

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. 05-0065-LOD  
:  
:  
:  
Robert A. Forster : James J. Lawrence, Hearing Officer

---

---

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
June 14, 2005

---

---

**I. FINDINGS OF FACT**

**A. Background**

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on April 21, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Robert A. Forster (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of prohibition of illegal gambling business, interstate transportation in aid of racketeering and submission of a false federal income tax return in 1992. Therefore, the Division asserts 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. The 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 commit such an offense again as required by R.C. 1322.041 (A) (3);
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).

Martine Jean, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits 1 through 4 and Respondent's Exhibit A were admitted into the record.

## **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on February 24, 2005 by certified mail, return receipt requested. (Exhibits 1A & B.) Respondent's hearing request was received by the Division on March 23, 2005. (Exhibit 1D.) The Division scheduled the hearing for April 4, 2005 but, on its own motion, continued the hearing to April 21, 2005. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit 1E.)

## **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on October 1, 2004. (Exhibit 2.)
2. Question five of that application asked the following question:
  5. 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. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "Yes." He indicated that the offenses were "Gambling – IRS in March 1988." (Exhibit 1.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which apparently revealed that the Respondent had been charged in 1988 with gambling and possession of criminal tools. By letter dated October 27, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and a certified copy of the judgment entry evidencing his pleas and the court's findings. (Exhibit 3.)
5. The Respondent provided a certified Judgment Entry from the United States District Court for the Northern District of Ohio, Eastern Division. The Entry for Case No. 1:92CR0128-001 shows that on August 11, 1992 the Court found the Respondent guilty of Prohibition of Illegal Gambling Businesses in violation of 18 U.S.C. 1955, a Class D felony, Interstate Transportation in Aid of Racketeering in violation of 18 U.S.C. 1952, Class D felony and Submission of a False Federal Income Tax Return in violation of 26 U.S.C. 7206(1), a Class E felony. The Court sentenced the Respondent to twenty-one months in federal prison plus three years supervised release. (Exhibit 4B.)

6. The Respondent explained that the violations occurred when he got involved with gambling after he had sold his businesses and gone into semi retirement. (Exhibit 4A; TR at 16 - 17.)
7. The Respondent testified that since the convictions he worked at car lots owned by his wife and stepson. (TR at 12, 41, 47.) The Respondent also testified that he has not engaged in illegal gambling since the arrest in 1988. (TR at 47 - 48.)
8. One witness appeared on the Respondent's behalf. Allen J. Lini has worked with the Respondent at the car lot three to four days a week for two years. Their wives have been friends for years. Mr. Lini testified that the Respondent is honest with his customers. (TR at 60 - 64.)
9. The Respondent submitted a letter signed by Anthony S. Vacca, Sr. Mr. Vacca, a loan officer for Third Community Mortgage Corp., states that he has known the Respondent for fourteen years and believes that he is honest, trustworthy and reliable. (Exhibit A.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdictional and Procedural Matters.**

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Attorney General objected to the admission of the Respondent's Exhibit A because it is hearsay. The Hearing Officer admitted the letter into the record with the caveat that the weight given the letter would be determined after considering the lack of ability to observe the witness as he gave testimony, to judge the credibility of his testimony and to benefit from his responses to cross examination by the Attorney General.

### **B. Loan Officer Application.**

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

\* \* \*

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), 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.

The NOH states the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if the applicant has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Crimes involving money are one category of the offenses described in R.C. 1322.031(A)(2). Since the Respondent was convicted of crimes involving money in 1992, the burden is on the Respondent to prove by the preponderance of the evidence that his activities and employment record since the conviction 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.
4. The Respondent has not met this burden. The Respondent has provided little information about his activities and employment record since his convictions. He testified only that he had worked at car lots owned by his wife and stepson and that he has not engaged in illegal activity since his convictions. Unfortunately, this information is not sufficient to meet the Respondent's burden to prove by the preponderance of the evidence that activities and employment record since the conviction 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 as required by R.C. 1322.041(A)(3).
5. The NOH asserts that the Respondent's loan officer application should be denied because the 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). The Division bases this finding upon the Respondent's criminal convictions.

6. The Respondent's convictions are evidence that he does not possess the character and general fitness to be loan officer. The only evidence that the Respondent presented to support his character and general fitness were the testimony of Mr. Lini and the letter from Mr. Vacca. Mr. Lini's testimony was limited to his observations of the Respondent at the car lot where they worked. While Mr. Vacca's letter shows that he believes the Respondent to be an honest, trustworthy and reliable friend, he did not provide specific examples of the Respondent's behavior that support his opinion. The absence or existence of such examples might have been ascertained upon cross examination had Mr. Vacca testified at the hearing. Moreover, Mr. Vacca's absence from the hearing makes it difficult to ascertain the sincerity of the beliefs stated in his letter. Even taken together, the testimony of Mr. Lini and the letter from Mr. Vacca are not sufficient to outweigh the facts of the convictions. In the absence of any other information supporting the Respondent's character and general fitness, the convictions establish that the 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).
7. As a result of the Respondent's failure to meet the requirements of R.C. 1322.041 (A)(3) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license.

### **III. RECOMMENDATION**

The Respondent has not proven that his activities and employment record since the conviction 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. The record in this case establishes that the 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

James J. Lawrence  
Hearing Officer  
June 14, 2005