

DIVISION OF FINANCIAL INSTITUTIONS
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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. 04-0384-LOD
:
:
:
Gilbert I. Graham : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
September 21, 2004

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 August 6, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Gilbert I. Graham (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 was convicted of carrying a concealed weapon in 1997 and falsification in 1998 and that he failed to disclose these convictions on loan officer applications filed on April 26, 2002 and October 21, 2003. 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 violated R.C. 1322.07 (A), (B) and (C) by failing to disclose criminal convictions on his loan officer applications filed in April of 2002 and October of 2003;
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. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 16 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on May 14, 2004 by certified mail return receipt requested. (Exhibit 13.) The Division received the Respondent's hearing request on June 11, 2004. (Exhibit 14.) The Division scheduled the hearing for June 25, 2004 and, on its own motion, continued it to July 23, 2004. That hearing was continued at the request of the Attorney General to August 6, 2004. The Division sent notices of the hearings by ordinary mail to the same address to which it mailed the NOH. (Exhibits 15 & 16.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on April 26, 2002. (Exhibit 1.)
2. Question 5 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.)
4. Respondent signed the application on April 22, 2002 before a notary public. Directly above the applicant signature line, the application states:

"Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 1.)

5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check said that the Respondent had been charged with several offenses by the Columbus and

Lancaster Ohio Police Departments. (Exhibit 2.) By letter dated May 31, 2002, the Division requested the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the judgment entry evidencing the disposition and sentence for each charge. (Exhibit 3.)

6. When it did not receive a response to its May 31, 2002 letter, the Division withdrew the Respondent's loan officer application and advised the Respondent that he was no longer authorized to originate mortgage loans governed by the Ohio Mortgage Broker Act. (Exhibit 4.)
7. The Respondent filed a second loan officer application on October 21, 2003. (Exhibit 5.)
8. Question 5 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 any criminal offense? Exclude minor misdemeanor traffic and parking offenses.

9. In response to Question 5, the Respondent answered, "No."
10. Respondent signed the application on September 8, 2003 before a notary public. Directly above the applicant signature line, the application states:

"Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 5.)

11. Again, as part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check said that the Respondent had been charged with several offenses by the Columbus and Lancaster Ohio Police Departments. (Exhibit 8.) By letter dated November 20, 2003, the Division requested the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the judgment entry evidencing the disposition and sentence for each charge. (Exhibit 9.)
12. The Respondent submitted a Judgment Entry from the Franklin County Court of Common Pleas in Case No. 96CR-08-4848 that shows that on February 3, 1997 the Court convicted the Respondent of the offense of carrying a concealed weapon in violation of R.C. 2923.12, a first degree misdemeanor,

and a conviction record from the Fairfield County Municipal Court in Case No. 98CRB01554 that shows that on August 31, 1998 the Court convicted the Respondent of the offense of falsification in violation of R.C. 2921.13, a first degree misdemeanor. (Exhibit 12.)

8. The Respondent explained that in 1996 he possessed a firearm because of threats made to his family. Unfortunately, he had the firearm in a "fanny pack" on his person when police were called because of his involvement in a domestic disturbance. (Exhibit 10; TR at 45 - 46.) With respect the conviction for falsification, the Respondent explained that when stopped for speeding in a borrowed vehicle, he presented the vehicle owner's proof of insurance card that was in the vehicle. Unfortunately, unknown to him the date or dates on the card had been altered. (TR at 30, 49 - 50.)

D. Respondent's Failure to Disclose Convictions

1. The Respondent did not disclose either conviction on his loan officer applications. (Exhibits 1 & 5.)
2. The Respondent stated that he did not intentionally withhold information when he filed his applications. He failed to disclose the convictions because his memory of those events was hazy and the details had been handled by attorneys. (Exhibit 14.) With respect to the carrying a concealed weapon conviction, he had believed that the case had been disposed of through a diversion plan and that the conviction had been expunged. (TR at 26 - 28.) This belief had been confirmed when the Municipal Court records showed that the case had been dismissed. With respect to the falsification conviction, he believed that it was a traffic offense that did not need to be disclosed on the loan officer license application. (TR at 32.)

E. Respondent's Reputation and Character.

1. The Respondent has worked in the mortgage industry since 1998, first as a loan officer and then after 2002 as a loan processor. He asserts that his high standard of integrity has allowed him to be a successful and productive member of the mortgage industry and that he has established an impeccable record of good business practice and satisfied customers without one complaint.
2. Larry Druggan, who is the branch manager for the Challenge Financial Investors Corp. office where the Respondent currently works, also worked with the Respondent for Allied Mortgage Capital Corp. He observed that the Respondent was extremely careful about his work, both completing the applications and the follow up. When he started a branch office for

Challenge Financial Investors Corp., he hired the Respondent because he was looking for people that he could trust. (TR at 53 – 56.)

3. Carlan Keith Graham, who is a loan officer for Challenge Financial Investors Corp. and is also the Respondent's father, testified that the Respondent's character is above reproach and that he has never heard a complaint about the Respondent's work. (TR at 59 -60.)

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 License 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. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent of the Division of Financial Institutions requires. Pursuant to this provision, in question 5 of the application the Superintendent asks for information about convictions for any criminal offense. In the application form in use after August 1, 2002, the Superintendent allows the applicant to exclude information about minor misdemeanor traffic offenses.
3. R.C. 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:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 or 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.

4. 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.

* * *

5. R.C. 1322.10 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 a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the Franklin County Court of Common Pleas of the offense of carrying a concealed weapon and in the Fairfield County Municipal Court of the offense of falsification.
2. The Division alleges that these convictions show 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. However, the Respondent established that the convictions occurred due to circumstances in the Respondent's life which do not exist today. As such, the convictions are not particularly strong evidence regarding the

Respondent's character and fitness today. In the absence of any other evidence to that reflects adversely on the Respondent's general fitness and character, the Division has not established 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.

3. The Division alleges that the Respondent's failure to disclose the convictions on his loan officer license applications 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. However, the Respondent explained that these omissions occurred because he misread questions 5 of the applications and misunderstood their meaning. His failure to disclose the convictions shows that he did not put enough thought and effort into completing the application. However, it is doubtful that at the time that he completed the applications, the Respondent believed that the convictions would cause the Division to not give him a loan officer license. Moreover, the Respondent signed the National Background Check, Inc. Registration Form that authorized the release of his criminal history information in the files of the Ohio Bureau of Criminal Identification and Investigation to the Division. He had to know that simply answering "No" to question 5 would not prevent the Division from discovering his criminal history. The facts in this record show that the Respondent's failure to correctly answer question 5 on the application was not done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
4. When Respondent failed to disclose his convictions on his loan officer application, he did violate R. C. 1322.07(A), in that she omitted a material fact required by state law from a license application.
5. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of

R.C. 1322.07 was an unintentional omission caused by a misreading of the question and was not done with any attempt to deceive or mislead the Division. The purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,

James J. Lawrence
Hearing Officer
September 21, 2004