

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0120-LOD
: :
SHIRLEY LYNN MILLER : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued August 5, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on April 28, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Shirley Lynn Miller ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of aggravated drug trafficking in 1991. Therefore, the Division asserted 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 has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit any criminal offense involving drug trafficking, money or securities again as required by R.C. 1322.041(A)(3); and
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).

James M. Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Brett R. Sheraw and David Skrobot represented the Respondent at the hearing. At the hearing, State's Exhibits 1 through 8 and Respondent's Exhibit Binder with Exhibits tabbed 1 through 5 were admitted into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 19, 2004. The Division scheduled the hearing for March 1, 2004, and continued it until April 28, 2004. The Respondent received the NOH by certified mail and received notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Criminal Conviction.

1. Respondent is an individual who wants to continue conducting business in Ohio as a mortgage loan officer. (State's Exhibit 1; Hearing Transcript at 26.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. The Division received Respondent's Loan Officer Application ("Application") on April 23, 2002. (State's Exhibit 1.)
4. Question 5 on the Application asked:

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.

(Application, State's Exhibit 1; TR at 14.)

5. Respondent answered "Yes" to Question 5 and stated that she had been convicted of drug trafficking in 1989. (State's Exhibit 1.) She spent over two years in prison and was on probation for several years thereafter. (State's Exhibit 5.)

6. The conviction for aggravated drug trafficking actually took place in 1991. Respondent's participation in the delivery of nine ounces of cocaine to an individual for distribution resulted in that conviction. Her former husband called her from prison and told her that a friend of his would deliver cocaine to her house where someone else would pick it up for distribution. The person who picked up the cocaine was apprehended and indicated that the cocaine had been obtained from her leading to her arrest. She did not know the person who brought the drugs by her house. (State's Exhibit 5; TR at 44-47.)
7. Respondent was charged with parole violations three times from 1993 through 1996. Only one charge for non-reporting was prosecuted. Respondent testified that she did not report because she was taken hostage at gunpoint by an ex-boyfriend. She turned herself in to the Parole Board when she escaped and served an additional six months in prison. (TR at 29-31.)
8. Respondent associated with a group that drank heavily and used drugs when she engaged in the activities that led to her conviction and the parole violation. She was also married to a man engaged in the drug trade. His family was also in that line of work. (TR at 44-46.)
9. Respondent has no other criminal convictions. She no longer associates with the people she associated with during the period surrounding her conviction and parole issues. (TR at 36-39.)

D. Respondent's Reputation and Character.

10. Since 1996, Respondent has worked in the restaurant, automotive, and mortgage industries. She was a waitress, shift manager and general manager at a restaurant starting in 1996. She was responsible for funds at the restaurant and was never accused of mishandling funds. She also worked at Spitzer Dodge for four years before she began her work in the mortgage industry in 2001. She started as the receptionist and cashier and later became the Operations Manager. She was responsible for the handling of funds, inventory, and accounts. She was never accused of mishandling funds or the subject of any customer complaints. She left that position to go to St. James Mortgage Company. She has worked at St. James Mortgage Company as a loan officer since 2001 and seeks a license to continue her work there. In that capacity, she has originated 163 loans. There is no indication of any problems with her loans. Respondent recently became a co-owner of the Columbus Comets women's professional football team. She handles the money for the team including taking care of bills and payroll. (TR at 26-28, 31-33, 36-37.)

11. Jeff Dierksheide, the Operations Manager for St. James Mortgage Company in Ohio, hired Respondent in 2001. He is also the Branch Manager for the branch where Respondent works. Mr. Dierksheide has been in the mortgage industry for twenty years and with St. James Mortgage since 1998. He has managed over one hundred loan officers. He supervises Respondent and monitors her work. He stated that Respondent always does what is best for her customers and is very knowledgeable about products in the industry. He stated that Respondent is honest, truthful, and reliable. He also testified that she has a good reputation. (TR at 33-34, 99-105.)
12. Lenia Neff, Respondent's sister, testified about Respondent's reputation in the community and her work. Ms. Neff is a Contact Center Manager for Kemba where she has been employed for the past seven and a half years. Prior to that, she worked as a head teller at Ohio State Bank. While working in those positions, she referred loans to others. Ms. Neff referred loans to Respondent that were closed by Respondent. None of the people Ms. Neff referred to Respondent had complaints about Respondent. She testified that Respondent is a very different person than she was prior to 1996. Respondent is now a caring and responsible member of the family. She speaks with Respondent a few times a week and sees her frequently. (TR at 62-64, 71.)
13. Michelle Roush, Ms. Neff's daughter, testified on behalf of her aunt. Ms. Roush is a Senior Account Relationship Associate at Huntington Bank where she processes commercial real estate loans for developers. Ms. Roush adopted her January 30, 2004 reference letter as her testimony. She is only six years younger than Respondent and believes that Respondent has no reason to return to her troubled past. She has entrusted Respondent with her three children. (TR at 74-75; Respondent's Exhibit 4.)
14. James Engel, a retired police officer who served thirty years with the Columbus Police Department, also testified on Respondent's behalf. He has known Respondent for over seven years. Respondent is one of his stepdaughter's friends. He believes Respondent has turned her life around and become a respectable citizen. He testified that she is honest, truthful and of good character. He also believes that she will never commit another drug offense. He would trust her with loans and his personal finances. He also adopted his reference letter as his testimony. (TR at 80-87; Respondent's Exhibit 5.)
15. Respondent also provided letters from two individuals familiar with her reputation in the community and her work. Both assert that she is a changed person who has been on the right track for the past eight years. (TR at 41-43.; Reference Letters from Roseanne Davis and John D. Davis, Sr., Respondent's Exhibit 4.)

16. Respondent identified the Davis' letters at the hearing. The authors of the letters were not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters from Roseanne Davis and John D. Davis, Sr. were considered but afforded less weight than they would have been if the respective authors had been available for cross examination.
17. Respondent also submitted thirty customer questionnaires filled in by individuals she has worked with while at St. James Mortgage. The authors of the questionnaires were not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the questionnaires in Respondent's Exhibit 2 were reviewed but not relied upon by the Hearing Officer in this matter.
18. The Hearing Officer found Respondent to be honest and truthful at the hearing. She has learned from her mistakes and improved her life greatly since 1996. She has a good reputation and is held in high regard by others. She is not likely to commit any drug related offense again.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

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

B. Loan Officer License Application.

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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.

3. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(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.

R.C. 1322.041(A)(3) and (5).

4. Respondent was convicted of aggravated drug trafficking a criminal offense specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
5. Once the aggravated drug trafficking conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3). That conviction is explicitly included in the reference to "any criminal offense involving ... drug trafficking" in R.C. 1322.031(A)(2) and is not what that provision refers to as "any criminal offense involving ... money or securities." Therefore, aggravated drug trafficking is the criminal offense involved for the purposes of the burden of proof shifted to Respondent by operation of the language in R.C. 1322.041(A)(3). Thus, the Respondent must prove that she will not be likely to commit any offense involving drug trafficking again but does not have the burden to prove that she will not commit any offense involving money or securities as alleged in the NOH.
6. Respondent was honest about the aggravated drug trafficking conviction and her troubled past on her Application and at the hearing. She has learned from her mistakes and improved her life greatly since 1996. She has a good employment record. She has held positions of trust and managed funds without incident since 1996. Her experience as a loan officer indicates that she is doing well and will continue to do well in that position.

7. Respondent's testimony and the testimony of her family, friends and supervisor establish that she is honest, trustworthy and reliable. The testimony confirms that Respondent is now a different person and not likely to repeat her past mistakes. She was involved in serious criminal activity in 1991 and struggled to get her life together until 1996. After 1996, the record evidences a person who has worked hard to earn the trust of others and establish herself as a person of good character. She now enjoys a good reputation in her community and her workplace. She has become a person trusted with funds and financial information. Almost eight years without incident indicate the changes she has made are permanent and support the conclusion that there is no basis in fact for believing that she will commit any drug related offense again.
8. If the Division believes, as it alleged in the NOH, that Respondent must also prove that there is no basis in fact for believing that she will commit any criminal offense involving money or securities, the evidence submitted by Respondent would meet that burden too.
9. The testimony from Respondent, Mr. Dierksheide, and Ms. Neff establish that Respondent has a good reputation as a loan officer. She has done a very good job as a loan officer for almost three years and has handled over 163 loans without incident. There have been no problems or concerns with her work. Respondent has established that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
August 5, 2004