

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0246-LOD
: :
JOSEPH SANFILIPPO : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 24, 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 May 4, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Joseph Sanfilippo ("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 attempted theft in 2002 and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. 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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application;
2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
3. 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).

Anthony Siciliano, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Kevin Osterkamp represented the Respondent at the hearing. At the hearing, State's Exhibits 1 through 10 and Respondent's Exhibits 1 through 9 were admitted into the record.

When the transcript was returned to the Hearing Officer, it did not contain all of the Respondent's Exhibits and had only copies of the ones it did contain. The record was reopened. Some original Respondent's Exhibits were located, returned to the Hearing Officer, and put back with the record. Counsel for the Division and the Respondent agreed that copies of the other exhibits could serve as the originals and those documents were admitted into the record. Documents verifying the identity of a telephonic witness were provided to the Hearing Officer and the Division's counsel. They were marked as Respondent's Exhibit 10 and admitted into the record without objection. The Hearing Officer appreciates the cooperation of counsel in this process.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 23, 2004. Respondent's hearing request was received by the Division on February 19, 2004. The Division's March 2, 2004 letter to Respondent set the hearing for March 4, 2004, and continued it indefinitely. The Division's April 1, 2004 letter to Respondent set the hearing for May 4, 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 Conviction for Attempted Theft.

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; Hearing Transcript at 32.) (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. On September 26, 2003, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on October 15, 2003. (State's Exhibit 1.)

4. Respondent answered "Yes" 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 1, emphasis and boldface type in original; TR at 32.)

5. Respondent's signature on the Application is notarized. Directly above the applicant signature line, 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." (State's Exhibit 1.)
6. Respondent's September 29, 2003 letter was attached to the Application. The letter included an explanation of the circumstances surrounding a driving under the influence conviction in July of 2001 and stated, in relevant part, that:

This was my first and also my last DUI. Plain and simple, this was a case of poor judgment on my behalf. I had met my wife just one week earlier and was too caught up in the moment of having a good time when this happened. This incident was the most embarrassing moment of my life. What I went through the next few months I wouldn't wish on my worst enemy.

(State's Exhibit 1.)

7. The letter also explained a bankruptcy he had filed pursuant to Chapter 7 on February 19, 1997. The Application, including the attached letter, did not mention Respondent's 2002 attempted theft conviction. (State's Exhibit 1; TR at 32-33.)
8. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
9. Respondent's background check revealed charges for burglary and theft in 2002. In response to the Division's inquiry, the Respondent submitted a certified copy of a Cuyahoga County Court of Common Pleas Journal Entry establishing Respondent's conviction for attempted theft in 2002. (State's Exhibits 2, 5 and 6.)

10. Respondent explained the attempted theft conviction in a letter he sent to the Division prior to the issuance of the NOH. The explanation in the letter was the same as he provided at the hearing. The letter, in relevant part, stated:

I will explain in this letter in exact detail as to what happened with regards to this burglary incident I was charged with back in September of 2001. In addition, I will provide you with the necessary documents to verify my story.

I have a 6-year-old son with a girl named Debra Savron. We dated for several years before we decided to move in together back in July of 2000. Her brother owned a house at 11671 Blossom Ave. in Parma Hts., Ohio.

Debra entered into a written agreement with her brother to purchase the house under a land contract deal. He received \$30,000.00 on behalf of Debra from her father. (A gift all the kids got for their first home).

When we moved in together I agreed to pay the monthly mortgage of \$845.00 per month. (Documentation attached) After about 10 months things didn't work out between Debra and I so I moved out. She and my son stayed in the house until September 19, 2001.

Every piece of furniture in the house was mine. I told her she could use everything until she moved back in with her parents. We both agreed on this with no incidents.

While we were living together, I purchased a washing machine and a refrigerator from B&B appliance. (Documents attached) When Debra moved out in September of 2001, I made arrangements with her to go to the house and remove my belongings.

I removed everything of mine with the exception of the refrigerator. This was to be left to offset 1 months worth of rent that was owed to David Savron. (Debra's brother)

Me, my son, and a friend of mine made the second and final trip to the house on September 19, 2001 to pick up the last of my things. One of the items was the washing machine that I bought.

Later that night, I get a call from David Savron saying that he found a buyer for the house and promised her the washing

machine. I argued with him that the washing machine was mine and wasn't part of the deal.

He then proceeded to call the Parma Hts. Police department and filed a burglary and theft charge against me. I was notified by the detective, met with him immediately, told my story and left.

He kind of laughed it off and said not to worry since it was a domestic incident and said they would contact me if they needed anything else. Concern wasn't there because I lived in the house and showed the officer that I bought the washer.

I never heard another word on this until I was pulled over on a traffic incident on 8-15-02 in Brecksville. The officer said I had a warrant outstanding for burglary. I was shocked to find this out. I was arrested, spent the night in jail and released the next day with no bail. (I was on my way home from picking up my wife's engagement ring from the Jewelry store when I was pulled over.)

Now remember, this is a year after the incident. The city of Parma Hts. sent a letter to my old address to appear in court on these charges and it was never forwarded to my new address in Broadview Hts.

Bottom line to this crazy mess is that instead of pleading not guilty, paying an attorney, going to court, and who knows what else, I was assured by the City prosecutor that this felony would be reduced to a misdemeanor. So I pled guilty to attempted theft and was ordered to pay Dave Savron \$500.00 for the washing machine that was mine to start with.

(State's Exhibit 6; TR at 36-52.)

11. The Respondent attached an invoice for the purchase of the washing machine in question to the letter he submitted. The machine was purchased in Ms. Savron's name to obtain her employee discount. One of Respondent's friend's paid for the washing machine in cash and it was to be for Respondent. (State's Exhibit 6; TR at 38-40.)
12. Respondent's testimony regarding the circumstances that led up to the attempted theft conviction was consistent with the letter he provided to the Division before the hearing.

13. At the hearing, he provided a letter from Debra Savron, his ex-girlfriend, confirming his version of the events. Ms. Savron's telephonic testimony verified that the information in her letter was true and accurate. (Respondent's Exhibit 4; TR at 43-44, 65-68.) Ms. Savron's letter, in relevant part, provided:

Joe, our son Anthony, and myself occupied a home in Parma Heights, Ohio from August of 2000 through July of 2001. My brother David owned the house and Joe was paying him rent of \$845.00 monthly.

When we moved in there was no washer, dryer or refrigerator in the home. Joe's friend Mark Fantozzi helped Joe out by purchasing a new washing machine and refrigerator in exchange for a bedroom set that Joe gave him.

Joe and I did not part on the best of terms. Furthermore, Joe and my brother were in disagreement as to how the final rent payment was to be paid. My brother believed that the washing machine and the refrigerator were to stay behind, while Joe felt that just the refrigerator was to stay.

As it turned out when Joe took the last load of furniture, he removed the washing machine and my brother was outraged. David had the house sold and promised the new owner that the appliance would stay behind. My brother filed a police report charging him with theft.

My brother had no intentions of pressing criminal charges and merely wanted to be paid for the washing machine. However, the case sat in Parma Heights for a year before it was somehow sent downtown.

David made an attempt to drop the charges when the case moved downtown. However, once the State of Ohio stepped in, there was nothing he could do.

(Respondent's Exhibit 4.)

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

14. The Respondent did not disclose the 2002 attempted theft conviction on his Application. (State's Exhibit 1; TR at 33-34.)
15. Respondent explained that he did not disclose the attempted theft conviction on his application because he did not view himself as being convicted of any criminal offense since he pled guilty to the offense. He felt that under the

circumstances the conviction was part of a "big masquerade" and "was just a ridiculous circumstance." (TR at 33-34.)

16. Regardless of Respondent's belief about whether it was warranted, it is clear that he understood that he had a criminal conviction for attempted theft.
17. Respondent's response to Question 5 indicating that he had a criminal conviction but only disclosing the driving under the influence conviction was false and misleading. He knew he had an attempted theft conviction and failed to disclose it. His letter referring to his driving under the influence conviction as the "most embarrassing moment of his life" was misleading as to his criminal background and falsely indicated that this was the only criminal conviction he had.
18. The Hearing Officer finds that the Respondent knew that he had an attempted theft conviction that should have been disclosed on the Application. His explanation for not doing so indicates that he simply did not want the Division to find out about this conviction.

E. Respondent's Reputation and Character.

19. The Respondent is currently employed by Nationwide Financial Services where he assists his wife who is a licensed loan officer. (TR at 18, 74-75.) Respondent has several years of work experience in the commercial printing and body shop industries. He has 19 years of experience as a licensed insurance salesperson. (TR at 19-20.) During much of the time that he was licensed as an insurance salesperson, he also had a Series 6 securities license that allowed him to sell annuities and mutual funds. (TR at 23-25 and 28.) As an insurance salesperson and a securities salesperson he handled premium payments and was never accused of mishandling funds. (TR at 25-27.)
20. Jeremy Sopko, the owner of Nationwide Financial Services testified about his experience with the Respondent in the mortgage broker industry. He has known the Respondent for two years. Respondent worked for a title company that worked with Mr. Sopko's mortgage brokerage firm. Mr. Sopko believes that Respondent has high integrity and is very good at problem solving. Respondent notifies people if there is a problem and gets it resolved immediately. Respondent also lets people know if he is not able to help them or not able to do something that would be cost effective. (TR at 74.) Respondent makes sure things are done right. (TR at 75-76.) Respondent also handles the medical insurance program for Nationwide Financial Services. This is a position of high trust involving the benefits for over 22 people. (TR at 77-78.) Mr. Sopko does not believe that Respondent is likely to engage in any dishonest, misleading or criminal activity. (TR at 79.)

21. Mark Fantozzi, who has known the Respondent for the past eighteen years, also testified as a character witness. Mr. Fantozzi is the owner of Camelot Foods, Inc. Respondent worked for Camelot Foods and opened up a new area of distribution while there. While Respondent was working for Camelot Foods, Mr. Fantozzi did not receive any complaints about him and Respondent's customers were always happy. In his opinion, Respondent is very professional, sensitive, honest and trustworthy. (TR at 58-62.)

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. That Section requires an attempted theft conviction to be disclosed on an application for a loan officer license
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:
 - (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
 - (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)(2), (3) and (5).

4. Respondent was convicted of attempted theft in 2002. Attempted theft is an offense included in the reference to "any offense involving theft" in R.C. 1322.031(A)(2).
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. 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.
7. Respondent's response to Question 5 of the Application indicating that he only had one driving under the influence conviction was a substantial misrepresentation of his criminal record on his 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 other criminal convictions, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his attempted theft conviction required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
10. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that he only had one criminal conviction, the 2001 driving under the influence conviction, on his loan officer license application.
11. 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 1322.041(A)(2).
12. Once the attempted theft conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the convictions show that {he} is honest, truthful,

and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).

13. Instead, the evidence established that he failed to disclose the very recent attempted theft conviction on his Application. Question 5 of the Application explicitly mandates disclosure of all criminal convictions except for certain traffic and parking offenses. Respondent's failure to disclose the conviction precludes him from establishing that he is honest, truthful, and of good reputation.
14. Despite favorable character testimony, the Respondent did not establish that it is unlikely that he will commit an offense similar to the attempted theft offense in the future. This burden of proof is hard to meet when, as in this situation, the crime is very recent. It is hard to predict the future and extremely difficult to prove that someone is unlikely to commit a similar crime in the future when the crime being considered occurred less than three years ago.
15. Respondent did not prove by a preponderance of the evidence that he is honest, truthful and of good reputation. He also failed to prove by a preponderance of the evidence that there is no basis in fact to believe that he will commit an offense similar to the attempted theft offense again. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
16. The recent conviction for attempted theft and Respondent's failure to disclose it on his Application, establish that his 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,

Jané Stempel Arata
Administrative Hearing Officer
June 24, 2004