

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS  
05 MAY 17 PM 12:43

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Warren A. Coman, II

Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0455-LOD

FINDINGS OF FACT

1. On or about June 14, 2004, Warren A. Coman, II ("Respondent" herein) submitted an application (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code (a copy of which is attached and incorporated as Exhibit A herein).
2. On or about November 17, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on March 23, 2005, at the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. At the Hearing, the Division was represented by Assistant Attorney General Martin Jean, Esq. Respondent appeared *pro se*.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 37)
5. As of the date of the Hearing, Respondent was employed by New Hope Financial Group.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a Loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences a conviction in 2002 of Unauthorized Use of Property, a theft-related crime which unfortunately reflects one of the very criminal offenses the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). Respondent was forthright in his response to question 5 of the Application in disclosing his criminal history, and providing further information concerning that matter and his life since the conviction. According to testimony at the Hearing, the criminal act forming the basis for the conviction was relatively isolated but part of a pattern of inappropriate behavior which included drug abuse and gun-related activities. (Tr. Pages 17 through 22, 34, 35) At first glance, Respondent's record reflects inappropriate activities including conviction of a serious crime which, upon review, would indicate that Respondent is the very kind of individual which the legislature intended to bar from the mortgage broker practice.

The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual, which have occurred since the facts that gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the

public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the criminal record of Respondent as described in the Notice and Application (Tr. Page 37), and the Respondent presented his own testimony as well as the president of his employer, together with certain unsubstantiated written testimonials, all in support of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and that Respondent's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly.

The verbal and written testimony presented by Respondent and others at the Hearing, together with materials submitted by Respondent in conjunction with the Application, evidence an individual who readily admits the indiscretions and actions of his past, and who has met the burden of proving, by a preponderance of the evidence, that he should be entrusted with the responsibilities of acting as a loan officer under Ohio law in the State of Ohio. The evidence presented by Respondent reflects an individual who has met the burden of overcoming his criminal history as provided by Ohio Revised Code Section 1322.041(A)(3), and whose character and general fitness will, and does now, command the confidence of the public and warrant the belief that the business will be operated honestly and fairly, consistent with Ohio Revised Code Section 1322.041(A)(5).

Subsequent to his criminal conviction, Respondent has maintained a steady work record, including work in the financial services industry; is active in his church; has taken responsibility for his son; is remorseful and forthcoming with respect to the inappropriate nature of his activities (Tr. Pages 23, 24, 25, 26, 27, 31, 39, 51, 53); and has generally exhibited the personal and professional qualifications which would appear to enable Respondent to overcome his criminal past. His present employer also testified as to Respondent's reputation and activities in the workplace, as well as Respondent's disclosure of his criminal record in the hiring process (Tr. Page 47, 48)

While troubling due to the fact that the conviction took place in 2002, the conviction does not appear to evidence a pattern of ongoing conduct, or a risk that Respondent is likely to continue such activities. Since the time of the criminal offense, the testimony and evidence indicates that Respondent has conducted his personal and professional life in an honest and truthful manner, with an apparently strong community and professional reputation and family attachments.

Respondent is open and forthright with respect to the mistakes of his past and his criminal conviction. It appears from the evidence and testimony presented that Respondent is a conscientious individual who takes his responsibilities and obligations seriously, is forthright and remorseful about the activities which gave rise to his criminal convictions, and will not likely revert to such activities again and disappoint his son, his business colleagues, members of his community, and others who have placed their confidence, faith, and trust in him and in his ability to overcome his past

RECOMMENDATIONS

For the reasons set forth herein, it is recommended that the referenced Application of the Respondent be approved.

Respectfully submitted,



Jeffery E. Smith, Hearing Examiner

10 May 05  
Date