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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0155-LOD
: :
TROY D. LEHMAN : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 29, 2006

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 May 23, 2006 at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Troy D. Lehman ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH").

The Division alleges that Respondent violated R.C. 1322.07(A), (B), and (C) because he did not properly complete his loan officer license application. For that reason, and because Respondent has a 2003 aggravated trespass conviction, the Division also alleges that his character and general fitness do not 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

Laura Meechan, 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. State's Exhibits A through E were admitted into the record during the hearing.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on February 16, 2006, and served it upon him by certified mail. (State's Exhibit B.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to him by certified mail. (State's Exhibits A and B.)
3. Based upon reasonable inferences made from documents in the record, the Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the Respondent's hearing request. The hearing was continued once and then set for May 23, 2006. The Respondent was notified of the date, time, and place for all scheduled hearing dates. (State's Exhibits A and B.)
4. Respondent received the NOH by certified mail and notice of the date, time, and location for each scheduled hearing date.

C. Respondent's Loan Officer Application.

5. Respondent is an Ohio resident who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit C.)
6. On July 6, 2004, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application sometime in July of 2004. (State's Exhibit C.)
7. 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.
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 or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

(Application, State's Exhibit C.)

9. Respondent's signature in the Attestation on 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 C.)
10. As part of the application process, the Division conducts a criminal background check of each applicant as required by R.C. 1322.031(B). The Respondent agreed to submit to a criminal background check as part of the application process and knew this would be done when he completed his application. (Application, State's Exhibit C; Hearing Transcript ("TR") at 28-29.)
11. Sometime after Respondent filed his Application, he received a letter from the Division requesting information on 2002 aggravated burglary charges. He replied to the Division and provided information on those charges. Those charges were dismissed in return for his guilty plea to a misdemeanor aggravated trespass charge based upon the same incident in Fairfield County Municipal Court. The 2003 aggravated trespass conviction was the result of an altercation between Respondent and a male friend of his then girlfriend in May of 2002. Respondent saw them together one evening and became very jealous. He followed them to his girlfriend's house. No one responded when he knocked on the door and rang the doorbell so he pushed his way through the door and started an altercation with the man inside. Now he is married to his then girlfriend and friends with the man involved in the incident. He completed his probation and attended counseling. Respondent has no other criminal convictions except for a speeding ticket. (State's Exhibits D and E; TR at 21-24, 35, 37.)
12. The Respondent testified that he did not fill out the application but reviewed it before he signed it. He thought the trespass conviction did not need to be disclosed because it was not a felony. He thought his response was accurate at that time. Respondent took full responsibility for the mistake and credibly testified that he did not intentionally mark the wrong answer to Question 5. (State's Exhibit C; Respondent's Exhibit D; TR1 at 20-25, 27-28)
13. Based upon his understanding of Question 5, Respondent answered it truthfully but incorrectly. He made a mistake but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on his Application.
14. Respondent's confusion in responding to Question 5 is understandable. The wording of that question is confusing.

15. Respondent was convicted of misdemeanor aggravated trespass in Ohio in 2003 but has not 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. Respondent provided detailed information on his conviction to the Division before it made any decision on Respondent's Application. (State's Exhibit B, D, E; TR at 39.)
16. The Division's current loan officer license application ("Current Application") only requires an Ohio resident applicant to disclose 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," "a defendant in a criminal action in the Federal court system," or "convicted of or pleaded guilty to any criminal offense in a state other than the state where you currently reside." The Current Application does not require an Ohio resident applicant to disclose an Ohio conviction for aggravated trespass. Ohio Loan Officer Application, Revised 12-27-2005, Questions 6, 7, and 8; <http://www.com.state.oh.us/dfi/>. The Hearing Officer takes administrative notice, the equivalent of judicial notice, of the Current Application on the website maintained by the Ohio Division of Financial Institutions and available to the public. (Copy of Relevant Portion of Current Application attached.)

D. Respondent's Reputation and Character.

17. The Respondent has worked in the mortgage loan industry for at least two years as a mortgage processor. As a processor, he is responsible for ordering loan payoffs, obtaining verification of loan information, and ordering title work. He is not aware of any complaints about his work. He spent 10 years as a postal carrier and was a nurse before that. He is a 4-H archery instructor for children between 6 and 16 years old. He testified that others consider him an honest person. (TR at 32-40.)
18. The Hearing Officer finds that the 2003 conviction at issue in this matter does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer. It is a conviction for an offense that is not one of the enumerated financial or drug related convictions listed in R.C. 1322.031(A)(2) based upon an isolated incident reflecting past poor judgment in the handling of a personal relationship. Whether it was disclosed in a response to Question 5 likewise does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer.
19. The Hearing Officer finds that Respondent's overall activities and employment record show that he is hardworking, honest, and of good reputation.

20. The Hearing Officer also finds that the evidence in the record only supports a finding 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.

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. In this case, no nexus exists between the 2003 conviction and qualifying for the license sought. That conviction itself does not prove or tend to prove anything pertaining to Respondent's fitness to be a loan officer. It is a misdemeanor conviction for an offense that is not one of the enumerated financial or drug related convictions listed in R.C. 1322.031(A)(2) based upon an isolated incident reflecting past poor judgment in the handling of a personal relationship. Therefore, the Hearing Officer concludes that the 2003 misdemeanor aggravated trespass conviction does not provide any legal basis for denying Respondent's Application.

4. This leaves the Division with claims based upon the Respondent's incorrect response to a question no longer used by the Division on its loan officer license application. Respondent would not have to disclose the conviction on the Current Application if he applied for a license today. The nondisclosure of a conviction no longer required to be disclosed on an application is not a legally sufficient basis for denying a loan officer license. Nondisclosure and incorrect application responses are part of the totality of the circumstances to be considered when determining whether a person should be licensed as a loan officer. Other factors, including a person's overall work history, character, reputation, trustworthiness, integrity, and ability to be a loan officer, must also be considered.
5. 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.
6. Question 5 on the Application requests information on "any criminal conviction" and seeks disclosure of criminal convictions, like the one at issue, not required to be disclosed on a loan officer license application by 1322.031(A)(2). The Division may consider convictions not enumerated in that section as a part of its determination of an applicant's "character and general fitness." R.C. 1322.041(A)(5). Extending that consideration to look at the nondisclosure of convictions not statutorily required to be disclosed on an application and no longer required to be disclosed by Ohio residents on the Current Application in this licensing process is problematic.
7. The fact that an Ohio resident applicant applying today would not have to disclose an Ohio aggravated trespass conviction evidences that failing to disclose such a conviction does not bear any significant relationship to being a loan officer.
8. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He answered truthfully based upon his understanding of the question. More importantly, the failure to disclose a conviction that the Current Application no longer requires an Ohio resident applicant to disclose is not a substantial misrepresentation for the purposes of this licensing process.

9. 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. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He answered truthfully based upon his understanding of the question. He made a mistake but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on the Application. Furthermore, the failure to disclose any conviction that the Current Application no longer requires an Ohio resident applicant to disclose is not material for the purposes of this licensing process.
10. 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 does not require the conviction at issue in this matter to be disclosed on an application for a loan officer license. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his Application.
11. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent made a mistake but he did not try to hide the conviction from the Division or make any statement that he thought or knew was false on his Application. He made a mistake when responding to a confusing question and did not disclose a misdemeanor Ohio conviction that the Current Application no longer requires an Ohio resident applicant to disclose. This alone does not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C. 1322.07(C).
12. There is no basis for establishing any violations of R.C. 1322.07(A), (B), or (C) by the Respondent.
13. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by 1322.041(A)(2).
14. The evidence in the record only supports a finding that the 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. Therefore, the record only supports a conclusion that Respondent meets that condition required for licensure by 1322.041(A)(5).

III. RECOMMENDATION

The evidence in the record only supports the conclusion that Respondent meets the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). The alleged failure to meet those requirements was the only basis for the proposed denial. Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
June 29, 2006