

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

04 JUL 13 PM 1:16

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL
	:	INSITUTIONS
	:	
	:	
Corey D. Smith	:	Case No. 04-0288-LOD
	:	
	:	

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued July 11, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:00 P.M. on May 19, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Corey D. Smith (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1989, Respondent pleaded guilty to and was convicted of Drug Abuse, a felony of the fourth degree, and that in or around June 2000 Respondent was charged with Domestic Violence and pleaded guilty to a lesser charge of disorderly conduct a misdemeanor of the fourth degree and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Paula Luna Paoletti. Respondent did not appear.

At the hearing, State's Exhibits 1 through 10 were admitted into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on March 30, 2004. The Respondent requested a hearing, which was received by the Division on April 19, 2004. The Division scheduled the hearing for April 29, 2004. The Division, upon its own motion continued the hearing to May 19, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 7).
2. Respondent is an individual who has applied for a Loan Officer Application with the Ohio Department of Commerce, Division of Financial Institutions. (Tr. p. 7; Ex.1).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about December 16, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1).
5. Respondent filled out and signed the Application on or about, December 12, 2003. (Exhibit 1).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you...ever been convicted of or pleaded guilty to any criminal offense including, but not limited to . . . drug . . . trafficking . . ." (Ex. 1).
7. In 1989, 15 years prior to the submission of the Application Respondent was charged and convicted of one count of drug abuse. (Ex's 3,4,5; Tr. pp.7-9)
8. In 2000, 3 years prior to the submission of the Application Respondent was charged and convicted of disorderly conduct. (Ex. 6; Tr. pp. 9 -10). Respondent had no character witnesses.
9. The State presented Mark Rhea as a witness (Tr. pp. 6-13).

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. 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 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 Section 1322.041 provides 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 sections 1322.01 to 1322.12 of the Revised Code.

4. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 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 any false or misleading statements of a material fact or any omission or 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;

5. Because the Respondent answered "no" to Question 5 of the Application, and, in fact, did have a criminal background, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
6. Respondent did not appear at the Hearing that Respondent had requested.

DISCUSSION

1. The State presented Mark Rhea, attorney for the Division of Financial Institutions as its witness. (Tr.pp. 6-13). Mr. Rhea verified the authenticity of each document that the State presented in its case against Respondent (Tr. pp.6 -10, Ex.'s 1-10).
2. The Respondent submitted an Application to be a Loan Officer (Tr.p. 7; Ex. 1).
3. The Respondent answered no to Question 5 on the Application where it asks " Have youever been convicted of or pleaded guilty to any criminal offense including but not limited to....." (Tr. p. 7; Ex.1).
4. In fact, Respondent has had two criminal charges and convictions in his past. One in 1989 for Drug Abuse which was a Felony of the fourth degree. (Tr. pp. 7-9; Ex.'s 3, 4, 5). And a 2000 charge and conviction for Disorderly Conduct which is a Misdemeanor of the fourth degree. (Tr. pp. 9 -10; Ex. 6).
5. Respondent had the burden of proof to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker Act.
6. Respondent did not appear at the Hearing that Respondent requested.
7. The Hearing Officer waited for Respondent to appear for 30 minutes before beginning hearing. (See Transcript cover page).
8. Paula Luna Paoletti argued on behalf of the State that Mr. Corey D. Smith, when asked if he had any criminal offenses in his background, responded that he did not. And that he also signed an Attestation indication that he swears or affirms that he completed the foregoing Loan Officer Application fully and frankly and, "The answers are complete and true of my own knowledge." (Tr. p. 15).

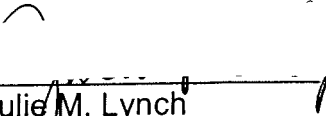
9. Ms. Paoletti further argued that a background check or investigation by the Division of Financial Institutions indicated that he had, in fact, had two criminal offenses in his background; one for drug abuse and one for disorderly conduct. (Tr. p.15). And as recently as 2003, the Respondent had shown his dishonesty by swearing to the Division in his application that he has never had any criminal offenses in his background and made an untruthful representation to the Division during his application process. (Tr. p.15).

10. Based upon the State's witness, and the Respondent's lack of appearance at the Hearing the Respondent requested, his character and general fitness do not command the confidence of the public to 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 section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division deny a Loan Officer License to the Respondent.

Respectfully submitted,


Julie M. Lynch
Hearing Officer
July 11, 2004