

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

DIVISION OF FINANCIAL INSTITUTIONS
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In re: Carolyn D. Myricks

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Case No. 04-0214-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Carolyn D. Myricks not be granted. The Division conducted an investigation and found:

- a. In or around 1997, in the Court of Common Pleas of Summit County, Ohio, Ms. Myricks pleaded guilty to and was convicted of the offense of deception to obtain dangerous drug, a felony of the fifth degree;;
- b. On or around July 15, 200w, Ms. Myricks attested in a sworn statement that information she provided on a licensing application was truthful, knowing that the information she provided was false; and
- c. On or around July 17, 2003, Ms. Myricks provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Ms. Myricks' 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 set forth in Revised Code Section 1322.041(A)(5);
- b. Ms. Myricks violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- c. Ms. Myricks violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and
- d. Ms. Myricks violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Ms. Myricks' address for service is 1176 Huntclub Drive #B, Copley, Ohio 44321. She is hereinafter referred to as the "Respondent." The Respondent is employed by Western Reserve Financial Services, Ltd., 1692 Merriman Road, Akron, Ohio 44313.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 7).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 7).

6. Thereafter, the Division received a Hearing Request Form from the Respondent (Exhibit 8).

7. On February 6, 2004, the Division wrote to the Respondent scheduling the hearing for 9:00 a.m. on February 12, 2004 and simultaneously, on the Division's own motion, continued the hearing until March 8, 2004 at 3:00 p.m. in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 9). The hearing was held beginning at 3:30 p.m. on Monday, March 8, 2004 in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. Attending were Daniel P. Jones, Assistant Attorney General of Ohio in the Executive Agencies Section, and Carolyn D. Myricks-Christian, *pro se*.

8. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On July 15, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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 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?

Yes ☐ No ☐

If the answer is yes, furnish details.

3. In response to Question 5, the Respondent answered "No".

4. Following the submission of the Application, the Division received the report of the National Background Check which disclosed a 1997 arrest in Akron, Ohio for deception to obtain drugs. (Exhibit 2).

5. On September 2, 2003, the Division wrote to the Respondent indicating that it was unable to make a decision whether to issue a license because of the 1997 arrest. (Exhibit 3). The Division asked for a detailed explanation of the facts and circumstances that gave rise to the charge as well as the applicable court's journal entry evidencing disposition of that matter. (*Id.*).

6. On October 8, 2003, the Division received a letter from the Respondent as follows:

The information that you requested has been very difficult to obtain, and I do not know what else I can do. I even contact the attorney that handled my case and he informed me that even though some information shows up in a background check it does not necessarily mean I can get documents proving it. (?) I have gone to Cleveland and Summit county clerk of courts and it's like I have no record, and no one can find anything. So what am I supposed to do at this point.

In 1997 I was prescribed an anti-anxiety medication **KLONOPIN**. At the time I was unemployed and had to go to the county mental health clinic for prescriptions. I had ran out of the medication and called the pharmacy to see if I could get it refilled. They in turn called the DEA, apparently Klonopin is a controlled substance. A representative came to my house and asked for details, and since they were called they had to follow through even though my explanation was confirmed as true. I did not get handcuffed and hauled to jail in fact they let me decide when I would come down and see the judge. I also found out that the doctor that prescribed me the Klonopin was under investigation (Dr. Queen Williams) for abruptly discontinuing my meds, because you have to be tapered off. It was my understanding that this would not show up on my record because it was a suspended sentence, I served no time and I had to do 20 hours of community service. I was assigned a probation officer who is no longer working with Summit County.

I have worked for 2 financial institutions since this time, and worked for a bank and was BONEDED[sic]. The last company I worked for was in Cleveland, where I was a commercial lender until they laid me off 1 year ago and this never even came up as an issue. Do[sic] my question is, how am I suppose to get documents, that no one seems able to have?

(Exhibit 5).

8. The Respondent also attached a copy of the Journal Entry of the Common Pleas Court of Summit County, Ohio, indicating that the Respondent pled guilty to deception to obtain a dangerous drug, a felony of the fifth degree. (Exhibit 6).

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 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 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. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 of the Revised Code 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 misrepresentations in any registration or license application;
- (B) Make 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[.]

....

4. The Division has the burden to show that the Respondent's character and 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 well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent suffers from panic and anxiety disorder. (Tr. 26). In 1994, while working for Bank One, she had an episode while driving home. (Id.). She began seeing a psychiatrist in June, 1994. (Id.). She was prescribed Klonopin, which she should take three times a day. (Id.). She continued taking Klonopin until 1997, which she found out later was a very long time to have been on that medication. (Tr. 27).

2. At some point, the Respondent took another position and ultimately lost there ob due to a company downsizing. (Tr. 27). She found herself running out of Klonopin and contacted her physician to get the prescription renewed. (Id.). She began seeing Dr. Queen Robinson who indicated that the Respondent would not be left on Klonopin. (Tr. 27). Dr.

Robinson prescribed Zoloft but the Respondent did not have success with that medication. (Tr. 27-28). Dr. Robinson re-prescribed a limited dose of seven Klonopin pills. (Tr. 28). Later, after the Respondent had taken the sixth pill, she contacted Dr. Robinson's office for a prescription renewal. (Id.). Dr. Robinson's office required the Respondent to come down to the doctor's office. (Id.). The Respondent was not able to even leave her house at that time because of her anxiety problems. (Id.).

3. The Respondent herself telephoned her pharmacist where she was well known. (Tr. 28). She asked if she could get some Klonopin and the pharmacist said no. (Id.). The pharmacist apparently reported that incident to the drug enforcement authorities. (Id.). Ultimately, a law enforcement officer appeared at the Respondent's home and questioned her. (Tr. 28-29). Because of the Respondent's anxiety issues, she was allowed to report to the authorities at a later date. (Tr. 29). Ultimately, the Respondent was arrested and charged. (Id.).

4. The Respondent has, in her own words, come a long way in the last four years. (Tr. 30). She is very proud of herself. (Tr. 30). According to the Respondent, she checked no in response to Question 5 because her attorney had reportedly told her that it would be expunged. (Tr. 30). Between the time of the conviction and the time of the hearing in this matter, the Respondent reported that she had two other jobs with financial institutions and that her criminal record did not prevent her from that employment. (Tr. 30-31).

5. At the time of completing the Application, the Respondent was aware that she had been convicted of a crime relating to the prescription medication. (Tr. 39). Even being aware of it, she checked no the Application, anyway. (Id.). She mistakenly believed that the conviction had been expunged. (Id.). However, she did nothing to inquire of her attorney to see whether the conviction had been expunged. (Tr. 40).

6. The Respondent believes that her reputation in the community is as a trustworthy person and a good friend. (Tr. 41). At the time of the conviction, the Respondent was twenty-seven years of age. At the time of the hearing in the matter, she was thirty-three. (Tr. 42).

7. Testifying in support of the Respondent was Greg Christian, her husband. (Tr. 43, *et seq.*). He has known her for over three years and has seen her work in the community. (Tr. 43). The Respondent is a member of the House of the Lord Church, one of the biggest churches in Akron and she has participated in several community events and organizations. (Tr. 43).

8. Initially, Mr. Christian and the Respondent worked at the same mortgage company. (Tr. 43). She worked on loan closings there. (Tr. 44). She began that position as a telemarketer. (Tr. 44). Mr. Christian acknowledged that the Respondent was still on medication for her condition. (Tr. 46).

9. In this matter, the Respondent acknowledges that she failed to report her criminal conviction on the Application. She made that omission because she believed the conviction had been expunged. However, the record contains no evidence of an Expungement having been issued.

10. The conviction occurred in 1997, between six and seven years prior to the hearing in this matter. At the time of her involvement with the criminal justice system, and continuing through the present time, the Respondent suffers from a condition that is treated by prescription medication.

11. The evidence in the record supporting the Respondent comes from her own testimony as well as that of her husband. The record does not contain supportive materials from her place of employment, her social acquaintances, her work colleagues, her customers or any one else. On one hand, the record shows that the Respondent has a criminal conviction that was not disclosed. There is little evidence, other than the testimony of the Respondent and her husband, to counter that weight.

12. The Division has a legitimate expectation that its application questions will be answered truthfully and honestly. Like the mortgage services industry, full disclosure is appropriate.

13. The Hearing Officer believes that the Division has met its burden in this matter of establishing 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 provisions of the Ohio Mortgage Broker Act. Likewise, the Hearing Officer determines that the Division has established violations of Section 1322.07(A), (B) and (C).

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
June 9, 2004