

DIVISION OF FINANCIAL INSTITUTIONS
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**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Thomas F. Sands

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0200-LOD**

FINDINGS OF FACT

1. On or about May 3, 2002, Thomas F. Sands ("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 January 22, 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 18, 2004, at the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorney General Martine Jean, Esq.
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. Pages 10, 40)
5. As of the date of the Application, Respondent was employed by Macloud Financial, Inc.

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 1322.031, 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 convictions in 1994 of eight counts of Grand Theft and Forgery, which unfortunately reflect some of the very criminal offenses which the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). The acts related to Respondent's misuse and theft of client funds received in his capacity as legal counsel for the victims. 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. Respondent's record reflects conviction of serious crimes 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. Pages 10, 40), and the Respondent presented his own testimony as well as that of Dennis W. Jacob of Fifth Third Bank (and a former business colleague of Respondent) and Marlene Green (a business contact and also Respondent's mother-in-law), 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.

Respondent incorrectly states in correspondence to the Division (State's Exhibit 5A) that the Division must, "...by law, issue a loan officer license" to Respondent. Applicable law, as set forth in the referenced provisions of the Ohio Revised Code, clearly requires the Respondent in this instance to prove, by a preponderance of the evidence, that he meets the statutory criteria necessary to overcome the "automatic disqualifier" provisions set forth in Ohio Revised Code section 1322.041(A)(3), and reserves to the Superintendent appropriate discretion in his licensing decision.

The acts giving rise to Respondent's convictions are all the more disconcerting when viewed from the perspective that the acts occurred when Respondent was in a position of professional trust with clients, acting as their legal counsel and handling their funds. Those acts were inexcusable, and Respondent recognized his wrongdoing, served time in prison, and surrendered his license to practice law as a result of those acts.

However, 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, and has paid for, 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 convictions 10 years ago and release from incarceration, Respondent has maintained a steady work record, including work in the financial services industry, with access to cash and personal financial information (Tr. Pages 16, 18, 19, 51, 54, 56, 75); has taken responsibility for his children, including raising his teenage son (Tr. Pages 76, 77); is regarded as honest and trustworthy (Tr. Pages 57, 59, 60, 67, 70); is remorseful and forthcoming with respect to his criminal acts (Tr. Pages 52, 70, 71, 74, 75); and has generally exhibited the personal and professional qualifications which would appear to enable Respondent to acknowledge and overcome his criminal past. Since his release from incarceration, 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.

Respondent is open and forthright with respect to the mistakes of his past and his criminal convictions, and appears sincere when he states, "I'll never do anything to risk that again" (Tr. Page 34). It appears from the evidence and testimony presented that Respondent is a conscientious individual who takes his responsibilities and obligations seriously, is embarrassed and forthright about the activities which gave rise to his criminal convictions, and will not likely revert to such activities again and disappoint his children, 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, the referenced Application of the Respondent should be approved.

Respectfully submitted,



Jeffery E. Smith, Hearing Examiner



Date