

IN THE MATTER OF: : CASE NO. 04-0237-L0D
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:
David C. Taylor, Jr. : James J. Lawrence, Hearing Officer

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2. 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).

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. At the hearing, State's Exhibits 1 through 9 were admitted into the record. The Respondent did not appear at the hearing without explanation for his absence.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on May 27, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on June 21, 2004. The Division scheduled the hearing for June 30, 2004 but, on its own motion, continued the hearing to July 20, 2004. The Division subsequently continued the hearing to August 24, 2004. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH.

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on May 1, 2002. (Exhibit 1; TR at 7.)
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 "yes." He attached a statement along with copies of indictments from 1993 and 1994. (Exhibit 1; TR at 7.)
4. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).
5. The background check on Respondent's application revealed numerous convictions for felony offenses. (Exhibit 2; TR at 8.)

6. By letter dated January 30, 2003, the Division required the Respondent to submit certified copies of journal entries evidencing the disposition and sentence in two criminal cases and a report of time served in confinement. (Exhibit 3; TR at 9.)
7. The Respondent provided a judgment entry from the Lorain County Court of Common Pleas for Case. No. 93CR043709 which showed that the Court convicted the Respondent of Insurance Fraud in violation of R.C. 2913.47(B)(1), a second degree felony, Aggravated Arson in violation of R.C. 2909.02(A)(2), a first degree felony, Arson in violation of R.C. 2909.03(A)(2), a third degree felony, three counts of Falsification in violation of R.C. 2921.13(A)(2), second degree felonies, Perjury in violation of R.C. 2921.11, a third degree felony and Wrecking in violation of R.C. 1547.91(C), a third degree felony. The Court sentenced the Respondent to two to twenty-five years for Insurance Fraud and each count of Falsification, five to twenty-five years for Aggravated Arson and two years on each remaining count, sentences to run concurrently. The judgment entry for Case No. 94CR045317 shows that the Lorain County Court of Common Pleas convicted the Respondent of eighteen counts of Grand Theft in violation of R.C. 2913.02(A)(2), all third degree felonies, Tampering with Evidence in violation of R.C. 2921.12(A)(2), a third degree felony and Forgery in violation of R.C. 2913.31 (A)(3), a fourth degree felony. The Court sentenced the Respondent to a six year total sentence to run consecutively to the five to twenty-five year sentence in Case No. 93CR043709. (Exhibit 4; TR at 9 - 11.)
8. In a letter that accompanied his application, the Respondent had explained that he had used money from friends and acquaintances to finance the building of a sixty-foot yacht which he insured and then set on fire in an effort to collect and insurance benefit. (Exhibit 1.)

D. Respondent's Reputation and Character.

1. The Respondent wrote in a statement attached to his loan officer application that since his conviction he has restructured his life, rebuilt relationships and has become an honest and upstanding citizen, father and friend. He believes that he is honest and straightforward.
2. Four letters accompanied the Respondent's loan officer application. Two had been written to the sentencing judge in 1997. A third letter had been written by his employer and the fourth by a client.
3. No witnesses appeared to testify on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer Application.

1. R.C. 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant 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.
2. R.C. 1322.041(A) provides that a loan officer license shall be issued if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

(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.

3. 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 if he finds either of the following:

(a) A violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12 ...

(b) A conviction of or guilty plea 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.

C. DISCUSSION

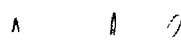
1. The Division's determined that Respondent's loan officer application should be denied because the Respondent did not prove that he is honest truthful and of good reputation, and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities as required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). The record shows that Respondent was convicted in the Lorain County Court of Common Pleas on eighteen counts of Grand Theft. R.C. 1322.041(A)(3) requires that an applicant for a loan officer license who has been convicted of an offense involving theft must show that his actions since the conviction prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities. The applicant has not met the requirement of R.C. 1322.041(A)(3).
2. The Division also determined that the Respondent's loan officer application should be denied because the 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). The record in this case establishes that Respondent has a substantial criminal record that includes offenses that show that Respondent may behave in ways that disregard the property rights of others. The record in this case supports the Division's determination that the 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.

III. RECOMMENDATION

The Respondent's has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities as required by R.C. 1322.041(A)(3) and the nature and extent of his

criminal record support a determination 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,


James J. Lawrence
Hearing Officer
September 22, 2004