

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

Jerome E. Tuff

Case No. 04-0311-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued July 19, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 8:30 A.M. on May 25, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Jerome E. Tuff (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1995, Respondent was convicted of Soliciting Prostitution, a misdemeanor of the first degree, and in or around 1999, in the U.S. District Court, Southern District of Ohio, was convicted of Issuing Postal Money Orders Without Paying or Receiving Payment, a felony and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Dan Jones. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 16 were admitted into the record. Respondent's Exhibit A was admitted into the record, over the Division's objection on hearsay grounds, subject to the limited weight afforded the documents, as discussed in the transcript (herein after "Tr.") and below. Respondent brought three witnesses to testify as to Respondent's character and honesty.

B. JURISDICTION

The Division issued the NOH against Respondent on February 10, 2004. The Respondent requested a hearing, which was received by the Division on February 23, 2004. On April 8, 2004, the Division scheduled the hearing for March 8, 2004. The Division, upon its own motion continued the hearing to May 25, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Ex. 13).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a loan officer (Tr. p. 6).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about April 8, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Ex. 1).
5. Respondent filled out and signed the Application on or about, March 20, 2002. (Ex. 1).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you . . . ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, . . . or any criminal offense involving money . . ." (Ex. 1).
7. In 1995, seven years prior to the submission of the Application Respondent was charged with and convicted of Soliciting Prostitution, A Misdemeanor of the First Degree. (Tr. p. 9; Ex. 2).
8. In 1999, three years prior to the submission of the Application Respondent was charged with Issuing Postal Money Orders Without Paying Or Receiving Payment, a Felony. (Tr. pp.10, 17 - 28; Ex. 9).

9. Respondent's Exhibit A was a statement of what happened to Respondent written by Respondent. (Tr. p 15; Ex. A).
10. Respondent did bring three witnesses to testify to his general character and honesty.

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant 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.

3. Ohio Revised Section 1322.041 provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

(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.

4. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial

misrepresentation in any registration or license application;

(B) Make any false or misleading statements of a material fact or any omission or statements required by state law, or false promises regarding a material fact through advertising or other means, or engage in a continued course of misrepresentations;

5. Because the Respondent answered "no" to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
6. In providing character references Respondent submitted a letter that he wrote about his own situation. (Tr. p.15; Ex. A).
7. Respondent also rendered testimony on his behalf by three individuals who work with him in various capacities in the loan mortgage industry.

DISCUSSION

1. The Respondent stated that he is currently employed as a mortgage loan officer. (Tr. p.27; Ex. 1).
2. The Respondent testified that in 1995 he was found guilty of Soliciting Prostitution and was fined \$200.00. (Tr. p. 22; Ex.'s 2, 5).
3. The Respondent testified that he "blocked out his past" when answering Question 5. (Tr. p. 20; Ex.1).
4. Respondent stated in his letter that was submitted as Exhibit A that "The information requested was brought to you in person by me in a timely fashion, so I did not intentionally try to hide this information from you." (Ex. A).
5. Respondent had Dennis Bourne testify on his behalf. Mr. Bourne testified that he is a life long friend of Respondent's, and that he brought Respondent into the Mortgage business. (Tr. p. 31).
6. Mr. Bourne further testified that integrity is important to him and his business. (Tr. p. 34).

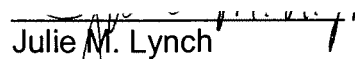
7. Mr. Bourne testified that he was only vaguely familiar with Respondent's criminal past. (Tr. p. 33).
8. Mr. Bourne further testified that he has never had any complaints, nor has there ever been a question from a lender, title company, or customer as to Respondent's character or honesty. (Tr. p. 37).
9. Mr. Bourne stated that his company does a billion dollars a month and that Respondent is responsible for about a quarter of a million of it. (Tr. p. 40).
10. Respondent next called Elaine Farrington, a real estate appraiser to testify to his character and honesty. (Tr. p. 43).
11. Ms. Farrington testified that she has found the Respondent to be ethical and a "generally good guy". (Tr. p. 45).
12. Ms. Farrington further testified that Respondent has never asked her or pressured her to do anything unethical and she has worked with him for the past four or five years. (Tr. p. 45).
13. Ms. Farrington stated she did not know of Respondent's criminal background. (Tr. p. 46).
14. Ms. Farrington testified that to her knowledge Respondent has always brought her checks, and she has never had any complaints from any clients regarding Respondent. (Tr. p. 47).
15. Respondent lastly had Vicki Cumberland testify on his behalf. (Tr. p. 48).
16. Ms. Cumberland testified that she trained Respondent when he was new to the mortgage industry in 1999. (Tr. p. 49).
17. Ms. Cumberland stated that Respondent's biggest asset is that he is trustworthy and loyal. (Tr. pp. 49 - 50).
18. Ms. Cumberland stated in her testimony that she was not aware at the time she hired Respondent of his criminal record nor did her company do background checks. (Tr. pp. 51 - 52).
19. Ms. Cumberland testified that on occasion Respondent would have to accept money from clients and that she always received all the money from Respondent. (Tr. pp. 53 - 54).
20. Ms. Cumberland testified she never had any complaints from customers or individuals in the mortgage industry regarding the Respondent. (Tr. p. 54).

21. Based upon Respondent's testimony, witnesses who testified at hearing, his character and general fitness do command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,


Julie M. Lynch
Hearing Officer
July 19, 2004