

NOV 27 2006
05 NOV 27 PM 3:45

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF: **Rodney L. Eveland** : **DIVISION OF FINANCIAL**
CASE NUMBER: **M2006-999755** : **INSTITUTIONS**
: **CONSUMER FINANCE SECTION**
:
:
: **William E. Leber, Esq.**
: **Hearing Examiner**

REPORT AND RECOMMENDATION
Issued November 21, 2006

Findings of Fact.

This matter came before me, William E. Leber, an attorney licensed to practice law in Ohio, upon appointment by the Division of Financial Institutions, a Division of the Ohio Department of Commerce. Accordingly, a hearing was held on October 19, 2006, at the Vern Riffe Center for Government and the Arts in Columbus in accordance with the Ohio Administrative Procedure Act, Revised Code Chapter 119 and with the Ohio Mortgage Broker Act, Revised Code Chapter 1322.

At the hearing, a stenographic record of the hearing was made at the expense of the Ohio Department of Commerce. The respondent, Rodney L. Eveland, represented himself *pro se*, and the Department of Commerce, Division of Financial Institutions (also referred to herein as the "State") was represented by Assistant Attorney General Mindy A. Worley.

1. On or about May 24, 2006, the Division of Financial Institutions, Consumer Finance Section transmitted a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Rodney L. Eveland. That Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing was returned to the Division of Financial Institutions unclaimed (State's Exhibit 5). In the Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing transmitted on or about May 24, 2006 the Division of Financial Institutions informed the respondent that it intended to deny his Loan Officer License Application because it had determined that he had not complied with the provisions of Revised Code sections 1322.031(A)(2), 1322.041(A)(3), 1322.041(A)(5), 1322.07(A), 1322.07(B) and 1322.07(C).

2. On or about August 2, 2006, the Division of Financial Institutions, Consumer Finance Section commenced publication in the Lancaster Eagle-Gazette, a newspaper of general circulation in Fairfield County, Ohio, of public notice of the respondent's opportunity for a hearing in the matter described above. A notarized publisher's affidavit included in Exhibit 5 reported that the notice had been published one time for three consecutive weeks in the Eagle-Gazette. The respondent confirmed that he had seen the Notice of Opportunity for Hearing which had been published in the newspaper (State's Exhibit 5 and transcript p. 23).
3. On or about August 28, 2006, the Division of Financial Institutions, Consumer Finance Section received a hearing request from Rodney L. Eveland with reference to case number 2006 - 999755 (State's Exhibit 6).
4. On or about August 18, 2006 of the Division of Financial Institutions transmitted a letter to Rodney L. Eveland, scheduling a hearing in case number M2006 - 999755 for September 27, 2006 at 77 S. High St, Columbus (State's Exhibit 8).
5. On or about September 29, 2006 of the Division of Financial Institutions transmitted a letter to Rodney L. Eveland, rescheduling the hearing in case number M2006 - 9992745 initially set for September 27, 2006, for October 19, 2006, at 3:00 p.m. at 77 S. High St, Columbus (State's Exhibit 10).
6. On or about January 17, 2006, Rodney L. Eveland filed a Loan Officer Application form with the Ohio Division of Financial Institutions. In response to question number five on the application, "Have you or has any company for which you have been Officer, or more than 5% owner or director, ever been convicted of any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI as are criminal offenses.)" the respondent answered "No." (State's Exhibit 1).
7. On or about January 20, 2006, the Division of Financial Institutions, Consumer Finance Section mailed a letter to Rodney L. Eveland under the signature of Consumer Finance General Counsel Anthony Siciliano advising him that him application had been forwarded to the Consumer Finance Legal Section for investigation (State's Exhibit 2).
8. The public records of the Toledo, Ohio Municipal Court, as confirmed by the admission of the respondent, established that on or about January 14, 1976, the respondent pleaded guilty to a violation of Revised Code Section 2913.02, Petty Theft. The record confirmed that the respondent was sentenced to 10 days to be served in the Toledo House of Corrections, which sentence was suspended, on future good behavior (State's Exhibits 3 & 4).
9. The public records of the Fairfield County Municipal Court, Lancaster, Ohio, as confirmed by the admission of the respondent, established that on or about November 15, 1993, the respondent pleaded guilty to a violation of Revised Code Section 2917.11(A)(1), Disorderly Conduct. The record confirmed that the respondent had been fined and assessed costs totaling \$144.50. The record does not indicate that the respondent was sentenced to any jail time or placed on probation for the crime (State's Exhibit 3).

10. The respondent did not report the criminal violations described in paragraphs 8 and 9, above, on the Loan Officer Application Form he filed with the Division of Financial Institutions as described in paragraph 5, above.

Conclusions of Law

A. In accordance with the provisions of the Ohio Mortgage Broker Act, Chapter 1322. of the Revised Code, the Ohio Division of Financial Institutions is responsible for the administration of the act. Accordingly, the Division of Financial Institutions has the authority to accept or deny applications for licensing as a mortgage loan officer.

B. In the matter of Rodney L. Eveland, the Division of Financial Institutions provided sufficient and proper written notice to respondent Rodney L. Eveland of the denial of his application for a license as a loan officer, and provided him with an appropriate hearing in accordance with the provisions of the Ohio Administrative Procedure Act, Revised Code Chapter 119, and the Ohio Mortgage Broker Act, Revised Code Chapter 1322.

C. The Division of Financial Institutions failed to establish that the respondent had not complied with the provisions of Revised Code section 1322.031(A)(2). That paragraph requires that an applicant for licensing as a loan officer provide a statement as to whether or not the applicant has been convicted of or pleaded guilty to any of a series of enumerated criminal violations. The statement provided to the Division of Financial Institutions was inaccurate, but the respondent did provide a statement as required by 1322.031(A)(2).

D. The Division of Financial Institutions failed to establish that the respondent had not complied with the provisions of Revised Code section 1322.07(C). That paragraph requires that no applicant for licensing as a loan officer shall "Engage in conduct that constitutes improper, fraudulent, or dishonest dealings." That provision does not appear to refer to prior conduct: It appears to provide the Division of Financial Institutions with a basis for taking action in response to conduct that occurs after an applicant has filed an application with the Division. Here, the Division of Financial Institutions did not establish that the respondent had engaged in improper, fraudulent, or dishonest conduct in his actions as an applicant for licensing. The State established that the respondent had been convicted of the criminal offenses described in paragraphs 8 & 9, above, but the State did not establish that the respondent's inaccurate application constituted "improper, fraudulent, or dishonest dealings."

E. The Division of Financial Institutions did establish that the respondent did not comply with the provisions of Revised Code section 1322.041(A)(3). The State established in paragraph 8, above, that the respondent had been convicted of a criminal offense listed in Revised Code Section 1322.031(A)(2), referred to in Revised Code Section 1322.041(A)(3), which had not been reported in his application.

F. The Division of Financial Institutions did establish that the respondent did not comply with the provisions of Revised Code section 1322.041(A)(5). The State established that the respondent had been convicted of an enumerated criminal offense, which had not been reported in his application, and the respondent did not provide adequate support for a determination by the Superintendent of Financial Institutions that the applicant's character and general fitness command the confidence of the public and warrant a belief that the business will be operated honestly and fairly. In response to the omission of a criminal offenses

in the application, the respondent provided only his own testimony in support of his business reputation and fitness to serve as a loan officer.

G. The Division of Financial Institutions did establish that the respondent did not comply with the provisions of Revised Code Section 1322 .07(A). The State established that the respondent had made a "substantial misrepresentation" in his application for licensing as a loan officer. That is, by not reporting the convictions, the respondent made untrue statements of fact regarding his 1976 conviction in Toledo Municipal Court of petty theft and his 1993 conviction in Fairfield County Municipal Court for disorderly conduct. It is noted that one conviction was approximately 30 years old, and the other conviction was approximately 13 years old, but the respondent nonetheless failed to report those convictions in his application.

H. The Division of Financial Institutions did establish that the respondent did not comply with the provisions of Revised Code section 1322 .07(B). The State established that the respondent made false statements regarding his prior conduct in his application for licensing as a loan officer.

Recommendation of Action.

Based on the foregoing, I recommend that the Division of Financial Institutions deny the Loan Officer License Application of Rodney L. Eveland.

Respectfully submitted,

William E. Leber, Esq.
Hearing Examiner
November 21, 2006