

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

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DIVISION OF FINANCIAL
INSTITUTIONS

In re: Douglas M. Kanag

: Case No. 03-LO-D-102-103

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 Douglas M. Kanag not be granted. The Division conducted an investigation and found:

- a. In or around 2000, Mr. Kanag pleaded guilty to possession of marijuana, a felony of the fifth degree in the Lucas County Court of Common Pleas.
- b. In or around 1999 in the Perrysburg Municipal Court, Wood County, Mr. Kanag was convicted of disorderly conduct with persistence, a misdemeanor of the fourth degree.
- c. In or around 1996, the Respondent pleaded guilty to attempted trafficking in marijuana, a misdemeanor of the first degree in the Court of Common Pleas of Lucas County.
- d. Mr. Kanag failed to disclose his criminal convictions on his license application. (Exhibit 8).

2. As a result, the Division determined:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and,
- ii. that Mr. Kanag's character and general fitness do not command the confidence of the public to 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 Section 1322.041(A)(5).

3. Mr. Kanag's address for service is 2052 Barrows, Toledo, Ohio 43613. He is hereinafter referred to as the "Respondent". The Respondent is employed by Marketplace Mortgage (Exhibit 8).

4. This matter was initiated by the Superintendent of the Division by the issuance on November 13, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 8).

5. On November 21, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 9).

6. On November 24, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for December 4, 2003 at 10:00 a.m. (Exhibit 10). The hearing was simultaneously continued until a date to be determined. (Id).

7. On December 3, 2003, the Division wrote to the Respondent to schedule the hearing for December 30, 2003 at 9:00 a.m. in Room 1914 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio 43215. (Exhibit 11).

8. On December 19, 2003, the Division wrote to the Respondent to reschedule the hearing at the request of the Respondent to January 22, 2004 at 2:00 p.m. in Room 1936 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio 43215. (Exhibit 12).

9. The hearing was held beginning at 1:55 p.m. on January 22, 2004 and was attended by: Paula Luna Paoletti, Deputy Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; and the Respondent. Also attending were Brian Tober, a witness for the Respondent, in addition to a member of the public and three high school students observers.

10. 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 January 29, 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). He was provided with the standard Explanation and Instructions. (Exhibit 2).

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? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.) Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances, which gave rise to each charge and a

certified copy of the journal entry evidencing the disposition of each charge.

3. In response to Question 5, the Respondent answered "No". (Id.).
4. Following submission of the Application, the Division contacted the Respondent by letter seeking an explanation about the discrepancy between the Respondent's answers to Question 5 and his background check. (Tr. 19).
5. In response to that letter, the Respondent submitted a written explanation as follows:

This letter is being written in explanation of a few issues with the loan officer application of Douglas Kanag Jr.

Concerning the matter of the March 1994 attempted trafficking charge: I was pulled over by a police officer for not having a front license plate. During the course of the traffic stop my car was searched and a small amount of marijuana and a postal scale were found inside the car. Consequently I was charged with drug trafficking, which was later reduced to attempted drug trafficking. I was given two years probation, during the probation period there was a single incident in which I had a positive drug screen. As a result I had to spend thirty days in a work release program. I then regained my composure and successfully completed the probation program.

Concerning the matter of the 1996 domestic violence charge:

I was involved with a young lady whose family did not agree with our relationship. One day the young lady and I were involved in a heated argument and her parents called the police saying that I hit the young lady. As you can see from the documents I have sent along with this statement the charges were ruled false especially in light of the supposed victim's testimony that I never touched her. In conclusion this domestic violence charge was dismissed with court cost.

Concerning the matter of the 1999 Aggravating Menacing:

I Doug Kanag Jr. was at home at that time when some friends of mine came to the door acting frantic. The informed me that a friend was being assaulted. I went to the place where the altercation was occurring in order to try and defuse the situation. When I arrived my friend was being choked by another person, I told him to let the man

go. The man would not let him go and a couple of the men that I was with began attacking the guy. I never did a thing except try and break up the fight. Yet later that night the police came and arrested all of us. Because there were 3 to 4 written statements saying I was only trying to break it up, I desired to take the whole thing to trial for contesting, but I was advised by my attorney not to. Instead I was advised to plead to a lesser charge of disorderly conduct with no time served.

Concerning the matter of the 2000 charge of possession of marijuana and weapon disability: At the time of the incident there was a collection of guns that I had amassed as well as just a bit of marijuana where both were on the premises. The police came to my home and upon being searched, found both the firearms and the marijuana. The weapons disability charge was dropped and there was a plea of guilty entered for the possession of marijuana. I was sentenced to sixty days of work release and four years community control. I was released 2 years early from community control for being a model participant in the program.

In closing I would like to say that I haven't been involved in any criminal activity since the last incident.

The opportunity to become a loan officer will indeed have a positive impact in helping me in reforming my life and becoming a productive member of society.

Thank You for taking the time to read this and try to explain myself.

(Exhibit 2).

6. The Respondent also submitted appropriate journal entries for each of the criminal convictions and they were received into the record as Exhibits 3, 4, 5, 6 and 7.

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 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.

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:

- (3) The applicant has not been convicted or plead 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 offense, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

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;

.....

4. Because the Respondent has been convicted of a misdemeanor offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that there is no basis in fact for believing that he will commit another 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. The failure to disclose the criminal convictions also caused the burden of proof to shift to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

DISCUSSION

1. The Hearing Officer notes that the Respondent has been involved in four distinct criminal matters, three of which are the basis for the Division's administrative action in this matter. In 2000, the Respondent was convicted of a drug offense, in 1999 he was convicted of disorderly conduct, and in 1996, he was convicted of another drug offense.

2. The Respondent submitted two letters in support of his Application. The first was from Pastor Doug Rumschlag of Grace Church in Toledo. (Respondent's Exhibit A). The second was from Norman Rapino of Stonefire Mortgage. (Respondent's Exhibit B). Both letters are supportive of the Respondent. In 1994, when the Respondent was convicted of his first drug offense, he was 19 years of age. (Tr. 31). At the time of his conviction for the disorderly conduct, he was 23 or 24 years of age. (Tr. 32).

3. The Respondent has a 3-year old son and the Respondent recently was awarded full custody of that child. (Tr. 33). The Respondent also has another child who lives with his mother. (Tr. 35). There is no doubt that the Respondent has had issues with drugs. (Tr. 37).

4. The Respondent presented the testimony of Brian Tober, a character witness in support of the Respondent. (Tr. 43, *et seq.*). Mr. Tober initially hired the Respondent when Mr. Tober was working in the Satellite Television business. (Tr. 43). When Mr. Tober left six months later to join Marketplace Mortgage, he recruited the Respondent. (*Id.*). There has never been a customer complaint received by Mr. Tober about the Respondent. (*Id.*).

5. In this matter, the Respondent must establish that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such an offense again. Likewise, the Respondent must establish that his character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In connection with the requirements of Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of a "disabling offense"; namely, two drug offenses. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again as set forth in the applicable statutes. In this case, the offenses committed

cannot be dismissed as youthful indiscretions. There are in fact multiple offenses. Each involves conduct on the part of the Respondent that is hard to justify in juxtaposition to the responsibilities he would bear as a mortgage loan officer. The offenses also occurred in the recent past and occurred with consistent regularity.


6. The Hearing Officer is also greatly troubled by the failure of the Respondent to answer Question 5 correctly. The failure to disclose a criminal offense on the Application is a false or fraudulent representation of a material fact. (See Ohio Revised Code Section 1322.07(A)). The failure to disclose also constitutes the making of a false or misleading statement required by Ohio Revised Code Section 1322.07(B). The Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to its Application questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market. Full, complete and truthful answers should be expected. Question 5 on the Application is unambiguous in its applicability to this Respondent. The failure to answer Question 5 fully and truthfully is unacceptable.

7. In this instance, the Hearing Officer cannot conclude that the Respondent has met his burden of proof in this matter. Respondent has not established to the satisfaction of the Hearing Officer that, by a preponderance of the evidence, the Applicant's activities and employment records since the convictions show that the Applicant is honest, truthful and of good reputation, that there is no basis in fact for believing that the Applicant will commit such an offense again. Further, the Hearing Officer cannot find 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 the purposes of Sections 1322.01 to 1322.12 of the Revised Code.

RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion 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
February 24, 2004

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