

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0029-LOD
: :
: :
Daniel J. Szanyi : James J. Lawrence, Hearing Officer

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION**
June 2, 2005

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 9:00 a.m. on April 18, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Daniel J. Szanyi (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent failed to disclose criminal convictions on his loan officer application filed in November of 2004. 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'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).
2. By failing to disclose his criminal conviction on his loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the

hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits 1 through 9 and Respondent's Exhibit 1 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on March 25, 2005 by certified mail, return receipt requested. (Exhibit 6.) Respondent's hearing request was received by the Division on March 31, 2005. (Exhibit 7.) The Division scheduled the hearing for April 11, 2005 but, on its own motion, continued the hearing to April 18, 2005. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit 8.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on November 8, 2004. (Exhibit 1.)
2. Question five of that application asked the following question:
 5. 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?
3. In response to Question 5, the Respondent answered "No." (Exhibit 1; TR at 20, 23.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031(B) which revealed that the Respondent had been charged with driving under the influence in 2000 and 2002. (Exhibit 3.) By letter dated November 17, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and a certified copy of the judgment entry evidencing his plea and the court's finding. (Exhibit 4.)
5. The Respondent provided a certified Judgment Entry from the Willoughby Municipal Court. The Judgment Entry for Case No. 00-TRC-1117-A shows that on February 10, 2000 the Court found the Respondent guilty of driving under the influence in violation of city ordinance 434.01A1. The Respondent also provided a certified Judgment Entry from the Bedford Municipal Court. The Judgment Entry for Case No. 02TRC09148 shows that on February 26, 2003 the Court found the Respondent guilty of driving under the influence in violation of city ordinance 434.01A1. In this latter case, the Court fined the Respondent \$750.00, sentenced him to 120 days in jail, 110 of those days suspended, ordered eighteen days of electronic monitoring and placed the Respondent on one year active probation. (Exhibit 5.)

6. In a letter to the Division dated December 10, 2004, Respondent explained that since the arrest in 2002 he admitted himself into the Laurelwood Hospital's Intensive Outpatient program and attended alcoholic anonymous meetings. He has remained sober since the date of his second arrest. (Exhibit 5.)
7. The Respondent explained that he answered "no" to Question 5 because the question led him to believe that he should answer "yes" only if he had been convicted of one of the offenses listed in the question. (TR at 20.) He points out that the Division amended the question in August of 2002 so it now reads:

5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.) (Emphasis in original.) (Exhibit A; TR at 21.)

The Respondent asserts that the Division amended the question in August of 2002 because it recognized that the wording of the question had misled other applicants to answer no when they should have answered yes. (TR at 45.) The Respondent insists that he would have answered "yes" to Question 5 if his employer had given him the current application form to complete. (TR at 21, 22.)
8. The Respondent testified that he knew that he would have to disclose the convictions for driving under the influence but believed that they would be disclosed through his consent to a background check. He did not believe that Question 5 was the proper place for him to disclose them. (TR at 24.)
9. The Respondent testified that he did not recall reading any instructions to the loan officer application which instructed applicants to report any matter even if they had doubts about whether the matter should be reported. (Exhibit 1; TR at 26.)
10. No witnesses appeared, either personally or in writing, on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Division objected to the admission of a blank loan officer application dated August 2, 2002. The Hearing Officer admitted the blank application because it is important to the understanding of the Respondent's stated

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

* * *

(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.

3. R.C. 1322.031(A)(4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense in Question 5 of the application.
4. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the convictions shows that his 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).
5. The Respondent failed to disclose his criminal conviction on his loan officer application as required by the Superintendent pursuant to R.C. 1322.031(A)(4). When asked about his criminal record in Question 5 of the application, the Respondent answered "no" even though he had been convicted of driving under the influence. The Respondent contends that he answered this question incorrectly because he misunderstood the question and that he would have answered the question correctly if his employer had given him the August 2002 version of the application. This explanation is not credible. Both the February and August 2002 versions of the Question 5 require the applicant to indicate if he or she has ever been convicted of any criminal offense. Although the February version does list examples of criminal offenses, it specifically states that the Question is not limited to the listed offenses. The Respondent's failure to correctly answer Question 5 supports the Division's finding that his 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 and shifts the burden to him to show that his character and general fitness do 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.

6. The Respondent presented no information to support his character and fitness. In the absence of any such evidence, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that his 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).
7. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
8. R.C. 1322.07 provides, in part, that no applicant for a loan officer license shall do any of the following:
 - (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.
 - (B) Make any false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations.
 - (C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

* * *

9. The Respondent's failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
10. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing

conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license.

III. RECOMMENDATION

The record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and that his 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,



Y
James J. Lawrence
Hearing Officer
June 2, 2005