

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL INSTITUTIONS  
2004 MAY 21 AM 8:10

IN RE: : CASE NO. 04-0062-LOD  
: :  
RICKY L. EVANS : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued May 21, 2004

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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 29, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Ricky L. Evans ("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 attempted assault on a police officer and resisting arrest in 2002. 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, because 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 Siciliano, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Mark Rhea, an attorney with the Division, attended the hearing as the Division's representative and testified at the hearing. The Respondent did not appear and was not represented by counsel at the hearing. At the hearing, State's Exhibits 1 through 11 were admitted into the record. The Division is to redact any Social Security Numbers from those exhibits. Social Security Numbers are not relevant to any issues in this proceeding and the protection of them is key to the prevention of identity theft.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on January 22, 2004, and served it upon him by certified mail. (State's Exhibit 8.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".) It is clear that the Respondent received the NOH because he sent the Division the hearing request form sent to him with the NOH. (State's Exhibits 8 and 9.)
2. Respondent's hearing request was received by the Division on February 23, 2004. (State's Exhibit 9; TR at 15-16.)
3. The Division scheduled the hearing for March 4, 2004, and continued it until April 29, 2004. On February 24, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location of the hearing. (State's Exhibit 10.) That letter was sent by regular mail to the Respondent at the most recent address he had provided to the Division. The letter was not returned to the Division as undeliverable. (State's Exhibits 6 and 10; TR at 12-13, 16.)
4. The Respondent faxed a letter to Mark Rhea, an attorney at the Division the day before the hearing. (State's Exhibit 11; TR at 7-8, 16.) That letter stated:

After a conversation with Anthony Siciliano I have decided to waive the right to my hearing concerning getting my loan officer license. I don't wish to continue at this time due to other interests, but Anthony told me that I could reapply at a later point if I wanted to. If there is a refund on the application fee, please send it to the address listed below.

(State's Exhibit 11.)

5. The day before the hearing, Mr. Rhea called Respondent and left a message on his voice mail indicating that the hearing would be held as scheduled. Respondent has not made any request for a continuance of the hearing. (State's Exhibit 11; TR at 8,16.)
6. The hearing was held on the date and at the location set forth in the Division's February 24, 2004 letter. The hearing started fifteen minutes after the time set forth in that letter to make sure that the Respondent had not changed his mind about attending. (State's Exhibit 10; TR at 1, 6.)
7. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

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

8. Respondent is an individual who sought to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 10.)
9. 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).
10. The Division received Respondent's Loan Officer Application ("Application") on May 3, 2002. (State's Exhibit 1.)
11. Respondent answered "No" to Question 5 on the Application which 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 15.)

12. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
13. Respondent's background check revealed criminal charges from an arrest in March of 2002. In response to the Division's inquiry, the Respondent submitted a certified copy of a Butler County Common Pleas Court entry confirming his convictions in October of 2002 for attempted assault on a police officer and resisting arrest. (State's Exhibits 2, 3, 4, 7 and 7.5.)
14. Respondent explained the convictions in a letter he sent to the Division as follows:

On March 12, 2002 I was visiting my brother at his house. My brother and his wife got in a argument and I tried to keep it from getting out of control. The argument stopped but the police were called. When the police came my brother got in an argument with the police and was being handcuffed(sic), I had been setting down this entire time. I stood up for some reason, I don't know why, but when I stood up the officer came at me and was hit. It happened so fast I'm not sure what happened. I think I was in the wrong place at the wrong time. When arrested I didn't resist at all, in fact some of the officer's commented on the fact that I was nothing like they were expecting when we got to the police station.

(State's Exhibit 5; TR at 12.)

## II. CONCLUSIONS OF LAW

### A. Jurisdiction and Procedural Matters.

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's NOH properly notified the Respondent that he was entitled to request a hearing and was served upon him by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of his right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once a date is set. The Division's February 24, 2004 letter including this information was sent to the Respondent by regular mail at the most recent address he had provided to the Division. The letter was not returned to the Division as undeliverable.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the hearing in this matter.
5. The Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124, 125-26, 532 N.E.2d 189, 191.
6. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### B. Loan Officer License Application.

7. 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.
8. 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).

9. Respondent was convicted of attempted assault on a police officer and resisting arrest in late 2002. These very recent convictions raise concerns about Respondent's ability to command the confidence of the public and comply with the law.
10. Respondent has merely provided a brief description of the events underlying the convictions. The record contains no evidence of general fitness to be a mortgage loan officer.
11. The "business of a loan officer shall be principally transacted at an office of an employing mortgage broker" registered with the Division pursuant to R.C. 1322.02(A). R.C. 1322.031(E)(1). After filing his Application, Respondent informed the Division that he does not want to pursue obtaining a license. Thus, the record does not establish that a license issued to him would be used in compliance with R.C. 1322.031(E)(1).
12. For the above reasons, and due to the nature of the criminal offense involved, Respondent has not established that his 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

### **III. RECOMMENDATION**

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions not issue a loan officer license to Respondent.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
May 21, 2004