

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0019-LOD
: :
PAUL A. KNOPF, JR. : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued October 22, 2004

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 July 20, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Paul A. Knopf, Jr. ("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 disorderly conduct 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; and
2. Respondent's 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 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. Mark Rhea, an attorney with the Division, attended the hearing as the Division's representative and testified as a witness. Respondent did not appear at the hearing but submitted exhibits

for consideration prior to the hearing. State's Exhibits A through G and Respondent's Exhibits A through F were admitted into the record at the hearing.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. The Division served the NOH on Respondent by certified mail. Respondent's hearing request was received by the Division on February 23, 2004. The Division scheduled the hearing for March 8, 2004 and continued it indefinitely on its own motion. The hearing was then set for July 20, 2004. 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.

1. Respondent is an individual who sought to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A.)
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. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
4. Respondent signed his loan officer license application ("Application") on August 27, 2003. The Division received the Application on September 29, 2003. (Application State's Exhibit A.)
5. 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit A, emphasis and boldface type in original.)

6. Respondent provided documents establishing that he had a 2000 conviction for disorderly conduct. (State's Exhibit D and Respondent's Exhibits B and F.)

7. Respondent's November 19, 2003 letter explained the conviction as follows:

On the night of April 15th, 2000, I had been celebrating the acceptance into law school with several friends. Upon returning from the night out, I was dropped off at my girlfriend's house where my vehicle was parked. After failing to reach my girlfriend via cell phone to answer the door, I walked to my car to seek shelter from the weather. I attempted another few times to contact her by phone and fell asleep while awaiting a return call to be let inside. An officer driving by spotted me in my vehicle asleep and logically thought I had been drinking and driving. I was charged with driving under the influence. After providing documentation of my girlfriend's residence and copies of my cell phone bill, the charge was amended to disorderly conduct.

(State's Exhibit D; Hearing Transcript at 9.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)

8. The record does not contain any evidence indicating that Respondent has any other criminal convictions.

D. Respondent's Incorrect Response to Question Five and Character.

9. Respondent did not disclose the 2000 conviction for disorderly conduct on his Application.
10. The exhibits include correspondence from Respondent to the Division and his written statement submitted for the hearing. These documents indicate that Respondent tried to obtain a copy of his Application from his compliance officer and the Division so he could review the question at issue. He was not able to do this and therefore provided what explanation he could as to why this happened. (Respondent's Exhibits B and F.)
11. The Hearing Officer can conceive of no legitimate reason why the Division would not provide Respondent with a copy of the Application he submitted so he could adequately prepare his response to the allegations in the NOH. The Application was presented by the Division at the hearing as an exhibit. A copy of that exhibit, with the Respondent's Social Security Number redacted, is attached as an exhibit to this Report and Recommendation. Therefore, it will be served upon the Respondent with the Report and Recommendation. (State's Exhibit A, attached.)
12. Respondent gave three possible explanations of the alleged nondisclosure, without the benefit of seeing the question at issue, and stated, "I am fully aware of my disorderly conduct charge in March of 2000, and would never deny this charge." (Respondent's Exhibit F.) He also explained that he has "spent the last 7 years since graduating high school studying the criminal justice system,

working as a summer intern with the Louisville Police Department, and working as a graduate assistant with the University of Louisville's Masters Program." He reiterated that this was just an "honest mistake." (Respondent's Exhibit F.)

13. Given the nature of the offense and the difficulty that others have had understanding Question 5 on the Application, the evidence only supports a finding that the Respondent made a mistake on the Application. The Hearing Officer finds that Question 5 can be confusing and might well lead someone to think that minor misdemeanors such as the conviction involved do not need to be disclosed on the Application.
14. The Hearing Officer finds that Respondent made a mistake on the Application but there is no evidence in the record indicating that he tried to hide the conviction from the Division or made any statement that he thought or knew was false on the Application. There is also no evidence in the record indicating that Respondent omitted any information that he thought or knew he should disclose from his Application.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

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 1322.041(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.

(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) and (5).

3. Respondent was convicted of disorderly conduct in 2000.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He made a mistake. The representation that he did not have any criminal convictions when in fact he had a disorderly conduct conviction under the very limited circumstances in this case, is not a substantial misrepresentation.
5. 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. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. Respondent made a mistake on the Application but there is no evidence in the record indicating that he tried to hide the conviction from the Division or make any statement that he thought or knew was false on the Application. There is also no evidence in the record indicating that Respondent omitted any information that he thought or knew he should disclose from his Application. The fact he had a disorderly conduct conviction under the very limited circumstances in this case, is not a material fact.
6. 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 does not require a conviction for disorderly conduct to be disclosed on such an application. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his application.
7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent made an inadvertent mistake and a mistake of little consequence. There is no evidence in the record indicating that he tried to hide the conviction from the Division or make any statement that he thought or knew was false on the Application. There is also no evidence in the record indicating that Respondent omitted any information that he thought or knew he should disclose from his Application. An inadvertent mistake by itself does not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C.1322.07(C).
8. There is no basis for establishing any violations of R.C. 1322.07(A), (B) or (C) by the Respondent.

9. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by R.C. 1322.041(A)(2).
10. The Respondent made a mistake when answering Question 5 on the Application. The conviction relied upon by the Division and the fact that the Respondent made a mistake on his Application, do not prove that the Respondent is not fit to work as a loan officer. Therefore, the record only supports a conclusion that Respondent's character and general fitness 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5). It is the Division's burden to prove otherwise and it has not done so.

III. RECOMMENDATION

The record only supports a conclusion that Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Janě Stempel Arata
Administrative Hearing Officer
October 22, 2004