfeiting; and Fifteen (15) convictions for violations of the national securities exchanges/compliance of non-members with exchange rules. 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, Assistant Attorney General Monica Rausch. Respondent appeared and represented himself.

At the hearing, State's Exhibits A through I were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on August 25, 2004. The Respondent requested a hearing, which was received by the Division on September 24, 2004. On September 27, 2004, the Division scheduled the hearing for October 18, 2004. The Respondent requested a continuance. A Hearing was held by telephone and Hearing Officer granted Respondent request for a continuance at which time the hearing was rescheduled to October 27, 2004 at which date the hearing was held.

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. (Ex. G).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio. (Tr. p. 12).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about April 9, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Ex.A).
5. Respondent filled out and signed the Application on or about, March 22, 2002. (Ex. A).
6. Within the Application Respondent answered "yes" to Question number 5, which asked: "Have you...ever been convicted of or pleaded guilty to any criminal offense including, but not limited to . . . drug . . . trafficking . . ." (Ex. A).
7. In or around 1994, In the United States District Court for the Northern Division of Ohio, Respondent pleaded guilty to and was convicted of: Three (3) counts of conspiracy to commit fraud; Eight (8) counts of frauds and swindles; Five (5) counts of fraud by wire, radio or television; Three (3) counts of laundering of monetary instruments; One (1) count of transportation of stolen goods, securities, moneys, fraudulent state tax stamps, or articles used in counterfeiting; and Fifteen (15) convictions for violations of the national securities exchanges/compliance of non-members with exchange rules. (Ex.'s G,F; Tr. pp. 16-17).
8. Respondent submitted a Loan Officer License Transfer Application on December 12, 2002. (Ex. C).
9. Respondent submitted a 2003 Loan Officer Renewal Application.(Ex. D).

10. Respondent submitted another Loan Officer Renewal Application for 2004. (Ex. E).
11. Respondent brought no witnesses or letters of character reference to the hearing.

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

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

B. LICENSE REVOCATION

2. Ohio Revised Code Section 1322.10(A)(1)(b), states the superintendent of the Division may revoke a loan officer license if the superintendent finds that the licensee has been convicted or pleaded guilty to a criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities.
3. Ohio Revised Section 1322.041 provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:
 - (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.
4. Because the Respondent answered yes to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
5. Respondent had no witnesses nor did he provide any letters of reference.

DISCUSSION

1. The Department of Financial Institutions (herein after "DFI") brought this action to correct a mistake made at DFI in regards to granting Respondent a loan officer license. (Tr. pp. 11,19-20; Ex. G)
2. Attorney Mark Rhea, witness for DFI acknowledges that Respondent disclosed his criminal history but due to a processing error it was not brought to DFI's attention. (Tr. p.11).
3. Mr. Rhea further testified that DFI would not have received criminal conduct that was prosecuted and sentenced in the Federal Court system as DFI is not authorized by statute to receive federal crimes because they don't have any staff from law enforcement. (Tr. pp. 12-13).
4. Mr. Rhea testified that once the initial application had been erroneously granted that nothing in the two renewal license applications of 2003 or 2004 would trigger further search because the questions on the renewal forms are only in regards to conduct within the previous 16 months of the renewal application. (Tr. pp. 15-18).
5. Mr. Rhea further testified that a Mr. Clements, who is Respondent's probation officer, faxed to DFI a six page document containing the convictions of federal crimes of the Respondent. (Tr.pp.16-17; Ex. F).
6. Mr. Rhea testified that DFI concedes that Respondent disclosed his convictions in the initial application and that Respondent was given a loan officer license. (Tr. p. 35).
7. Mr. Rhea stated that it was a mistake made by the DFI to grant Respondent a license without having a hearing . (Tr. p. 35).
8. Respondent testified that he went to prison for seven and half years for stealing (Tr.p. 40).
9. Respondent testified that he is on probation until January 31, 2005. (Tr. p. 41).
10. Respondent testified that he answered all questions on his application honestly. (Tr. p. 24).
11. Respondent testified, when asked by the Hearing Officer, if the requests for the license transfers were because he left the companies, the Respondent answered yes. (Tr. p. 43).
12. Respondent stated that he left both companies when his office manager at Home Loan Associates and he got into a little argument about what he (the office manager) perceived to be a competing relationship. (Tr. p. 43).
13. Respondent testified that he had an interest in an LLC named Character Trust & Mortgage that provided commercials loan. (Tr. p. 43).

14. Respondent testified that his office manager felt that Respondent was taking business away from Home Loan Associates and routing it to Character Trust & Mortgage. (Tr. p. 44).

15. Respondent testified that to his knowledge a complaint had been filed about his conduct with DFI. (Tr.p. 44).

16. Respondent testified that Amanda Axtell from DFI had previous knowledge of his criminal activity but state he didn't call her as his witness " because of the nature of this presentation". (Tr. p. 45).

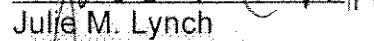
17. Based upon the testimony of Mark Rhea, witness for DFI, and the fact that R.C.1322 permits the Superintendent the ability to revoke licenses that have been issued if the superintendent finds that the licensee has been convicted or pleaded guilty to a criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities, and the statute allows that at the discretion of the superintendent and this Hearing Officer finds Respondent's testimony did not overcome a preponderance of the evidence that his character and general fitness do command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

18. Further, Hearing Officer finds Respondents Motion to Disqualify Hearing Officer without merit. Respondent argues that before the hearing began Hearing Officer stated she had a nephew with the last name Gilmartin. Through conversation Respondent said he new of and may be related to that Gilmartin family. As Hearing Officer's nephew is thirty years old and Hearing Officer sees no conflict of interest nor did Respondent bring it up at the time of the hearing and proceeded with the hearing, Hearing Officer denies motion.

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division suspend and revoke the Loan Officer License of the Respondent.

Respectfully submitted,


Julie M. Lynch
Hearing Officer
December 16, 2004