

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

2004 SEP -2 PM 3:51

IN RE: : CASE NO. 04-0053-LOD  
: :  
DENNIS DORKO : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued September 2, 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 June 23, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Dennis Dorko ("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 unauthorized use of property and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. 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, for the following reasons:

1. Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application;
2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
3. Respondent's 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).

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 10 were admitted into the record.

**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 6; Hearing Transcript at 13-15.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. Respondent's hearing request was received by the Division on March 5, 2004. (State's Exhibit 7; TR at 15-16.)
3. The Division scheduled the hearing for March 15, 2004, and continued it until May 12, 2004. On March 9, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location of the hearing. (State's Exhibit 8.) Respondent moved to continue the May 12, 2004 hearing and it was continued until June 23, 2004. (State's Exhibit 9.) On May 14, 2004, the Division sent a letter to Respondent, with the Order granting the continuance enclosed, notifying him of the date, time, and location of the hearing. (State's Exhibits 9 and 10.) That letter was sent by regular mail to the Respondent at the most recent address he had provided to the Division and where he received the March 9, 2004 letter. The May 14, 2004 letter was not returned to the Division as undeliverable. (State's Exhibits 4, 8, 9 and 10; TR at 9-10, 16-18.)
4. On June 23, 2004, Respondent telephoned Mark Rhea, an attorney with the Division, less than an hour before the hearing was scheduled to start. He told Mr. Rhea that he would not be attending the hearing and was out of the mortgage broker business. He indicated that he could not attend because he was going to the hospital to see a sick child but did not want to have the hearing continued. (TR at 6-7.)
5. The hearing was held on the date and at the location set forth in the Division's May 14, 2004 letter and the enclosed Order. The hearing started several minutes after the time set forth in that letter to make sure that the Respondent did not change his mind. (State's Exhibits 9 and 10; TR at 1, 4.)
6. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of the hearing.

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

7. Respondent is an individual who sought to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1.)
8. 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).
9. On April 4, 2002, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on April 4, 2002. (State's Exhibit 1.)
10. 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.)
11. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
12. Respondent's background check revealed a possible criminal conviction during or after 1991. In response to the Division's inquiry, the Respondent submitted a certified journal entry from the Kettering Municipal Court confirming his 1992 conviction for unauthorized use of property. (State's Exhibits 2, 3, and 5; TR at 10-12.)
13. Respondent did not disclose his unauthorized use of property conviction on his Application. (State's Exhibit 1.) The record contains no evidence indicating why Respondent failed to disclose the unauthorized use of property conviction on his Application.

14. Respondent sent a letter to the Division explaining the charge of petit theft that led to the unauthorized use of property conviction as follows:

In December of 1991 I was dining with a couple of friends at Denny's Restaurant. We waited for over an hour to get [our} meal. That night Denny's was horribly understaffed. I asked to speak with a manager but one never showed. 45 minutes later we left. The next day I received a call from the Centerville Police Department. I fully cooperated with them.

(State's Exhibit 5.)

## 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 May 14, 2004 letter and the continuance Order, notifying him of the date, time, and location of the hearing were sent to him by regular mail at the most recent address he had provided to the Division and where he received the March 9, 2004 letter. It is clear that the Respondent received notice of the June 23, 2004 hearing because he contacted the Division to indicate that he would not be attending.
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 for 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 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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.
9. A conviction for the unauthorized use of property is a "theft offense" and therefore constitutes a "criminal offense involving theft" for the purposes of R. C. 1322.031(A)(2).
10. 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:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

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(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)(2), (3), and (5).

21. 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 was out of the mortgage broker business and did not want to pursue obtaining a license. This statement establishes that Respondent is not currently employed by or seeking employment with a registered mortgage broker. Therefore, he cannot establish that a license issued to him would be used in compliance with R.C. 1322.031(E)(1).
22. Respondent's unexplained failure to disclose his criminal conviction on his Application establishes 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 Ohio's Mortgage Broker Act. Respondent has not established that a license issued to him would be used in compliance with R.C. 1322.031(E)(1). Therefore, Respondent has not established the licensing prerequisites set forth in 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)(2), (3) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions refuse to issue a loan officer license to Respondent pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

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Jane Stempel Arata  
Administrative Hearing Officer  
September 2, 2004