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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0031-LOD
: :
DEAN A. CURRAN : JANE S. ARATA, HEARING
: OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued August 15, 2006

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, who was 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 July 12, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Dean A. Curran ("Respondent" or "Mr. Curran") to consider the allegations in the Division's Amended Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("Amended NOH").

The Division alleges that Respondent was convicted of improper discharge of firearm into habitat in 2002. The Division further alleges that he violated R.C. 1322.07(A), (B), and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserts 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 violated R.C. 1322.07(A), (B), and (C) by failing to disclose the convictions on his applications, 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).

Ted Klecker, an Assistant Attorney General with 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 A through G and Respondent's Exhibits 1 and 2 were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued its original Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH") to Respondent on March 23, 2006, and served it upon him by certified mail. (State's Exhibit A.)
2. The Division received Respondent's request for a hearing on the NOH within thirty days of the date the original NOH was sent to him by certified mail. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received that hearing request. The hearing was continued once and set for July 12, 2006. (State's Exhibits A, B, and C.)
3. The Division issued the Amended NOH to Respondent on April 18, 2006, and served it upon him by certified mail. (State's Exhibit D.)
4. The enclosure letter the Division sent to the Respondent with the Amended NOH notified him that the Division had already received his hearing request and provided him with the date, time, and location for the hearing in this matter. (State's Exhibits A, B, C, and D.)
5. The Respondent was notified of the date, time, and place for all scheduled hearing dates in this matter. (State's Exhibits B and D.)

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

6. 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).
7. The Division received Respondent's Loan Officer License Application ("Application") in March of 2005. (State's Exhibit E.)

8. Respondent answered "No" to Question 5 on the Application, which 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit E, emphasis and boldface type in original; Hearing Transcript ("TR") at 22-23.)

9. Respondent's signature in the Attestation part of the Application is notarized. Directly above that signature, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Application, State's Exhibit E.)
10. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
11. Respondent was convicted of improper discharge of firearm into habitat in 2002. He appeared in court with counsel and pleaded guilty to improper discharge of firearm into habitat. Another charge against him was dropped. (State's Exhibit G; TR at 23-28.)
12. Respondent testified the charges were filed after a friend discharged a firearm from Respondent's vehicle. They were involved in altercation with someone outside the vehicle and his friend asked him to drive around the block. After he did that, his friend fired at least three shots into the air. He believes that his friend did this to scare the people involved in the altercation. Respondent testified that he did not know his friend had the firearm in the vehicle before the incident occurred. (TR at 52-53.)
13. The police arrived on the scene a few minutes after the shots were fired. Respondent was held in an investigative holding cell for five days. (TR at 53.)

D. Respondent's Failure to Disclose Conviction on Application.

14. Respondent did not disclose his improper discharge of firearm into habitat conviction on the Application. (State's Exhibit E, TR at 16, 22-23.)
15. Respondent initially stated that he did not disclose the conviction because he did not realize that he was charged with improper discharge of firearm into habitat. Then, he stated that "the charge was actually an agreement with the courts as maybe a warning, didn't do any – did not get punished for the charge at all." He further explained that: "It was an ex-friend that discharged a firearm, not myself. I was driving the vehicle, did not know that he had a firearm on him at the moment. So I think that is the reason they let me go, so to speak; but it was nulled. I don't know what that means." He also mentioned, "Apparently I could have got this expunged before then and probably this would never have been brought up." (TR at 16-17.) His claim that he did not know he was charged is inconsistent with his claim that he could have had it expunged. Later in the hearing, he admitted that he agreed to the charge just to end it all and that his "mindset was I need to get this expunged as soon as possible." Respondent's testimony and the court documents he sent to the Division evidence that he was aware of the conviction in 2002. (State's Exhibit G; TR at 53-54.)
16. Respondent knew about his conviction at the time he filled out the Application, knew that it should be disclosed on that application, and failed to do so. His false and inaccurate response to Question 5 reflects negatively on his ability to be a loan officer.

E. Respondent's Reputation and Character.

17. Respondent has been working since he was fourteen years old and has a business degree. He has been a loan processor since 2005 without incident. Prior to that, he spent seven years working at Six Flags as a manager of retail games and handled several thousand dollars each day without incident. He testified that his ability to handle funds and his integrity have never been questioned. He also coaches children's flag football and basketball teams and volunteers for an organization that helps homeless veterans. (TR at 37-41.)
18. Respondent's wife of seven years also testified on his behalf. She has known Respondent for eight years and they have two children. She confirmed that he was not aware that his friend had a firearm before the shots were fired. She testified that Respondent is a good husband and is good with children. She has never worked with her husband. (TR at 57-62.)

19. Respondent submitted a notarized letter from Joseph Mioranza, his manager at FirstOhio Banc & Lending, Inc. for the past 18 months. Mr. Mioranza spoke favorably about Respondent's character and judgment in the workplace. Mr. Mioranza did not testify at the hearing and was not available for cross-examination regarding how well he knows the Respondent and the bases of his opinions. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibit 1 was considered but afforded less weight than it would have been if its author had testified and been available for cross-examination. (Respondent's Exhibit 1; TR at 42-43.)
20. Respondent also submitted a letter from Ryan Hyde, an account executive who has known him for ten years. Although Mr. Hyde's letter very positively describes Respondent's abilities and his character, it was not the subject of testimony by its author at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibit 2 was considered but afforded less weight than it would have been if its author had testified and been available for cross-examination. (Respondent's Exhibit 2; TR at 43-44.)
21. The evidence in the record does not establish that Respondent's 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 purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

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 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(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)(2) and (5).

3. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
4. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
5. Respondent's response to Question 5 on the Application indicating that he did not have any criminal convictions when in fact he had been convicted of improper discharge of firearm into habitat in 2002, was a substantial misrepresentation in that application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions when in fact he had been convicted of improper discharge of firearm into habitat in 2002, in violation of R.C. 1322.07(B).
6. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
7. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the Application that he did not have any criminal convictions when in fact he had been convicted of improper discharge of firearm into habitat in 2002.
8. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by R.C. 1322.041(A)(2).
9. Respondent's testimony evidences that he knew about his conviction at the time he filled out the Application, knew that it should be disclosed on that application, and failed to do so. His false and inaccurate response to Question 5 reflects negatively on his ability to be a loan officer.
10. For the reasons described above, the evidence in the record does not establish that Respondent's 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 purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

11. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does 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

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2) 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
August 15, 2006