

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0058-LOD
: :
DANA L. DAVIS : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued July 28, 2004

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 April 28, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Dana L. Davis ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of petty theft, possession of drug paraphernalia, and forgery. Therefore, the Division asserted 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 has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit another offense involving theft, money or securities again as required by R.C. 1322.041(A)(3); and
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).

Paula Luna Paoletti, the Deputy Attorney General for the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 13 and Respondent's Exhibits A through D were admitted into the record.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 23, 2004. The Division scheduled the hearing for March 4, 2004, and continued it until April 28, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Criminal Convictions.

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibits 1 and 9; Hearing Transcript at 18.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. The Division received Respondent's Loan Officer Application ("Application") on March 27, 2002. (State's Exhibit 1.)
4. Question 5 on the Application asked:

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.

(Application, State's Exhibit 1; TR at 18.)

5. Respondent answered "Yes" to Question 5 and stated that she had been convicted of forgery in 1998. (State's Exhibit 1; TR at 14.) Attached to her Application was a letter explaining three criminal convictions. Later, in response to the Division's inquiry, Ms. Davis submitted certified copies of court records evidencing the following criminal convictions: Petty theft in 1997, possession of

drug paraphernalia in 1997, and two counts of forgery in 1998. (State's Exhibits 3, 4, 5 and 6.)

6. Respondent's letter, attached to the Application, described the events that led to her convictions and her activities afterwards as follows:

I was diagnosed with severe fibromyalgia in 1994 and had to quit my job. For two years I was very heavily medicated for depression, and received up to 18 injections in my back at a time as part of my treatment. I had to have rotator cuff surgery on both of my shoulders and surgery on my right knee for degeneration. I needed to have something positive to focus on so I signed up as a volunteer for the A.I.D.S. Task Force of Hancock County and "adopted" two buddies. I was transporting one of my buddies to the store for medicines and groceries, and he had put his marijuana pipe in my purse. He had done this before. He smoked it a lot because of the pain and nausea associated with his sickness, but I never thought to check my purse before we went into the stores. I was alone wandering through the store and took off my shoes and replaced them with a new pair from the store. I had been struggling for so long to take care of my children, and I needed shoes so badly. I know that was wrong, and my psychologist told me that my action was a desperate cry for help, as I was suffering from withdrawal from so many different medications. So, when they stopped me at the door and took me to their office to call the police, I never thought about a pipe being in my purse. My buddy tried to explain to the police that it was his, but they said it was in my possession, so I was charged with possession and paraphernalia, along with the petty theft conviction. My depression was very bad, and I knew that I had to find a way to help myself. I was offered vocational rehabilitation, and re-entered college to learn a new trade, as I would never be able to do the types of work I had done in the past. I lived in government assisted housing for 3 years, and had only the child support from my children's father for income. I did this for two and a half years, and was totally distraught over my situation. My treatments were very painful, and I did not feel that I was really gaining anything from them, so I took my treatment into my own hands. I lost 60 pounds and began to wean myself from the incredible amount of medication that I was on. It was during this time that a man I knew came to see me at my home. He had two blank checks that did not belong to him. He told me that if I would write a woman's name on the blank checks, he would make sure that my children got some new clothes and whatever else they needed. I never received a pair of {socks} for that, but I did get 3 years of probation, 15 days in the county jail, and {paid} \$600 in restitution for being such an idiot. I cooperated fully with the police

and the probation department. I never got in trouble during this time. I was released after 2 years of probation (which was the minimum). I continued to recover from my illness and got over my dependence on {too} many pain and depression medications. At this point, I am very healthy, dependable, and trustworthy. I was working as an accounting consultant in Indianapolis before I moved back to Ohio to take care of my mother and have her grandchildren and great-granddaughter closer to her. I love my job, and will do whatever I have to do to keep it.

(State's Exhibit 2.)

7. Ms. Davis' testimony at the hearing was consistent with the information she provided to the Division prior to the hearing. She was charged with shoplifting for stealing a pair of shoes from Meijer in 1997. She took her A.I.D.S. buddy to the store so he could shop for medication and food. While in the store, she took a pair of tennis shoes. When that was being investigated, a marijuana pipe was discovered in her purse. She testified that the pipe belonged to her A.I.D.S. buddy who was using marijuana to deal with chronic pain. The possession of drug paraphernalia conviction was based upon this situation. (TR at 26-28, 30-32.)
8. Ms. Davis also explained the 1998 forgery conviction. She was approached by a man who handed her two blank checks. He asked her if she would sign the checks thereby forging the name of the woman listed on the checks. He promised to get clothing for her children if she forged the checks and she did so. Apparently, he had stolen two packs of the woman's checks and had several forged by others while she was on vacation. (TR at 34-38.)
9. Ms. Davis met the conditions of her parole, made restitution to the victim of the two forged checks, and completed all the conditions of her probation. Her probation was terminated in March of 2001. (State's Exhibit 8; TR at 21, 37.)
10. Ms. Davis testified honestly and described the horrible circumstances in her life at the time of these convictions. She was dealing with medical and mental health problems and chronic pain. The information she provided to the Division before the NOH was issued and her testimony at the hearing described her struggles with fibromyalgia, depression, anxiety, degenerative arthritis, rotator cuff surgeries, and chronic pain. (TR at 26-30.)
11. Ms. Davis' testimony at the hearing indicates that she makes no excuses for her past. She knew what she did was wrong and illegal when she did it. She has made enormous efforts to improve her life since 1998. (TR at 34-35.)

D. Respondent's Reputation and Character.

12. Respondent testified about how her life has drastically changed since 1998. Her health has improved and her fibromyalgia is in remission. She has been through vocational rehabilitation and worked as an accounting consultant for a trucking firm in Indianapolis. She returned to Ohio and took a job with a mortgage broker. She has worked as a loan officer and liked helping people purchase a home. Respondent is currently employed as an administrator at Christian Mortgage Company. (State's Exhibit 2; TR at 15-16, 26-30, 41, 43-45.)
13. Christian Mortgage Company is owned by Charlotte Ann Tippie. Ms. Tippie testified favorably about Respondent's work during the past year. Respondent works directly with Ms. Tippie and helps with compliance and loans. Ms. Tippie stated that Respondent is conscientious, considerate and honest. (TR at 54-57.)
14. Respondent also submitted notarized reference letters from four individuals. The first letter was from Maria A. Hernandez who has known Respondent since 1986. She has worked with Respondent at three different places of employment. She stated that Respondent is hard-working, honest, trustworthy and committed to her customers. Respondent helped her refinance a loan and did a good job explaining the loan process to her. Her letter does not specify the periods during which she worked with Respondent and how closely they worked together. It is also not clear from her letter whether she is aware of the criminal convictions in Respondent's background. (Respondent's Exhibit A.)
15. Angela D. Jacobs of United Midwest Savings Bank also provided a letter on behalf of the Respondent. She has known Respondent on a professional basis for approximately two years and worked with Respondent at Mortgage Professionals. She states that Respondent is an outstanding loan officer who structures loans in the best interests of borrowers. Ms. Jacobs' letter does not state her position, the nature of her professional relationship with Respondent, and the bases for her opinion. It is also not clear from her letter whether she is aware of the criminal convictions in Respondent's background. (Respondent's Exhibit B.)
16. Tina M. Crish, a licensed title agent for ATP Title Agency, submitted a letter on behalf of the Respondent. She has known Respondent for two and a half years. Respondent helped set up an accounting tracking system for her title agency. She is familiar with Respondent's work as a loan officer and has closed Respondent's loans. She states that Respondent's clients receive a fair deal and full disclosure. Ms. Crish describes Respondent as honest, reputable, diligent, and hard-working. It is not clear from her letter whether she is aware of the criminal convictions in Respondent's background. (Respondent's Exhibit C.)

17. The last letter submitted on behalf of Ms. Davis was from Sharon R. Zollman, a Systems Analyst at Made2Manage Systems, Inc. She has known Respondent since 1999 and worked with her at a trucking company in Indianapolis. Respondent worked in the Accounts Receivable Department and worked on a new shipping, tracking, analysis, and reporting system. Ms. Zollman indicated that Respondent did a very good job learning the new system and helped train other employees on the system. Respondent helped Ms. Zollman obtain two loans and did a good job. Ms. Zollman's letter does not indicate whether she has knowledge of Ms. Davis' criminal background. (Respondent's Exhibit D.)
18. The letters submitted on Respondent's behalf were notarized but the authors of those letters were not available for cross-examination by the Division at the hearing. The letters and the record do not indicate whether any of those people had day-to-day contact with the Respondent and whether they were aware of her criminal background.
19. Especially in a case involving theft and forgery convictions that are not too far in the past, it is important for the Division to have an opportunity to cross-examine character witnesses and for the Hearing Examiner to be able to observe their demeanor. How well they know the Respondent and whether they know about her criminal convictions go to the weight given to their statements and opinions.
20. While the letters were admitted into the record, they were given less weight than they might have been given if the authors had testified regarding the bases for their opinions as well as been available for cross-examination. The weight given to the letters also took into account the lack of specific information on the nature and frequency of the authors' contact with the Respondent. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters were reviewed and given some weight but not the weight they might have been given if their authors had testified at the hearing.

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. Loan Officer License Application.

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, 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.

R.C. 1322.041(A)(3) and (5).

4. Respondent was convicted of petty theft in 1997 and forgery in 1998. Petty theft and forgery are criminal offenses specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).

5. Once the petty theft conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
6. Instead, the record shows that Respondent was convicted of forging two checks in 1998. The serious nature of this offense coupled with the earlier petty theft conviction leaves the Respondent with a difficult burden of proof to meet. That burden when viewed in light of the concerns raised by two such crimes has not been met. While the evidence is favorable, it is simply not enough given the 1998 forgery conviction. That conviction, which is less than six years old, raises great concerns. The record contains evidence indicating that Respondent has made great strides in five years but not enough to establish that no basis in fact exists for believing that she will commit an offense involving theft or forgery again.
7. For the reasons stated above, Respondent also failed to establish that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
8. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals that do not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

While Respondent has made great progress in her life in the past five years, the nature of the convictions in her past cannot be ignored. The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
July 28, 2004