

06 AUG -2 PM 4:31

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0044-LOD
: :
JAMES D. RADESIC : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued August 2, 2006

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 July 12, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent James D. Radesic ("Respondent" or "Mr. Radesic") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH").

The NOH alleges that Respondent was convicted of aggravated assault in 2002 and driving while under the influence in 2003. Therefore, the Division alleges that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, because his character and general fitness do not command the confidence of the public and warrant the belief that his 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).

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lawrence Bocci represented the Respondent at the hearing. State's Exhibits A through I and Respondent's Exhibit 1 were admitted into the record during the hearing.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on February 22, 2006. The Division received Respondent's hearing request on March 20, 2006. The Division scheduled the hearing for March 30, 2006, and continued it to July 12, 2006, upon its own motion. The Respondent received the NOH by certified mail. Respondent and his counsel received written notice of the date, time and location for all hearing dates set in this case. (State's Exhibits A, B, and C.)

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

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit D.)
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 6, 2005. (State's Exhibit D.)
4. Respondent disclosed his 2002 conviction for aggravated assault, a fourth degree felony, and his 2003 driving while under the influence ("DWUI") conviction on the Application. These recent criminal convictions reflect negatively on Respondent's character and fitness to be mortgage loan officer. (State's Exhibits D, G, H, and I.)
5. On July 2, 2002, Mr. Radesic signed a written proffer of his guilty plea to aggravated assault. That document specifically disclosed that the maximum prison term for that offense was 18 months. Mr. Radesic responded "no" to Questions 8 and 10 on that document which asked if anyone had made any promises to him in order to get him to plead guilty and if any other promises or representations had been made to him. (State's Exhibit I; Hearing Transcript ("TR") at 20.)
6. His guilty plea was accepted and he was sentenced to six months in prison on September 9, 2002. The sentencing Journal Entry Addendum included the finding that Mr. Radesic caused physical harm to a person and ordered him to make restitution to the victim. It also stated that the amount of restitution would be determined by the Probation Department based upon proof from the victim. (State's Exhibits H and I.)

7. Respondent's June 3, 2005 letter to the Division stated the following:

The 2001 felonious assault charge that appears was dropped to aggravated assault in 2002, but both still show up on my background check. I agreed to plead guilty to the lesser offense, which is why it was dropped. This charge arose because of a confrontation with an ex-girlfriend. The suit was eventually thrown out in civil court because she changed her original story several times through out the case. However I was sentenced and sent to prison for a few months, because my sentencing happened before she started making up new stories.

(State's Exhibit E.)

8. Respondent testified at the hearing about the circumstances underlying his aggravated assault conviction. He and his then girlfriend got in a fight and broke up at his family reunion. She tried to leave in his Jeep and he stood behind her to block it. The top of the Jeep was down. He started walking away and turned around to discover that she was coming at him in the Jeep. He threw a beer bottle at the Jeep and it hit the front windshield. She braked and hit her face on the steering wheel. (State's Exhibit D; TR at 26.)
9. Respondent initially testified that he was not ordered to make restitution to the victim. Then he stated that he may have been but was not required to do so. The victim filed a civil suit against him for the restitution and it was dismissed. Respondent's June 3, 2005 letter indicated that the civil case was "thrown out in civil court because she changed her original story several times through out the case." Again, at the hearing, he testified that the civil case was "thrown out of court." While responding to a later question about whether he had contact with the victim, Respondent stated:

A. No. The only contact that I have is, like I said, originally got thrown out, the case, the civil suit got thrown out. It got thrown out for prejudice or whatever. She had a year to refile and on the last day, she refiled. It just got handed down to arbitration.

Q. And what is that suit about?

A. It was about – Basically suing me over the assault charge. The original suit got thrown out. She refiled a year later and now it just got handed – The most recent thing it got handed to arbitration.

(State's Exhibit E; TR at 19-20, 28-29, 32.)

10. Respondent has not paid restitution to the victim of the aggravated assault. Even though he has been released from prison and post release control, this raises a question of whether he completely complied with the original court order requiring him to pay restitution. That order did require the victim to provide proof of the amount and she has filed a civil suit. The record does not include information as to why this situation exists but it does include Respondent's statements in his letter and at the hearing. Those statements reflect Respondent's attempt to minimize what happened and inaccurately portray his responsibility for restitution. Dismissal of a civil case without prejudice and therefore subject to refiling in one year is not a determination on the merits and describing that case as having been "thrown out in civil court because she changed her original story several times throughout the case" is misleading. Furthermore, Respondent's claim that he "was sentenced and sent to prison for a few months, because [his] sentencing happened before she started making up new stories" was also misleading and dishonest since he pleaded guilty to aggravated assault. (State's Exhibits E and H; Respondent's Exhibit 1; TR at 19-20, 28-29, 32.)

D. Respondent's Reputation and Character.

11. Respondent is a bartender and bar manager at Liquid Living where he has worked for the past six years. While in those positions, he has been responsible for cash, credit cards, and financial information without incident. He has taken college coursework in accounting and has plans to complete his undergraduate accounting degree this fall. During the past two months, he has spent time becoming familiar with the mortgage industry including observing a loan officer and reviewing loan documents. (TR at 24-25, 27-28, 30-33.)
12. Bob Vance, who has been friends with Respondent since grade school, testified about Respondent's character. He is a licensed loan officer trying to start his own firm and wants to hire Respondent as a loan officer. Mr. Vance is teaching Respondent about the industry. Mr. Vance also worked with and supervised Respondent at Liquid Living for close to two years about five years ago. Mr. Vance spoke quite favorably about Respondent's character, reputation, and honesty. (TR at 35-49.)
13. Michelle Ezzo, Respondent's supervisor at Liquid Living, also testified about Respondent's character. She has worked with Respondent for the past 15 months and has some general knowledge of his convictions. He is trusted with access to all funds and offices. She also confirmed that he has been responsible for cash, credit cards, and financial information at Liquid Living without incident. Liquid Living takes in at least \$2,000,000 each year. Ms. Ezzo testified favorably about Respondent's trustworthiness, dependability, and ability to get along with others at work. (TR at 50-56.)

14. Respondent's recent aggravated assault and DWUI convictions reflect negatively on his character and fitness to be mortgage loan officer. Those recent convictions, including one for a fourth degree felony, raise concerns about his character and ability to comply with the law.
15. Respondent's inaccurate claims about why he went to prison, his responsibility for restitution, the merits of the victim's civil suit against him, and the dismissal of that case, reflect negatively on his honesty and truthfulness in his dealings with the Division in the loan officer licensing process. These claims likewise reflect negatively on his character and fitness to be a loan officer. They also evidence that his character and general fitness do not command the confidence of the public and warrant the belief that his 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).
16. The evidence in the record is not sufficient to establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act.

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 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions 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.

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

3. Respondent's recent aggravated assault and DWUI convictions reflect negatively on his character and fitness to be mortgage loan officer. Those recent convictions, including one for a fourth degree felony, raise concerns about his character and ability to comply with the law. Additionally, only a few years have passed since the underlying events occurred.
4. Respondent's inaccurate claims about why he went to prison, his responsibility for restitution, the merits of the victim's civil suit against him, and the dismissal of that case, reflect negatively on his honesty and truthfulness in his dealings with the Division in the loan officer licensing process. These claims likewise reflect negatively on his character and fitness to be a loan officer. They also evidence that his character and general fitness do not command the confidence of the public and warrant the belief that his 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 evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that his 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).
6. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to any applicant who does not meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

The evidence in the record only supports a conclusion that Respondent does not meet the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
August 2, 2006