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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0254-LOD
: :
GUY A. OLIVER : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued January 6, 2005

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 October 5, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Guy A. Oliver ("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 passing bad checks in 1974 and "using someone else's credit card without their permission" in 1990. The Division further alleged that Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose those convictions 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 convictions 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).

Monica Rausch, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared pro se and testified at the hearing. At the hearing, State's Exhibits A through G and Respondent's Exhibits 1 and 2 were admitted into the record. The Division chose to submit its case in writing through State's Exhibits A through G and did not have any witness testify about those exhibits. Counsel representing the Division identified the Division's exhibits at the hearing and Respondent agreed that they could be admitted into the record. Therefore, those documents were admitted into the record and speak for themselves.

B. Respondent's Loan Officer Application and Background.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A; Hearing Transcript at 42-43.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. 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).
3. On June 27, 2002, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on July 25, 2002. (State's Exhibit A.)
4. 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.

(State's Exhibit A; TR at 40.)

5. Respondent's signature on the Application is notarized. 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." (State's Exhibit A.)
6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
7. Respondent's background check revealed possible Ohio charges for passing bad checks and indicated that he might have some out of state criminal history. (State's Exhibit A.)
8. Respondent has two 1974 passing bad check charges. The bad check charges were for checks he wrote without sufficient funds to cover them in his account. He was in his mid-twenties then and struggling to make ends meet. He testified that he made restitution on all of the checks involved. (State's Exhibits A and D; Respondent's Exhibits 1 and 2; TR at 18-20, 27-28.)
9. Respondent also has a 1990 California conviction for "using someone else's credit card without their permission" or "theft by forgery, credit card, non valid, invalid credit card." (This conviction will also be referred to as the "credit card conviction.") The 1990 incident occurred after a woman he knew convinced him to sign a credit card slip on behalf of a third person and pick up some phones for her. He did not have the credit card owner's permission to do this. Unbeknownst to him, the woman was involved in a credit card theft ring. After that incident, she disappeared and he never saw her again. (State's Exhibit D; Respondent's Exhibits 1 and 2; TR at 20-25.)
10. The Respondent indicated that he did not have any criminal convictions on his Application. (State's Exhibit A.)
11. Respondent explained that he did not disclose the bad check charges because he did not know they resulted in criminal convictions and could not recall what happened thirty years ago. He did recall that he went to court, made restitution, and picked up the checks involved. Respondent knew he had the 1990 credit card conviction but did not disclose that conviction on his Application because he thought it was too old. He testified that his mortgage broker's operations manager told him that he only needed to disclose convictions from the past seven or eight years or so. (TR at 18-28, 40-44.)

12. Regardless of Respondent's belief about the bad check charges, it is clear that he understood that he had a criminal conviction for "using someone else's credit card without their permission" or "theft by forgery, credit card, non valid, invalid credit card."
13. Respondent's response to Question 5 indicating that he did not have any criminal convictions was false and misleading. He knew he had the credit card conviction and failed to disclose it.

C. Respondent's Reputation and Character.

14. Respondent has been a loan officer since 2001 and has closed over 15 loans. There have been no concerns raised about his work and his loan files. Prior to 2001 he worked in the telecom and computer industries and as a project manager. He has been gainfully employed since 1990 and has had no criminal convictions since then. (TR at 28-40.)

II. CONCLUSIONS OF LAW

1. 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.
2. 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. That Section requires disclosure of a criminal conviction for "using someone else's credit card without their permission" or "theft by forgery, credit card, non valid, invalid credit card" on an application for a loan officer license.
3. 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.

(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).

4. Respondent was convicted of "using someone else's credit card without their permission" or "theft by forgery, credit card, non valid, invalid credit card" in 1990. Unauthorized use of someone else's credit card and "theft by forgery, credit card, non valid, invalid credit card" are offenses included in the reference to "any offense involving theft" in R.C. 1322.031(A)(2).
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
7. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions was a substantial misrepresentation of his criminal record on his Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his credit card conviction required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
10. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by inaccurately stating that that he did not have any criminal convictions on his loan officer license application.

11. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
12. Once the credit card conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the convictions show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
13. Instead, the evidence established that he failed to disclose the credit card conviction on his Application. Respondent's failure to disclose the conviction precludes him from establishing that he is honest, truthful, and of good reputation.
14. Respondent did establish that it is unlikely that he will commit any criminal offense in the future.
15. Respondent did not prove by the preponderance of the evidence that he is honest, truthful and of good reputation. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
16. Respondent's failure to disclose his credit card conviction on his Application casts doubt as to whether his 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).
17. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals that do not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

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 Respondent's loan officer's license application be denied pursuant to R.C. 1322.041 and R.C. 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
January 6, 2005