

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

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Van W. Easterday**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0002-LOD**

**FINDINGS OF FACT**

1. On or about June 24, 2003, Van W. Easterday ("Respondent" herein) submitted an application and related materials (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on March 24, 2004. At the Hearing, Respondent was represented by Erica A. Probst, Esq., and the Division was represented by Assistant Attorney General James M. Evans, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice. (Tr. Page 15)
5. As of the date of the Application, Respondent was employed as a loan officer by American Mortgage Express.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

## **DISCUSSION**

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 15)

Insofar as one of Respondent's convictions include a conviction specifically included in Ohio Revised Code section 1322.041(A)(3), the burden shifts to the Respondent to prove, by a preponderance of the evidence, that Respondent's activities and employment record since the conviction meets the criteria set forth in that section.

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Respondent presented his own testimony, testimony from two customers and business associates, and certain unsubstantiated written testimonials in support of the statutory factors considered under Ohio Revised Code sections 1322.041(A)(3) and (A)(5). Respondent testified with respect to the circumstances surrounding the referenced criminal convictions, his employment history, his personal life experience, and his professional relationships. The two witnesses testified with respect to their respective positive personal and business experiences with Respondent, however

at least one of the witnesses was not fully aware of Respondent's criminal history, incarceration, or current probationary status. (Tr. Pages 78, 79, 80, 81, 82)

Given the limited number of witnesses, their limited knowledge of the Respondent, the relatively recent occurrence of the criminal convictions, as well as the serious nature of the convictions, and combined with the failure to disclose the convictions in the Application, it is difficult to conclude by a preponderance of the evidence that Respondent has met his burden under Ohio Revised Code section 1322.041(A)(3).

Respondent admitted that he failed to disclose the criminal convictions cited in the Notice in response to question 5 of the Application, testifying that he misunderstood the question and thought the question meant "...you had to be a part owner of a company or at least five percent owner of a company". (Tr. Page 34)

Respondent also referred to a previous loan officer application, which was not submitted as evidence in the Hearing. Respondent was unable to recall how he had responded to question 5 in the previous application. (Tr. Pages 23, 32, 33)

Other than his own testimony, Respondent did not present any other evidence or testimony to explain why he failed to disclose the convictions in response to the referenced question in the Application.

Respondent's failure to disclose the conviction in the Application calls into question Respondent's character and fitness, and whether Respondent meets the criteria contained in Ohio Revised Code section 1322.041(A)(5). While the limited testimony of Respondent's witnesses on his behalf appears to provide some support for Respondent's character and fitness under Ohio Revised Code section 1322.041(A)(5), the testimony was limited to two witnesses with admittedly limited knowledge of the Respondent, and purported testimonials from individuals not present for cross-examination by the Division.

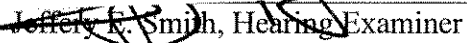
While Respondent's criminal convictions do not appear to evidence a pattern of ongoing criminal behavior, Respondent unfortunately failed to disclose the convictions as required by question 5 of the Application. The relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue, or require any evidence with respect to intent or knowledge. Therefore, there is support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations.

In light of the limited evidence provided by Respondent, the serious nature and relatively recent timing of the underlying convictions, and the failure to disclose the conviction as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent's findings under Ohio Revised Code sections 1322.041 and 1322.07.

**RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

  
Jeffery E. Smith, Hearing Examiner

  
Date