

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

In re: Craig J. Cusick

: Case No. 04-0180-COD

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DEPT OF COMMERCE
DIVISION OF FINANCIAL
INSTITUTIONS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Craig J. Cusick not be granted. The Division conducted an investigation and found:

- a. In or around 2002, Mr. Cusick was convicted of underage possession of beer, receiving stolen property and possession of drug paraphernalia in the Shaker Heights Municipal Court, Cuyahoga County, Ohio.
- b. On or around April 8, 2003, in a sworn statement, Mr. Cusick provided information on a licensing application that he stated was truthful, knowing that the information was false.
- c. On or around April 18, 2003, Mr. Cusick provided untruthful information to the Division.

2. As a result, the Division determined:

- a. that Mr. Cusick has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3);
- b. that Mr. Cusick's character and general fitness do not 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);
- c. Mr. Cusick violated Revised Code Section 1322.07(A) which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Mr. Cusick violated Revised Code Section 1322.07(B) which prohibits a loan officer applicant from "mak[ing] false or misleading statements of a material fact, [or] omissions of statement required by state law"; and

- e. Mr. Cusick violated Revised Code Section 1322.07(c) which prohibits a loan officer from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings".

3. Mr. Cusick's address for service is 2359 Antique Drive, Apt. 2D, Columbus, Ohio 43235. He is hereinafter referred to as the "Respondent". The Respondent is employed by Jericho Mortgage (Exhibit 7).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 4, 2004 of a *Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing* together with a covering letter (Exhibit 7). The Division also mailed to the Respondent a document titled *Loan Officer License Application* (Exhibit 7).

5. On January 27, 2004, the Respondent wrote to the Division requesting a hearing (Exhibit 8). The Respondent submitted a Hearing Request Form (Exhibit 9).

6. On November 24, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing, scheduling a hearing for February 10, 2004 at 10:00 a.m.(Exhibit 10) The hearing was simultaneously continued until February 27, 2004 at 3:00 p.m. in Room 1919 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio 43215 (*Id*).

7. The hearing was held beginning at 3:30 p.m. on February 27, 2004 and was attended by: David P. Jones, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; and the Respondent. Also attending was Mark Rhea, Staff Attorney for the Division.

FINDINGS OF FACT

1. On April 8, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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?

Yes ☐ No ☐

If the answer is yes, furnish details.

3. In response to Question 5, the Respondent answered "No". (*Id*).

4. The Respondent's criminal background check revealed January, 2002 convictions in the Shaker Heights Municipal Court, Cuyahoga County, Ohio for underage purchase of beer, receiving stolen property and possession of drug paraphernalia (Exhibit 2).

5. Following submission of the Application, the Division contacted the Respondent by letter seeking an explanation about the discrepancy between the Respondent's answers to Question 5 and his background check (Exhibit 3).

6. In response to that letter, the Respondent submitted copies of the journal entries from the Shaker Heights Municipal Court (Exhibit 4).

7. The Respondent also submitted a copy of a *Judgment Order of Expungement of Record of Arrest and Conviction* issued by the Shaker Heights Municipal Court on August 12, 2003 (Exhibit 5).

CONCLUSIONS OF LAW

1. 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.

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

(3) The applicant has not been convicted or plead 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 offense, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 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 misrepresentations in any registration or license application;
- (B) Make false or misleading statements of a material fact, omissions of 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;
- (C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

4. Because the Respondent has been convicted of the misdemeanor offense of receiving stolen property, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that there is no basis in fact for believing that he will commit another 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. The failure to disclose the criminal conviction also caused the burden of proof to shift 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 Ohio Mortgage Broker Act.

DISCUSSION

1. At the time of the submission of the Respondent's Application, on April 8, 2003, the Respondent stood convicted in the Shaker Heights Municipal Court of the criminal offenses of underage purchase of beer, receiving stolen property and drug paraphernalia.

2. Subsequent to the submission of the Application, the Respondent received from the Shaker Heights Municipal Court an Order of Expungement (Exhibit 5). The Order of Expungement was dated August 12, 2003, approximately 4 months after the submission of the Application. In the Application, the Respondent answered no to the question about whether he had criminal convictions. At that time, prior to the Entry of

the Expungement Order, the Respondent's record did indeed show 3 misdemeanor criminal convictions.

3. The criminal convictions arose from an incident in March, 2001 while the Respondent was a college student at John Carroll University. (Tr.18, *et seq.*) At the time, the Respondent and 4 roommates were renting a house near John Carroll University. (Tr. 20). All 4 were hosting a party. (Tr. 18). The police were summoned to the house. (Tr. 21). The police found a traffic sign and a wooden saw horse and for these, the Respondent was charged with receiving stolen property. (Tr. 21). The Respondent claims that he had no involvement with the drug paraphernalia. The drug paraphernalia was found upstairs in one of the other roommate's rooms. (Tr. 22). The Respondent's room was in the basement of the house. (Tr. 28).

4. The Respondent submitted a copy of the lengthy police report filed by the arresting officers (Respondent's Exhibit A). That police report goes into considerable detail about the nature of the party that night and the arrests of all of the roommates and party-goers. The police found revelers in the back yard, in the drive-way, upstairs, downstairs and virtually everywhere else in the rented house. They also stated how they found an orange barricade and a 25 mph speed limit sign belonging to the City of University Heights. In the family room on the first floor, the police officers found three large water pipes which "appeared to have been used at some point for smoking Marijuana" (Respondent's Exhibit A). It seems that all of the party-goers were arrested either for underage consumption of alcohol or the offenses with which the Respondent was charged. There appear to have been no fewer than 16 separate arrests that evening arising from the party (Respondent's Exhibit A).

5. At the moment of his arrest, the Respondent was actually asleep in his basement room. (Tr. 18) The Respondent denies that he had any involvement in the drug paraphernalia matter or the purchase of beer for underage party-goers. (Tr. 22)

6. The Respondent checked no in response to the question on the Application about his criminal convictions. The Respondent, at the hearing in this matter, acknowledged that at the time of the making of that statement it was inaccurate. (Tr. 25) The Respondent thought his conviction was "automatically expunged" and that is why he checked no. (Tr. 25)

7. Since the arrests in this matter, the Respondent has graduated from John Carroll University and has moved to Columbus to start his career. (Tr. 27) He has had no further involvement with the criminal justice system other than being the victim himself of a crime. (Tr. 27) At the time of the arrest in this matter, the Respondent was 22 years of age. At the time of the hearing, he was 25. The Respondent has a degree in Communications from John Carroll University. He was, while in high school, involved with the DARE drug prevention program. (Tr. 35)

8. In this matter, the Respondent must establish that he is honest, truthful and of good reputation and that there is no basis to believe that he will commit such an offense again. Likewise, the Respondent must establish that his character and general fitness 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.

9. In connection with the requirements of Ohio Revised Code, Section 1322.031(A)(2), the Respondent, at the time of the submission of the Application, had been convicted of a "disabling offense"; namely receiving stolen property. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis and fact to believe that he/she will commit such an offense again as set forth in the applicable statutes.

10. In this case, the offenses for which the Respondent stood convicted at the time of his application can easily be classified as youthful exuberance. In fact, there may be significant doubt in hindsight whether the Respondent should have been subject to conviction on all such charges. Nevertheless, Shaker Heights Municipal Court has determined that the convictions should be expunged and has issued an order accordingly. It would be against the manifest interests of justice to fail to give effect to the Shaker Heights Municipal Court Expungement Order in this instance.

11. Admittedly, the Expungement Order was issued after the date of the Application, but considering the misdemeanor nature of the offenses, the youth of the Respondent at the time, and the fact that all of this arose from a single episode involving a party, and the favorable impression made by the Respondent on the Hearing Officer, the Hearing Officer believes that the Respondent has met his burdens to show that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such offenses again. Likewise, the Hearing Officer finds that the Respondent has met the burden to establish that his character and general fitness 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.

12. Ordinarily, the Hearing Officer is greatly troubled by the failure of any applicant to answer Question 5 correctly. In this single, isolated instance, the Hearing Officer is convinced that the Respondent should be given the benefit of the Expungement Order as issued by the Shaker Heights Municipal Court even though the Expungement Order was issued after the date of the Application. The Respondent is admonished to remember that the Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to all questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market.

13. In this instance, the Hearing Officer concludes that the Respondent has met his burdens of proof in this matter.

RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant the Respondent a Loan Officer License.

Respectfully submitted,



Kenneth R. Cookson
Hearing Officer
April 2, 2004

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