

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

2004-03-14 09:28:05

In re: Frederick E. Poock

:

Case No. 04-0198-LOD

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 Frederick E. Poock not be granted. The Division conducted an investigation and found:

- a. In or around 1995, in the Berea Municipal Court, Cuyahoga County, Ohio, Mr. Poock was convicted of the offense of menacing;
- b. In or around 1995, In the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Poock pleaded guilty to and was convicted of attempted possession of criminal tools, a misdemeanor of the first degree and aggravated menacing, a misdemeanor of the first degree;
- c. On or around March 18, 2002, Mr. Poock attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- d. On or around March 26, 2002, Mr. Poock provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Poock'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 set forth in Revised Code Section 1322.041(A)(5);
- b. Mr. Poock violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- c. Mr. Poock violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and
- d. Mr. Poock violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Poock's address for service is 544 Compton Road, Wyoming, Ohio, 45231. He is hereinafter referred to as the "Respondent." The Respondent is employed by Midwest Financial and Mortgage Services, Inc., 6964 Tylersville Road, West Chester, Ohio, 45069.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 8).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 8).

6. On February 19, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 9).

7. On February 20, 2004, the Division wrote to the Respondent acknowledging receipt of the Request for a Hearing and scheduling the hearing for Thursday, April 1, 2004 at 1:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 10).

8. On March 24, 2004 Gordon P. Shuler, Esq., wrote to the Assistant Attorney General seeking a continuance of the Hearing because of a scheduling conflict. (Exhibit 11).

9. On March 31, 2004, the Division wrote to Attorney Shuler rescheduling the Hearing for 1:00 p.m. on Tuesday, May 25, 2004, in Room 1910 of the Vern Riffe Center. (Exhibit 12).

10. The hearing took place on May 25, 2004, at 1:00 p.m. Attending were Anthony Siciliano, Assistant Attorney General of Ohio in the Executive Agencies Section, Gordon P. Shuler, Esq. counsel for the Respondent, and the Respondent. Also present was Joanna Heldman.

11. 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 March 18, 2002, 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).

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 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?

Yes ☐ No ☐

If the answer is yes, furnish details.

3. In response to Question 5, the Respondent answered "No".

4. As part of the Application, the Respondent signed a National Background Check consent. (Exhibit 1).

5. On April 15, 2002, the Respondent submitted a Loan Officer Application (the "Second Application") (Exhibit 2). Question 5 of the Second Application was identical to Question 5 of the Application. The Respondent gave the same negative answer to Question 5 in the Second Application.

6. The Division received the Report of the National Background Check which disclosed an arrest on August 19, 1994 in Strongsville, Ohio, for domestic violence, an arrest on January 6, 1995, by the Sheriff's Office of Cuyahoga County, Ohio, for possession of criminal tools. (Exhibit 3).

7. On April 22, 2002, the Division wrote to the Respondent seeking detailed information about the two arrests. (Exhibit 4).

8. Thereafter, the Respondent wrote to the Division, enclosing certified journal entries and indicating dispositions of criminal matters. (Exhibit 5).

9. Those documents, taken together with materials supplied by the Respondent in Respondent's Exhibit B, show the dispositions of the various criminal matters which are attached hereto as Exhibit A to this Report.

10. On December 12, 2002, the Division received a letter from the Respondent indicating that he was providing all of the materials available from the applicable Courts. Respondent also indicated that these were the same materials that he supplied to the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. the State of Ohio Department of Insurance in connection with the Series 7, Series 63, Series 65, Series 31 and the Health Life and Annuities Life Insurance Licensing Tests that the Respondent took and ultimately passed. (Exhibit 7).

11. The Respondent also wrote the following:

1 – You wanted me to get a letter from the Clerk of Courts, Mr. Raymond Wohl, 11 Berea Commons, Berea, Ohio, 44017, (440) 826-5860 stating that you have all the legal documents pertaining to my cases.

I contacted the Berea Municipal Court and asked them for the letter you requested regarding my legal situations with this court. The Berea Municipal Courts response was that they do not write or provide such information because their court records on computer only go back to 1991. They said that this type of request would be cumbersome, time prohibitive and costly at best. They said that a F.B.I. check and a CCH-NCIC should provide you with al the information you are trying to obtain. Please let me add that I did send the certified journal entries from the Berea Municipal Court to Ms. Amanda M. Axtell, Legal Counsel on Consumer Finance.

I provided The Securities and Exchange Commission (SEC), National Association of Securities Dealers, Inc. (NASD), and State of Ohio Department of Insurance with the same court documents that I provided The Division of Financial Institutions. I was cleared by the SEC, NASD, State of Ohio Department of Insurance to take the Series 7, Series 63, Series 65, Series 31, and Health, Life and Annuities tests. I took these five tests, passed and received all of the preceding financial and insurance licenses.

2. - Explanation of my checking a wrong answer on the Loan Officer application.

I was informed by The Division of Financial Institutions that I had checked a wrong box on the application. I may have misread or misinterpreted the question but there was no deliberate intent on my part to check the incorrect answer.

3. - My words about my legal problems.

All my criminal charges that were filed against me involved my divorce (Feb. 1994 – May, 1995). There were various charges filed against me for various reasons, none of the charges involved monetary issues. Ultimately I pled guilty to two charges. I wouldn't have pled guilty to these two charges had I had the money and time to pursue my legal rights. The two charges that I ultimately pled guilty to follow.

- 1 - Possessing Criminal Tools & Interception of Communication. I put tape recorders on my telephones and listening equipment in my house.
- 2 - I pled guilty to menacing. I don't even know what the legal definition of menacing. I pled guilty for at least two reasons. One reason was to bring my divorce to a final conclusion and the other reason was the depletion of funds.

In conclusion, I would like to reiterate that I never had any problems with the law before or after my divorce concluded (May 31, 1995). If you have any questions regarding this letter or any other information please contact me on my cell telephone number, (513) 300-8192. (Exhibit 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 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:

- (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 Section 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;
- (C) Engage in conduct that constitutes improper, fraudulent or dishonest dealings[.]

....

4. The Division has the burden to show that the Respondent's character and 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 well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

## DISCUSSION

1. At the time of the Hearing in the matter, the Respondent was fifty-five years of age. He is no longer married and has two adult children. He attended The Ohio State University, the University of Houston and the University of Cincinnati. He did not receive degrees from any of these institutions. (Tr. 20-21).

2. The Respondent was employed most of his working life at Levi Strauss & Co. (Tr. 21 et seq.). He was a sales representative in the women's division. (Tr. 22). There he met his future wife. (Tr. 22). They were married April 7, 1979. (Tr. 22). In March, 1979, the couple moved to Cleveland. (Tr. 22). The children were born in 1979 and 1983.

3. In 1994, the Respondent's wife filed for a divorce. (Tr. 23). For the initial part of the divorce proceedings, the Respondent and his wife continued to live in the same home. (Tr. 24). The Respondent maintained his principal office in his home. (Tr. 24). The Respondent ultimately moved out of the house but did not do so voluntarily. (Tr. 25-26). He was ordered to move out by the Domestic Relations Court. (Tr. 26). For approximately one month thereafter, he lived in budget-class motels. (Tr. 26). Finally, the Respondent settled in a house diagonally across the street from the marital home where he lived with some friends. (Tr. 27). During the pendency of the case, a domestic relations order was in place preventing the Respondent from entering the house at certain times of the day. However, the Respondent was permitted to enter the home during business hours in order to work in his office. (Tr. 28).

4. At one point, the Respondent confronted a former employee who was apparently helping the wife move items out of the house. (Tr. 29). Criminal charges of menacing were filed as a result of that confrontation. (Tr. 29). The Respondent was placed on a suspended sentence and ordered to perform community service. (Tr. 30).

5. At another time during the pendency of the divorce case, the Respondent placed tape recorders and listening devices on telephones in the marital home. (Tr. 31). The Respondent believed, at the time, that his actions were not illegal. (Tr. 32).

6. The Respondent remains, even today, bitter and resentful about his divorce. (Tr. 33).

7. Ultimately, the Respondent moved from the Cleveland area to Cincinnati, where he had family and others to help support him. (Tr. 34).

8. The Respondent no longer works for Levi Strauss due to corporate restructurings. (Tr. 34). Following his employment at Levi Strauss, the Respondent worked at Dean Witter Reynolds, a securities firm. (Tr. 34). The Respondent took and passed the Series 7, Series 63 and the Series 65, the Series 31 as well as the insurance tests for health, life and annuities. (Tr. 35). The Respondent disclosed to Dean Witter Reynolds the existence of his criminal convictions. (Tr. 36). The Respondent also worked at Banc One as a financial advisor. (Tr. 36).

9. Following employment at Banc One, the Respondent began working at Midwest Financial Mortgage Services. (Tr. 36). The Respondent has also had intervening employment at other mortgage lenders. (Tr. 37).

10. The Respondent explained his answer to Question 5 as follows:

I thought it all dealt with money issues, basically, fraud, forgery, bad check passing, embezzling money, everything, laundering, drug trafficking, criminal offenses involving money or securities, which I had none. (Tr. 38).

11. The Respondent believed that he was answering Question 5 honestly. (Tr. 38). The Respondent knew that a background check and his fingerprints would disclose his convictions. The same had happened when he worked at Dean Witter Reynolds, Banc One and other institutions. (Tr. 38-39).

12. In his work at Dean Witter Reynolds and Banc One, the Respondent has never had a complaint about mishandling other people's money or a loan transaction. (Tr. 42-43). Other than the convictions identified above, the Respondent has no other involvements with the criminal justice system. (Tr. 43).

13. The Respondent submitted a letter of support from Jim Smith, Jr., Branch Manager of Midwest Financial Services, Inc. (Respondent's Exhibit B).

14. The Respondent also presented a plaque being the inscription "Midwest Financial Mortgage Services, Inc. Broker of the Year, 2001" presented to the Respondent. (Tr. 51).

15. The Respondent held a valid Ohio Insurance Salesman's License until approximately 30 to 40 days prior to the hearing when he voluntarily relinquished it because he did not want to pursue the required continuing education. (Tr. 53). The license had been in effect for two years. (Tr. 53).

16. The Hearing Officer has had a unique opportunity to personally observe the Respondent and to listen attentively to the Respondent's lengthy testimony.

17. The Respondent stands convicted of three misdemeanor offenses, the last of which occurred in May, 1995, approximately nine years prior to the Hearing in the matter. All of those convictions arose from a divorce proceeding that the Respondent was then going through. None of those offenses involve money, securities, mortgage broker issues or other issues. The convictions surround, and are inextricably intertwined with the Respondent's divorce proceedings. The Hearing Officer also notes that the Respondent was also charged with additional criminal matters, all of which were related to the divorce and all of which were subsequently dismissed. The Hearing Officer concludes that the criminal involvement of the Respondent is exclusively related to the divorce proceedings.

18. The record also discloses that the Respondent worked for a national securities firm, a national bank as well as was licensed by the State of Ohio to sell insurance. All of those positions require appropriate licensure or bonding. It does not appear that the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. or the State of Ohio Department of Insurance were so convinced of the seriousness of the criminal matters as to warrant a denial of licensure to the Respondent.

19. The Hearing Officer concludes that, on their own, the criminal convictions do not establish that the Respondent's character and 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. Indeed, the Respondent has been working in the industry

for at least three years. There is no evidence in the record from the Division, any other regulatory agency, or otherwise, that the Respondent has had complaints about the way in which he operates the business. Indeed, the only evidence in support of the proposed denial of the license for purposes of Section 1322.041(A)(5) is the existence of the convictions. That evidence is more than outweighed by the length of time that has elapsed since the convictions, the Respondent's licensure by at least three other agencies or institutions, and the lack of any credible evidence to suggest that the Respondent is incapable of operating the business honestly and fairly or has done so in the past.

20. The issue presented to the Hearing Officer is whether the Respondent intentionally presented false information to the Division when he answered Question 5 incorrectly. On one hand, the Division has an expectation that Question 5, along with all other requests for information, will be answered fully, completely and honestly. Here, the Respondent does not deny that he stands convicted of criminal offenses. Rather, the issue is whether the Respondent understood Question 5 sufficiently to know that he was to have answered that Question in the affirmative. It is not as simple in these situations as determining whether a false answer is given to Question 5. If the person completing an application does not understand the question, then an incorrect answer does not rise to the level of an intentionally given false statement. In this case, the Hearing Officer, based upon the record before him and including the opportunity to personally observe the Respondent concludes that the Respondent did not intentionally answer Question 5 incorrectly. Respondent certainly knew that he stood convicted of criminal offenses and knew from his prior licensing experiences that those convictions would be disclosed. The Respondent has been issued a license by the Ohio Department of Insurance as well as having been examined by the Securities and Exchange Commission and the National Association of Securities Dealers, Inc. It is improbable to suggest that the Respondent could have believed that the existence of his criminal convictions would have gone unobserved by the Division. The Hearing Officer believes that the Respondent testified truthfully when he stated that he thought that Question 5 sought information about convictions involving financial transactions.

21. In conclusion, the Hearing Officer does not believe that the Division has met its burden to show that the Respondent's character and 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 or that it has met its burden with respect to showing violations of Section 1322.07(A)(B) and (C). In this case, the Hearing Officer believes that the Respondent should be issued a license.

#### RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson  
Hearing Officer  
August 3, 2004