

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 03-LO-D-07-08
)	
WILLIAM M. BUETTNER)	<u>DIVISION ORDER</u>
1000 Hickory Street)	Denial of loan officer license application
Perrysburg, Ohio 43551)	&
)	Notice of Appellate Rights

Respondent, William M. Buettner, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 24, 2002. On April 30, 2003, the Division notified Buettner that it intended to deny his loan officer license application because: (1) In or around 1998 he was convicted of unauthorized use of property (motor vehicle); (2) he violated R.C. 1322.07(A) and (B) by failing to disclose his criminal conviction to the Division; and (3) because 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 R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Buettner requested an administrative hearing which was held on July 8, 2003. A Report and Recommendation was filed with the Division on August 1, 2003, recommending that the Division approve Buettner's loan officer license application and grant him a license. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached).

The Division disapproves paragraph H on page 3 of the Report and Recommendation.

Question 5 of the loan officer license application is a straightforward question. Furthermore, Respondent never testified that he was confused by the question. Instead, he testified that he thought the question only inquired about felonies. (Transcript pg. 42). On direct examination Buettner testified: "Well, I guess to simply explain it is I misunderstood the question. I know it is right there in black and white and it is simple..." (Transcript pgs 41-42). Prior to closing, the hearing examiner asked Buettner, "Why did you mark the application on

question number 5 regarding your criminal record no again?” Buettner responded by pausing to re-read the question and then answering; “I kind of did not look at the whole definition of the question or the whole questions in each part.” (Transcript pages 46-47).

The Division disapproves paragraph B on page 5 of the Report and Recommendation.

The cases cited by the Hearing Officer are not applicable to the relevant burdens in this case. The Division has the burden to prove that Buettner’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. (R.C. 1322.041(A)(5)). Buettner’s conviction for unauthorized use of property is classified as a theft offense under R.C. 2913.01(K)(1). Therefore his conviction is for an enumerated offense found in R.C. 1322.031(A)(2) which shifts the burden to him to prove by a preponderance of the evidence that his 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 he will commit such an offense again. (R.C. 1322.041(A)(3)).

The Division disapproves paragraph E on page 5 of the Report and Recommendation.

Respondent’s statement that he had not been convicted of any offenses is a false or misleading statement. The Division finds that Respondent’s failure to disclose his convictions is a substantial misrepresentation, as he in fact was convicted of a theft related offense. Additionally, the inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer. On a daily basis loan originators deal with consumers’ personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend and evaluate complicated mortgage documents is a vital part of the job. By not being able to understand a direct question on a licensing application, Respondent has demonstrated to the Division that he does not hold the requisite fitness needed to be a loan officer.

The Division disapproves paragraph G on page 6 of the Report and Recommendation.

The Hearing Officer incorrectly places the burden on the Respondent. As stated above, the burden is on the Division to demonstrate that Respondent’s character and 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. (R.C. 1322.041(A)(5)).

The Division disapproves paragraph H on page 6 of the Report and Recommendation.

Respondent was convicted of the enumerated offense of Unauthorized Use of Property only four years before he submitted his loan officer license application. (State's Exhibits 1 and 4). Respondent only offered hearsay testimony through letters into evidence to meet his burden. None of the authors were present at the hearing, thus the Division was unable to cross-examine them. Additionally, when asked about his criminal history on his loan officer license application, Respondent was not honest as he answered "No". (State's Exhibit 1). This recent act of dishonesty belies the conclusion that his activities since the conviction have been honest and truthful. Respondent has not met his burden.

The Division disapproves paragraph I on page 6 of the Report and Recommendation.

Not only does Buettner have a theft related criminal conviction, he did not disclose it on his loan officer license application. The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a question about one's criminal background accurately be taken seriously. Therefore, the Division finds that Respondent's 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.

The Division disapproves paragraph J and the Recommendation on page 7 of the Report and Recommendation.

Upon the Division's review of the evidence, the Division finds that 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 Ohio Mortgage Broker Act per R.C. 1322.041(A)(5). Additionally, he has not proven by a preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again. Thus, Respondent has not met the condition for licensure set forth in R.C. 1322.041(A)(2).

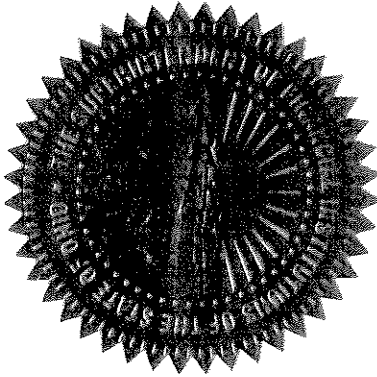
For the reasons stated above, the Division hereby denies the Loan Officer License Application of William M. Buettner.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 17th day of March 2006.



ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

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DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : Case No: 03-LO-D-07-08
: :
WILLIAM M. BUETTNER :
3607 Cecelia :
Toledo, Ohio 43608 :

REPORT AND RECOMMENDATION

Pursuant to R.C. Chapter 1322, the Ohio Department of Commerce, Division of Financial Institutions, proposed that William Buettner's application for a mortgage loan officer license be denied. Mr. Buettner is hereinafter referred to as the "Respondent" and the Ohio Department of Commerce, Division of Financial Institutions, is referred to as the "Division."

The Division provided Respondent with timely notice of the proposed action, the basis of the proposed action, and an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, R.C. Chapter 119. Respondent subsequently requested a hearing, which was held in Columbus, Ohio, on July 8, 2003. The Division was represented by Assistant Attorney General John A. Izzo, Esq., and Respondent was represented by Scott A. Kossoudji, Esq.

The hearing was conducted in accordance with the requirements of R.C. Chapter 119. This report is hereby filed with the Superintendent of Financial Institutions for distribution to the parties.

I. FINDINGS OF FACT

A. On April 24, 2002, Respondent applied for a mortgage loan officer license. As part of the application process, Respondent submitted a loan officer application to the Division. The application included the following question:

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.

In response to this question, which is designated as Question #5 on the application, Respondent denied that he had ever been convicted of or pleaded guilty to any criminal offense.

B. A subsequent background check revealed that Respondent had been convicted of unauthorized use of property and disorderly conduct.

C. Because Respondent failed to disclose these convictions on his application, the Division found that he violated R.C. 1322.07(A) and 1322.07(B). As a result, the Division determined that Respondent's character and general fitness did 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.

D. Prior to the close of its case-in-chief, the Division moved to withdraw, as a basis for the proposed action, the allegation that Respondent had been convicted of disorderly conduct. Respondent testified that he could not recall the circumstances that lead to the charge or whether he had actually been convicted of the offense. The alleged conviction occurred approximately twenty-three years ago in the Sylvania Municipal Court. The original case file at the Court has been destroyed so there is no official court record of what happened. No other evidence was introduced regarding the conviction. Accordingly, there is insufficient evidence in the record to support a finding that Respondent was convicted of disorderly conduct.

E. The evidence presented at the hearing did show that Respondent had been convicted in 1998 of unauthorized use of property, a misdemeanor of the fourth degree. The underlying offense involved Respondent's use of a rental car. Respondent claimed that there

was a misunderstanding regarding the return of the car or payment for the car. There was no evidence presented to rebut this claim.

F. Respondent did not disclose that he had been convicted of unauthorized use of property on his application.

G. At the hearing, Respondent denied that he intentionally falsified his application. Instead, Respondent claimed that he misunderstood Question #5. The thrust of Respondent's testimony is that he did not think the question applied to a misdemeanor such as unauthorized use of property.

H. As written on the application, Question #5 is at least arguably confusing and difficult to read. Thus, Respondent's claim has merit.

I. The credibility of a witness is ordinarily to be determined by the trier of fact. To determine the credibility of a witness, the trier of fact should use the tests of truthfulness used in daily life. 1 Ohio Jury Instructions (2003) 119, Section 5.30(2). These tests include the appearance of the witness; his manner of testifying; the reasonableness of the testimony; the opportunity the witness had to see, hear, and know the things concerning which he testified; the accuracy of his memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all the facts and circumstances surrounding the witnesses testimony. *Id.* at 119-120, Section 5.30(3). Based on the foregoing, this Hearing Examiner finds Respondent to be a credible witness.

J. Respondent is employed as a loan officer with Affiliated Mortgage and Financial Services ("Affiliated") in Maumee, Ohio. He has been employed with Affiliated for approximately five years.

K. Respondent submitted a letter from Bryan Davis, the owner of Affiliated. Davis wrote that Respondent is a trusted employee. Respondent also introduced a letter from J. Allen Seelenbinder of Mortgage Quest, Inc., and Douglas A. Kiser of Kiser Appraisers. Respondent has worked with Seelenbinder and Kiser over the past four or five years. Both individuals indicated that Respondent is an ethical and capable loan officer.

L. Although these letters technically constitute hearsay, they do corroborate Respondent's claim that he is an employee in good standing with Affiliated as well as an honest and ethical loan officer.

II. CONCLUSIONS OF LAW

A. R.C. 1322.041(A) provides in pertinent part:

Upon conclusion of the investigation required under division (B) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(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 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.

B. Respondent has the burden to show that he is entitled to the license. See *St. Augustine Catholic Church v. Atty. Gen.* (1981), 67 Ohio St.2d 133, 138. Because this action is a civil proceeding, Respondent must demonstrate by a preponderance of the evidence that he is entitled to the license. See, e.g., *Sanders v. Fleckner* (App. 1951), 59 Ohio Law Abs. 135, 98 N.E.2d 60, 61-62.

C. A preponderance of the evidence is the greater weight of the evidence; that is, evidence that the trier of fact believes because it outweighs or overbalances the evidence opposed to it. Phrased another way, a preponderance of the evidence means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may or may not be identical with quantity or the greater number of witnesses. 1 Ohio Jury Instructions (2003) 112-113, Section 3.50(1).

D. R.C. 1322.07(A) prohibits an applicant for a loan officer license from “obtaining a license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or [from] making any substantial misrepresentation in any *** license application.” Additionally, R.C. 1322.07(B), prohibits an applicant for a loan officer license from “[m]ak[ing] false or misleading statements of a material fact [or] omissions of material fact ***.”

E. Although Respondent did not disclose that he had been convicted of unauthorized use of property, the evidence introduced at the hearing demonstrated, by a preponderance of the evidence, that Respondent did not intend to mislead or conceal his conviction from the Division. Instead, Respondent demonstrated that he misunderstood the question on the application.

F. The offenses described in R.C. 1322.031(A) include any offenses involving theft. Respondent was convicted of unauthorized use of property, a violation of R.C. 2913.04. A

violation of R.C. 2913.04 is classified as a theft offense under Ohio law. See 2913.01(K)(1). Accordingly, Respondent has the burden of demonstrating by a preponderance of the evidence that his activities and employment record since this conviction show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again. R.C. 1322.041(A)(3).

G. In addition, Respondent must demonstrate that his 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 the Ohio Mortgage Broker Act. R.C. 1322.041(A)(5).

H. At the hearing, Respondent demonstrated by a preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again. Since the conviction, Respondent has been employed as a loan officer with Affiliated. The evidence introduced at the hearing indicates that he is a trusted, honest and ethical loan officer. There was no evidence introduced to the contrary. Thus, Respondent has met his burden of demonstrating by a preponderance of the evidence that he is honest, truthful and of good reputation. Additionally, there is no basis in fact for believing that Respondent will commit such an offense again.

I. For these same reasons, Respondent also established by a preponderance of the evidence that his 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 the Ohio Mortgage Broker Act.

J. Accordingly, the record of the hearing held on July 8, 2003 does not support the denial of Respondent's license.

III. RECOMMENDATION

Respondent's application for a mortgage loan officer license should be granted.

Respectfully submitted,

Robert J. Cochran
Hearing Examiner

8/1/03
Date