

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:

John J. Sakelos
9415 Waxwing Drive
Cincinnati, OH 45241

:
: Case No. 04-0203-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on June 1, 2004. Appearing was Respondent Mr. John J. Sakelos. Assistant Attorney General James M. Evans represented the Department of Commerce's Division of Financial Institutions ("the Division"). Mary Pisciotta, legal extern with the Division, observed the proceedings.

After due consideration of the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C 1322.01 to O.R.C. 1322.12, the Division is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.
2. On December 30, 2002, Mr. Sakelos, employed by Heartland Home Finance, applied for a license to be a loan officer. See Loan Officer Application, State's Exhibit 1.
3. On January 22, 2004, the Division issued a Notice of Intent to Deny a Loan Officer's

License to Mr. Sakelos. See Notice, State's Exhibit 10.

4. The Division stated in its Notice of Intent to Deny Loan Officer's License that in or around 1977, Mr. Sakelos was convicted of "attempted breaking and entering." See Notice, State's Exhibit 10.
5. Mr. Sakelos did not disclose these convictions on his loan officer application. As a result, the Division also alleges that he knowingly provided false information in a sworn statement and that he provided "untruthful" information to the State. See Notice, State's Exhibit 10.
6. As a result, the Division stated that in its Notice of Intent to Deny Loan Officer License that Mr. Sakelos's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act; that he made a substantial misrepresentation in a license application in violation of law; that he made a false or misleading statement of a material fact required by state law; and that he engaged in conduct that constitutes improper, fraudulent, or dishonest dealings. See Notice, State's Exhibit 10.
7. On February 20, 2004, Mr. Sakelos requested a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 11.

b. Conviction for Attempted Breaking and Entering (1977)

8. At the hearing, the State offered into evidence documentation indicating Mr. Sakelos was convicted of attempted breaking and entering in 1977. See Document, Hamilton County Clerk of Courts, State's Exhibit 5. Mr. Sakelos acknowledged the conviction at the hearing. See Transcript, p. 17. He also acknowledged the conviction in a letter to the Division. In the letter, he states that the conviction stems from an incident in which he illegally

attempted to gain entry into an ex-roommates's premises to retake possession of property that belonged to him. See Letter, State's Exhibit 4. He reiterated this position in a subsequent letter to the Division. See Letter, State's Exhibit 6.

c. Failure to Disclose Convictions on Loan Officer Application

9. In response to Question 5 on the Loan Officer Application, asking:

"[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or plead 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,"

Mr. Sakelos answered, "no." See Loan Officer Application, State's Exhibit 1.

10. At the hearing, Mr. Sakelos acknowledged this failure to disclose. He stated:

"And when I reread the application, I can honestly say that if I read that question again and more carefully, I probably would have answered yes. I really have no argument for why I answered "No" at the time because I'm not the kind of person who can fabricate stories or intend to fabricate stories as to why I answered that question the way I did at the time...[I]f I misinterpreted the question, I really can't—I wouldn't probably say I did that. But I believe that's what happened. I can say this, when I had a criminal record in 1977 I really don't think of myself as having a record, and I guess part of that is, you know, my own wishful thinking and part of that also being the fact that when I was in college I was told by the Prosecutor on this case that if I pleaded no contest to a misdemeanor, I would be eligible—or that my record would be expunged after a certain amount of time, three years or six years, I forget what he said at the time...So in my mind, I guess, I do maybe think of having an expunged record that's not really pertinent to the year 2002 or the year 2003 or the year 2004..." See Transcript, pp. 16-18.

d. Additional Convictions

11. On cross-examination, Mr. Sakelos acknowledged that he also was convicted of driving under the influence in August of 1980 and in December of 1993. See Transcript, pp. 27-30. See also Mr. Sakelos's Ohio Drivers License Record, State's Exhibit 14.

12. He did not disclose these convictions on his application either. He stated that in contrast to his attempted breaking and entering conviction, if he “answered that question today,” he still would not have disclosed these convictions because he “didn’t really think of driving under the influence as a criminal offense.” See Transcript, pp. 34-35.
13. He then acknowledged that the question on the application is broad. “[T]he “not limited to” [language] sure does open up a lot of areas when you read it carefully.” See Transcript, p. 35.

e. Workers Compensation Premiums

14. The State also offered into evidence documentation indicating a lien was filed against Mr. Sakelos’s business because of a failure to pay workers compensation premiums. The Tax Commission’s judgment against the company was for \$839.36. See Hamilton County Clerk of Courts Document Listing, State’s Exhibit 15.
15. Mr. Sakelos testified that he was aware of an “intent to lien,” but that he and his bookkeeper thought the amount was incorrect. He also testified that in his 15 years of operating his business, he never had a similar situation. See Transcript, pp. 33-34.

f. Personal Testimony

16. Mr. Sakelos testified to his own fitness for licensure. He explained when they learned his wife could not have children, they took extraordinary steps to adopt. A social worker from the State lived with he and his wife for three days and produced a study that concluded they were both very fit parents. See Transcript, p. 18. He testified that they then did adopt a child from Paraguay, with the blessing of the Department of Immigration and Naturalization. See Transcript, p. 20.
17. He testified that he believes he qualifies for licensure because of his character, abilities, and

moral values. He also testified that he is a “hard working provider,” who “lives the values the Department is trying to protect.” See Transcript, pp. 21-22.

g. Letters of Reference

18. Mr. Sakelos provided a letter of recommendation from the branch manager at Heartland Home Finance, who called him a valued and skilled employee. See Letter, Respondent’s Exhibit A.
19. Mr. Sakelos provided a letter from his local police department indicating he and his wife had no criminal criminal contact with the department. The letter was written in 1991, from when they were seeking to adopt children. See Letter, Respondent’s Exhibit D.
20. Mr. Sakelos also provided a copy of the “home study” which was completed in 1990 as he and his wife were being considered as adoptive parents. The study speaks in glowing terms of both his and his wife’s qualifications as parents and the pervasive love in his family. They were “highly recommended” as adoptive parents. See Sakelos Home Study, Respondent’s Exhibit E. He also provided a letter written in 1995 by close friends recommending they be considered to adopt a second child. See Respondent’s Exhibit F.
21. He provided documentation indicating he has completed continuing education toward his mortgage broker license. See Certificates, Respondent’s Exhibits B and C.

III. Conclusions of Law

22. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041.
23. The criminal offenses incorporated by reference are:

“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.”
O.R.C 1322.031 (A)(2). Emphasis added.

24. Based on the documentation offered by the State (State’s Exhibit 5), and Mr. Sakelos’s admissions at the hearing, the Hearing Examiner finds that Mr. Sakelos was convicted of ~~an~~ attempted breaking and entering in 1977. This is a criminal offense “involving theft.”
25. Once the conviction is established, the statute allows for a burden-shift in which Mr. Sakelos assumes the burden of proving by a preponderance of the evidence that despite his conviction, he otherwise should receive a loan officer’s license.
26. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part reads:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...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.” O.R.C. 1322.041 (A)(3).

27. The conviction is approximately twenty-seven years old. The statute requires a determination of whether, since then, his activities and employment record show he is honest, truthful, and of good reputation, and that there is no basis in fact to believe he will commit such an offense again.

a. Do His Activities And Employment Since Conviction

Demonstrate He is Honest, Truthful And Of Good Reputation?

28. Evidence concerning his employment record since his conviction, while positive, was sparse. His supervisor recommends him for a license in a letter, and the “home study”

performed by a social worker indicated financial stability. But the study is quite dated (15 years old) and Mr. Sakelos offered no witnesses to testify to his job performance, or otherwise. His failure to pay a workers' compensation premium is relevant in this context as well. It does not speak well of his employment record that the State filed a lien on his property in order to induce him to pay premiums required by law.

29. As to whether his activities since his conviction show a good reputation, his two OMVI offenses are relevant and do not reflect well on him. In his favor, the second of these occurred twelve years ago, and his record since then is clean. In addition, he demonstrated at the hearing that his activities are now family-oriented, and his and his wife's admirable efforts to adopt children speak well to his reputation.

30. But as to his activities since the conviction demonstrating honesty and truthfulness, Mr. Sakelos's representations on his loan officer application are relevant to this analysis. If he deliberately concealed his convictions from the Division in order to gain a license, this would harm his ability to demonstrate that his activities since his conviction have been honest.

31. The Hearing Examiner found Mr. Sakelos's explanation for failing to disclose his conviction for attempted breaking and entering, as well as his two OMVI convictions, unsatisfactory. Indeed, with respect to the breaking and entering, he himself stated that he has "no argument" for why he answered "no" on the application to the question asking him if he had convictions. He called his answer "wishful thinking," and then suggested that the age of the conviction may have led him to believe it was somehow automatically expunged from his record. This testimony was meandering, and did not appear credible.

32. Thus, the Hearing Examiner, and the Division, is faced with contrasting evidence

concerning Mr. Sakelos's activities since his conviction. The record shows some very positive attributes, but also contains troublesome information, particularly his OMVI convictions and failure to offer any reasonable or credible explanation for his omissions on his loan officer application.

b. Is There A Basis for Believing He Will Commit Such An Offense Again?

33. As to whether he would commit a theft offense again, the answer seems clearly to be "no."

The circumstances of his original offense do not seem particularly aggravated, and he has not been charged with a theft offense since that time in 1977. This lengthy period of time free of recidivism is very strong evidence that he will not engage in such conduct in the future. The Hearing Examiner does not doubt this was an isolated incident in Mr. Sakelos's life.

34. But significant questions were raised at the hearing concerning Mr. Sakelos's past criminal convictions (and his failure to disclose them), which he never adequately addressed. The Hearing Examiner finds that on balance, he did prove by a preponderance of the evidence that there is no basis in fact to believe he would commit a similar offense in the future. But he did not prove by that standard that his activities and employment record since the time of his conviction demonstrate that he is honest, truthful, and of good reputation.

35. The second part of the statute states:

"The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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." O.R.C. 1322.041 (A)(5).

36. In assessing Mr. Sakelos's character and general fitness to receive a license, the nature of

his offenses must be considered. Regardless of his age at the time, the crime of attempted breaking and entering is serious. So is OMVI.

37. But since his 1977 conviction, his criminal record is free of what might be called “crimes of dishonesty.” This speaks to his character. And again, his testimony concerning the importance of his family was also credible, and reinforced by his exhibits related to his family’s efforts to adopt children.
38. However, his omission of any criminal record at all on his loan officer application is also relevant to this analysis. By failing to make the required disclosures to the very agency responsible for regulating his industry, or offering a credible and reasonable explanation for not doing so, he has made impossible the task of certifying that he would run his business in compliance with the law. See Paragraphs 30-31.
39. Further, aside from perhaps a letter from his supervisor, the record is void of any independent outsider who could have testified to his business practices. While the record certainly supports a finding that Mr. Sakelos is a dedicated father and husband, it remains too thin to support a finding that he is a businessperson who would always follow best practices, and operate in compliance with the Ohio Mortgage Broker Act.
40. Finally, O.R.C. 1322.07, also cited in the Division’s Notice of Intent to Deny Mr. Sakelos a license, states that:

“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 misrepresentation 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...”

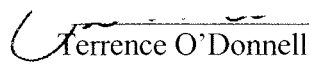
41. Mr. Sakelos withheld the fact of his conviction for attempted breaking and entering, and his two convictions for OMVI, from the Division. He offered no credible, reasonable explanation for this. See Paragraphs 30-31. Thus, the Hearing Examiner finds he made critical omissions of material facts in violation of this section.

B. RECOMMENDATION

42. The Hearing Examiner finds that Mr. Sakelos has not proven by a preponderance of the evidence that 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 again¹; nor do his 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 intent of O.R.C. 1322.01 to 1322.12. Further, the Hearing Examiner finds that he knowingly omitted material facts on his loan officer application in violation of law.

43. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent of the Division of Financial Institutions that Mr. Sakelos be denied a loan officer's license pursuant to Ohio Revised Code 1322.041.

1/19/05
Date


Terrence O'Donnell
Hearing Examiner

¹ He did show the latter, but not the former. The law requires he demonstrate both to qualify for a license.