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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

OLD LIGHTHOUSE MORTGAGE  
COMPANY, INC.

:  
: Case No. 03-MB-D-09-03  
:  
: Jane S. Arata, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued August 19, 2004

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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 May 17, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Old Lighthouse Mortgage Company, Inc. ("Respondent" or "Old Lighthouse") to consider the allegations in the Division's Notice of Intent to Deny Renewal of Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent's Mortgage Broker Certificate of Registration should not be renewed for the following reasons:

1. Old Lighthouse is not qualified for renewal because Darrell Tate, the primary owner of Old Lighthouse, has two theft convictions and therefore it does not meet the requirements of R.C. 1322.04(A)(7) and R.C. 1322.04(B)(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. 1322.04(A)(10) and R.C. 1322.04(B)(3);
3. Respondent failed to disclose that Darrell Tate, the primary owner of Old Lighthouse, has two theft convictions on mortgage broker

certificate forms it filed with the Division in violation of R.C. 1322.07(A) and (C); and

4. Respondent conducted business without an operations manager in violation of R.C. 1322.03(A)(3) and R.C. 1322.04(D).

Daniel P. Jones, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Luther Mills represented the Respondent at the hearing. At the hearing, State's Exhibits 1, 1A, 1C, 1D, 1E, 1F, 2, 2A, 3, 3A, 4, and 5 were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on September 17, 2003. Respondent's hearing request was received by the Division on October 15, 2003. The Division's October 16, 2003 letter to Respondent set the hearing for October 23, 2003, and continued it indefinitely. Sometime thereafter, the Division notified Respondent that the hearing was set for April 12, 2004. Respondent requested a continuance and the parties agreed to continue the hearing to May 17, 2004. The Respondent received the NOH by certified mail and received notice of the date, time, and location of hearing.

**C. Respondent's Application To Renew Mortgage Broker Certificate Of Registration.**

1. Respondent is an Ohio company that sought to renew its Mortgage Broker Certificate of Registration in 2003.
2. The Division is the state agency responsible for the licensing and regulation of mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
3. As part of the mortgage broker certificate renewal process, the Division conducts an investigation of each applicant.

**D. Respondent's Change of Ownership, Management and Activities.**

4. Respondent is currently owned by Darrell Tate who is also the President of the company.
5. Mr. Tate purchased the company from Ja'ree Ward in 2001. He agreed to pay Ms. Ward for the company and to pay the company's past due bills in exchange for a 95% ownership interest in the company. Ms. Ward agreed to retain a 5% interest in the company and continue to work there as the qualifying agent since an operations manager was not yet required.

6. Mr. Tate became the primary owner of the business on November 28, 2001.
7. Ms. Ward notified the Division of the change in ownership on December 3, 2001. (State's Exhibit 1A.)
8. Ms. Ward has ten years of experience in the mortgage industry. When she agreed to sell the business and stay on as an employee, she understood that Mr. Tate also had some experience in the mortgage industry.
9. Mr. Tate relied on Ms. Ward to be the qualifying agent. He needed her to help him run the business. He had very little experience and counted on her to help keep the business out of trouble. He testified that he had many responsibilities; he just was not sure what they were. He relied on Ms. Ward to tell him what they were.
10. On January 2, 2002, Mr. Tate prepared and signed Schedule 18. That document contains information he is required to disclose as the President of Old Lighthouse. Mr. Tate's notarized signature appears after language stating that he, after "being duly sworn according to law, deposes and says the statements contained herein are true and correct." (State's Exhibit 1.)
11. Mr. Tate answered "No" to Question 10 of the Schedule 18, which asked:

Have you ever, or has any organization with which you were associated as an officer, director, partner, owner, employee or otherwise, ever pleaded guilty, nolo contendere or been found guilty by a judge or a jury for violation of any law {of} Ohio or elsewhere (excluding motor vehicle traffic laws)?

(State's Exhibit 1.)
12. Sometime after Mr. Tate signed Schedule 18, it was submitted to the Division. (State's Exhibit 1.)
13. Ms. Ward continued her employment with Old Lighthouse until February 21, 2002. From late 2001 through her resignation in February of 2002, she was absent from the business for several weeks to help care for an ill niece. She became aware of some situations that made her uncomfortable with Repondent's business practices and resigned on February 21, 2002. On February 20, 2002, she notified the Division of her planned resignation and her concerns about Mr. Tate's handling of a loan. (State's Exhibit 2.)

14. Mr. Tate claims that Ms. Ward did not leave the business until later in 2002. He thinks she was the operations manager until November or December of 2002. He claims he thought she was on leave but was still the qualifying agent and the operations manager. According to him, she was not in the office much before and after February 21, 2002. He did not present any evidence of her being in the office after February 21, 2002. Ms. Ward's testimony on this issue was more credible and her written notice to the Division verifies that February 21, 2002 was the last date she was employed by or associated with Respondent.
15. Ms. Ward became concerned when the first check she received as partial payment for the business bounced. Later, the bank that held the business account informed her that several checks bounced after Mr. Tate took over the business. Ms. Ward handed that account over to Mr. Tate with the business. At that time, she went through the account with him and explained it to him. After the sale, she was not a signatory on the account. At one point, Mr. Tate became frustrated when he was not able to figure out how to close a loan. She had to step in and show him how to do it.
16. Immediately prior to her resignation, Ms. Ward received a complaint from a customer about Mr. Tate's handling of checks totaling \$20,000 intended for the customer's credit card companies as part of a transaction involving debt reconciliation and refinancing. The title company issued checks made payable to the credit card companies involved but the checks were not sent to those companies. Mr. Tate later admitted to Ms. Ward that he had deposited the checks in an account. She informed Mr. Tate that the checks should have been forwarded to the credit card companies directly. She also asked him to correct the situation. Mr. Tate agreed that he did not handle this situation properly and stated that he would handle it differently today. He testified that he sent the money to the credit card companies approximately ten days later.
17. On April 3, 2002, Mr. Tate signed the 2002 Renewal Application for Respondent. Mr. Tate's notarized signature appears after an attestation stating that, "I swear or affirm that this Application was prepared or reviewed by me and constitutes a complete and accurate statement. I further realize that false responses are a crime and can result in denial of a license renewal or later revocation of the license/certificate." This document was also filed to notify the Division of the change of ownership. (State's Exhibit 3.)

18. Mr. Tate answered "No" to Question 2 of the 2002 Renewal Application, which asked:

Has any owner, partner, shareholder, LLC member, officer, director, been arrested, charged, or convicted of any violation of federal, state, city, civil or criminal statute(s) excluding traffic violations, within the past year?

(State's Exhibit 3.)

19. The Division received the 2002 Renewal Application on April 17, 2002. (State's Exhibit 3.)
20. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage brokers to have an operations manager. R.C. 1322.03(A)(3).
21. After Ms. Ward's departure, Respondent operated without an operations manager until Doug Pemberton took that position in March of 2003. (State's Exhibit 4.)

**E. Mr. Tate's Failure to Disclose Criminal Convictions.**

22. Mr. Tate was convicted of petit theft in 1981, unauthorized use of property in 2001, and theft in 2001. He was also charged with passing bad checks in 1990 and placed in a pretrial diversion program. (State's Exhibits 1C, 1D, 1E, and 1F.)
23. Mr. Tate did not disclose any of the convictions in response to Question 10 on Schedule 18 and Question 2 on the 2002 Renewal Application. Instead, his responses indicated that he did not have any criminal convictions. The questions required disclosure of any convictions and only excluded traffic violations from disclosure.
24. Respondent testified that he answered Question 10 on Schedule 18 and Question 2 of the 2002 Renewal Application truthfully. He gave several explanations such as not reading the details, thinking only felonies were involved, and confusion over the meaning of the pretrial diversion program. He claimed that two 2001 convictions involving different courts, judges and charges were from the same incident and only admitted otherwise after persistent cross-examination.
25. His testimony about why he did not disclose the convictions was not credible. The Hearing Officer finds that he knew he had criminal convictions that should have been disclosed in response to those questions. The two criminal convictions in 2001, for unauthorized use of property and theft, respectively, were clearly responsive to the questions which asked for disclosure of any violations of

law and excluded only traffic violations from disclosure. The same is true for the 1981 conviction. Mr. Tate knew he had convictions that should have been disclosed and failed to do so. His evasive testimony and his failure to admit convictions except under persistent cross-examination also make his claim of innocent nondisclosure unbelievable.

## **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. Mortgage Broker Certificate Renewal Application.**

1. The Division is the state agency responsible for the licensing and regulation of mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.03(A)(7) requires a mortgage broker applying for a certificate of registration to include in its application "a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of 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."
3. Ohio Revised Code Section 1322.04(B) provides for annual renewal of a mortgage broker's certificate of registration if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(6) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(7) Neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has pleaded guilty to or been convicted of any criminal offense described in division (A)(7) of section 1322.03 of the Revised Code, or, if the applicant or any of those other persons has pleaded guilty to or been convicted of such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again.

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(10) The applicant's financial responsibility, experience, 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. 1322.04(B)(3); R.C. 1322.04(A)(6), (7) and (10).

4. If the applicant is a corporation, the Division designates which shareholders or persons must meet the conditions set forth in R.C. 1322.04(A)(6), (7) and (10) based on the extent and nature of the shareholder's or person's ownership interest in the corporation. Mr. Tate, as Respondent's President and primary owner, was properly designated by the Division as a person who must meet those requirements. The NOH alleges that he cannot meet the requirements set forth in R.C. 1322.04(A)(7) and (10) respectively.
5. Mr. Tate was convicted of petit theft in 1981, unauthorized use of property in 2001, and theft in 2001. Unauthorized use of property is a theft offense. R.C. 2913.01(K)(1); R.C. 2913.04.
6. Ohio Revised Code Section 1322.07(A) prohibits a mortgage broker from obtaining a certificate of registration through the omission of any material fact required by state law.
7. Respondent's response to Question 2 of the 2002 Renewal Application indicating that Mr. Tate did not have any criminal convictions was an omission of material facts required by state law. Ohio Revised Code Section 1322.03(A)(7) required Mr. Tate's theft and unauthorized use of property convictions to be disclosed on that application and those convictions are material to the application. The omission of those material facts allowed Respondent to procure its 2002 certificate of registration in violation of R.C. 1322.07(A).
8. Ohio Revised Code Section 1322.07(C) prohibits a mortgage broker from engaging in conduct that constitutes improper, fraudulent or dishonest dealings.
9. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that Mr. Tate did not have any criminal convictions on both the Renewal Application and the Form 18 when in fact he had theft and unauthorized use of property convictions.

10. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required each mortgage broker to have an operations manager. R.C. 1322.03(A)(3). If the operations manager leaves, the mortgage broker must designate a new operations manager and notify the Division. R.C. 1322.04(D). An operations manager is an "individual responsible for the everyday operations, compliance requirements, and management of {the} mortgage business." R.C. 1322.01(H). Respondent conducted its mortgage business without an operations manager in violation of R.C. 1322.03(A)(3) and R.C. 1322.04(D) for over ten months.
11. Respondent's violations of R.C. 1322.07(A), 1322.07(C), 1322.03(A)(3), and R.C. 1322.04(D) preclude it from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for renewal of its mortgage broker certificate by R.C. 1322.04(A)(6).
12. Once Mr. Tate's theft conviction was proven by the Division, the Respondent had the burden to prove, by the preponderance of the evidence, that Mr. Tate's "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" to renew its mortgage broker certificate. R.C. 1322.04(B)(3); R.C. 1322.04(A)(7).
13. Instead, the evidence established two 2001 convictions for theft offenses. Mr. Tate, acting on behalf of Respondent, failed to disclose those convictions on two notarized statements he filed with the Division. The questions on both forms asked for disclosure of any convictions except for traffic violations. The nature of the recent convictions, Mr. Tate's failure to disclose the convictions, and his lack of credibility when testifying about the convictions and the reasons for non-disclosure, preclude Respondent from establishing that Mr. Tate is honest, truthful, and of good reputation.
14. The Respondent did not establish that it is unlikely that Mr. Tate will commit an offense similar to the theft offenses in the future. This burden of proof is hard to meet when, as in this situation, the individual has two recent criminal convictions for theft offenses.
15. Respondent did not prove by the preponderance of the evidence that Mr. Tate is honest, truthful and of good reputation. It also failed to prove by a preponderance of the evidence that there is no basis in fact to believe that he will commit an offense similar to the theft offense again. Therefore, Respondent has not established the mortgage broker certificate renewal prerequisites set forth in R.C. 1322.04(A)(7). R.C. 1322.04(B)(3); R.C. 1322.04(A)(7).
16. For the all of the reasons stated above, Respondent has not established that Mr. Tate'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 Ohio's Mortgage Broker Act. The evidence also fails to indicate that he has the requisite level of financial responsibility. Mr. Tate relies on others to be responsible. He failed to even recognize that an operations manager was no longer in place. Therefore, Respondent has not established the mortgage broker certificate renewal prerequisites set forth in R.C. 1322.04(A)(10). R.C. 1322.04(B)(3); R.C. 1322.04(A)(10).

### III. RECOMMENDATION

The Respondent has not established the required prerequisites for renewal of its mortgage broker certificate set forth in R.C. 1322.04(B)(3) as that section incorporates R.C. 1322.04(A)(6), (7) and (10). Therefore, I respectfully recommend that the Division refuse to renew Respondent's mortgage broker certificate pursuant to R.C. 1322.10(A)(1)(a).

Respectfully submitted,

A handwritten signature in cursive script that reads "Jane S. Arata".

Jane Stempel Arata  
Administrative Hearing Officer  
August 19, 2004