

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL
INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0080-LOD
: :
: :
Vanessa A. McGroder-Brown : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 21, 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 26, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Vanessa A. McGroder-Brown (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 failed to disclose a criminal conviction on her loan officer application filed in September of 2004. 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. 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).
2. By failing to disclose her criminal conviction on her loan officer application, the Respondent failed to comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).

James M. Evans, 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 10 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on March 10, 2005 by certified mail, return receipt requested. (Exhibit 5.) Respondent's hearing request was received by the Division on April 4, 2005. (Exhibit 6.) The Division scheduled the hearing for April 14, 2005 but, on its own motion, continued the hearing to April 26, 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 7.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on September 28, 2004. (Exhibit 1.)
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 "No." (Exhibit 1.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which revealed that the Respondent had been charged in 1992 with assault. (Exhibit 2.) By letter dated November 5, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing her plea and the court's finding. (Exhibit 3.)
5. The Respondent provided a certified Judgment Entry from the Willoughby Municipal Court. The Entry for Case No. 92 CRB 00215 A showed that on February 11, 1992 the Court convicted the Respondent of assault in violation of city ordinance 537.03, a first degree misdemeanor. The Court fined the Respondent \$250.00, \$150.00 suspended, and sentenced her to thirty days in jail, all thirty days suspended, placed her on six months of probation and ordered her to complete an alcohol assessment and sixteen hours of community service. (Exhibit 4.)
6. In an undated letter to the Division and in her testimony, the Respondent explained that the violation occurred when she got into a fight in a bar. (Exhibit 4; TR at 27.)
7. At the hearing, the Respondent explained that she did not disclose the conviction on her loan officer application because she did not believe that the conviction for assault was a criminal conviction. She testified that she did not believe it was a criminal offense because she was not read her rights, she was not hand cuffed and she was not arrested. She was simply given a summons and sent home. (TR at 28.) She remembers going to court, pleading no contest, paying a fine, doing community service and undergoing an alcohol assessment. (TR at 20 – 24.)

8. At the hearing, the Division introduced a Docket Entry from the Painesville Municipal Court which shows that the Respondent was charged with domestic violence on February 16, 2005. (Exhibit 9.) The Respondent testified that this charge occurred because she threw a telephone at her husband. (TR at 35.) The Respondent pleaded guilty to this offense and the Court placed the Respondent in diversion. (TR at 49 – 50.) If she successfully completes that program, the Court will dismiss the charge. (TR at 37, 49.)
9. The Respondent did not present evidence in support of her character and general fitness. No witnesses appeared to testify on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

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

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:

* * *

(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.

3. R.C. 1322.031(A)(4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense, other than minor misdemeanor traffic and parking offenses, in question 5 of the application.

4. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the conviction shows that her 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.
5. When asked about her criminal record in Question 5 of the application, the Respondent answered "no" even though she had been convicted of assault. The Respondent contends that that she answered this question incorrectly because she believed that she was not convicted of a criminal offense. This explanation is not credible. The Respondent testified that after she got into a fight at a bar and hit another female patron causing a mark to her face, she was given a summons, went to court, pleaded no contest, paid a fine and completed community service and an alcohol assessment. Given the nature these events, it is not likely that the Respondent did not realize that she had been convicted of a criminal offense. Additionally, the Respondent did not disclose that she had pleaded guilty to domestic violence while her loan officer application was pending and after the Division asked for additional information about the assault conviction.
6. Moreover, the Respondent has not presented any evidence to support her character and fitness. In the absence of reliable and probative evidence supporting her character and general fitness, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that her 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. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
8. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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 misrepresentation in any registration or license application.
 - (B) Make any 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.

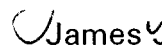
* * *

9. The Respondent failed to disclose her criminal conviction on her loan officer application as required by the Superintendent pursuant to R.C. 1322.031(A)(4). Her failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07(A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A)(2).
10. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2) 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 record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and that her 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 G. Lawrence
Hearing Officer
June 21, 2005