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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0024-LOD
: :
BRANDY CARROLL : JANE S. ARATA, HEARING OFFICER
: :

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued August 31, 2006

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata an attorney licensed to practice law in Ohio who was 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 July 17, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Brandy Carroll ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Renewal Application and Notice of Opportunity for a Hearing ("NOH"). The NOH alleges that the Division intends to deny Respondent's Loan Officer License Renewal Application ("Renewal Application") pursuant to R.C. 1322.10(A)(1)(a) and 1322.041(B)(3) because she pleaded guilty to making a false statement in 2005.

Timothy Loughry, an Assistant Attorney General for the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. John Neal represented the Respondent at the hearing. At the hearing, State's Exhibits 1, 2, 3, 4, and 5, and Respondent's Exhibits A, B, C, D, and E were admitted into the record. Exhibit E was a copy of an original affidavit. The record was left open and the original affidavit was added to that exhibit without any objection from the Division. Exhibit E now contains the copy and the original affidavit.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on January 24, 2006. Respondent's hearing request was received by the Division on February 17, 2006. The Division scheduled the hearing for February 28, 2006, and continued it until May 16, 2006, on its own motion. The Respondent's unopposed request to continue the May 16, 2006 hearing was granted. The hearing continued to June 20, 2006, and then to July 17, 2006, because Respondent's counsel had scheduling conflicts. The Respondent received the NOH by certified mail and notification of the date, time, and location for each scheduled hearing date. (State's Exhibit 1.)

C. Respondent's Renewal Application.

1. Respondent is an Ohio mortgage loan officer licensed by the Division. The Division received her Renewal Application shortly after she signed it on April 1, 2005. (State's Exhibit 2.)
2. Respondent pleaded guilty to making a false statement, a felony, in the United States District Court for the Northern District of Ohio, Western Division, in March of 2005. Plea Agreement in U.S. v. Brandy Carroll, Case No. 3:05CR709 (N.D. Ohio), State's Exhibit 5 and Respondent's Exhibit A; TR at 32. Based upon this guilty plea, the Division sought to deny Respondent's Renewal Application. (State's Exhibits 1 and 2.)
3. The Plea Agreement, in relevant part, states that:
 1. Defendant [Brandy Carroll] agrees to plead guilty to the Information in this case, because in fact she is guilty as charged in the Information.

5. The parties agree to recommend that the Court impose a sentence within the range determined pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below based upon readily provable facts. The government will not request a sentence higher than the advisory Sentencing Guidelines range and the defendant will not request a sentence lower than the advisory Sentencing Guidelines.

- b. Brandy Carroll was a loan officer at Firelands Mortgage, Inc.;

c. While a loan officer from approximately July to August, 2000, she handled the mortgage application for James and Robin Witter, who were seeking a Single Family Housing Loan Guarantee, pursuant to the United States Department of Agriculture, Rural Development, Rural Housing Service;

d. In order to qualify the Witters for the guarantee based upon their income, Brandy Carroll knowingly and falsely stated on the loan application that the Witters had three (3) children when in fact they had two (2) children, and that the total number of members in the household was five (5), when in fact it was four (4). This was a material misrepresentation.

(State's Exhibit 5 and Respondent's Exhibit A.)

4. Respondent worked on the Witters' loan file during the summer of 2000 while she was a loan officer at Firelands Mortgage, Inc. ("Firelands"). Her boss at that time, Roberta Littellmann, and the lender's representative involved told her to put an extra dependent on the Witters' mortgage loan application. Respondent knew that the information she put on the Witters' application was inaccurate. This offense did not result in any loss to the Witters' or the lender. Respondent cooperated with federal agents investigating Firelands' owner Roberta Littellmann and testified against her in federal court. (State's Exhibits 3, 4, and 5; Respondent's Exhibits A, B, C, and D; TR at 32-40, 43, 48, 56-60, 65-66.)
5. On April 10, 2006, Respondent was sentenced to two years probation and ordered to pay a \$100 special assessment based upon her 2005 guilty plea to making a false statement. (Respondent's Exhibit C.)

D. Respondent's Reputation and Character.

6. Respondent became a mortgage loan officer in 2000 when she was 22 years old. Before that, she was a waitress and worked in a factory. Respondent started as a loan officer at Firelands where she worked for less than one year. She had no experience in the mortgage industry when she started working as a loan officer at Firelands. Firelands' owner Roberta Littellmann hired her and was responsible for training her as a loan officer. Due to concerns about how Firelands was being operated, Respondent left there at the end of 2000. At that time, she brought her concerns to the Division. (TR at 30-32, 34, 36-38, 54-55.)
7. Respondent also worked as a loan officer with another mortgage broker before Ohio's loan officer licensing requirements went into effect in 2002. She then obtained her Ohio loan officer license with Elite Home Mortgage. (State's Exhibit 2; TR at 30-32.)

8. Several character witnesses who know Respondent professionally testified at the hearing. One individual submitted an affidavit describing her experiences with Respondent in the mortgage lending industry. All are favorably impressed with Respondent's character and abilities in the mortgage lending industry. They described Respondent as honest, direct, diligent, trustworthy, knowledgeable, and someone who cares a great deal about her customers. Despite their favorable testimony, most of them were not fully aware of the nature of Respondent's criminal conviction. It was clear that Respondent had disclosed some information about the situation to all of them. While they were generally aware of the investigation, the charges, and/or the situation at Firelands, the testimony did not establish that they were aware of the fact that Respondent had a 2005 federal felony conviction for making a false statement on a mortgage loan application. Despite this, Respondent's efforts to disclose information to those she deals with in the mortgage industry reflect positively on Respondent's honesty in her business dealings. (TR at 68-78, 80-85, 87-95; Respondent's Exhibit E.)
9. The affidavit submitted was given less weight than it might have been given if the author had testified regarding the bases for her opinions as well as been available for cross-examination. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibit E was reviewed and given some weight but not the weight it might have been given if the author had testified at the hearing.
10. Two witnesses familiar with Respondent's cooperation in the federal investigation testified about her activities in that arena. Her cooperation with law enforcement and assistance in the prosecution of Ms. Littellmann reflect favorably on her character. (TR at 98-105, 108-112; Respondent's Exhibits B and D.)
11. Although six years have passed since the events underlying Respondent's conviction occurred, she will be on federal probation until April of 2008. (Respondent's Exhibit C.)
12. The evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5) and 1322.041(B)(3).

III. 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. Respondent's Renewal Application.

1. The Division is the state agency responsible for the licensing and regulation of mortgage brokers and loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.041(B)(3) provides that a loan officer license may be renewed if the Superintendent of Financial Institutions finds that certain conditions are met, including:

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)(5).

3. Respondent pleaded guilty to making a false statement, a felony, in the United States District Court for the Northern District of Ohio, Western Division, in March of 2005, pursuant to a Plea Agreement that contains the following stipulations:
 - c. While a loan officer from approximately July to August, 2000, [Brandy Carroll] handled the mortgage application for James and Robin Witter, who were seeking a Single Family Housing Loan Guarantee, pursuant to the United States Department of Agriculture, Rural Development, Rural Housing Service;
 - d. In order to qualify the Witters for the guarantee based upon their income, Brandy Carroll knowingly and falsely stated on the loan application that the Witters had three (3) children when in fact they had two (2) children, and that the total number of members in the household was five (5), when in fact it was four (4). This was a material misrepresentation.

(State's Exhibit 5 and Respondent's Exhibit A.)

4. The Plea Agreement evidences a guilty plea to the criminal offense of making a false statement to a federal agency based upon Respondent's knowingly providing false information on a loan application while operating as a loan officer in the mortgage lending industry. This necessarily raises serious concerns about her fitness to be a mortgage loan officer.
5. The evidence of Respondent's good character was taken into consideration. It was outweighed by the serious concerns raised by her guilty plea to a criminal offense of making a false statement to a federal agency and the underlying events. The ability to handle mortgage loans with integrity and in compliance with the law is highly relevant to one's ability to be a mortgage loan officer.
6. While Respondent's cooperation with law enforcement and assistance in the prosecution of Ms. Littellmann reflect favorably on her character, they do not outweigh the serious concerns raised by her recent guilty plea to a criminal offense involving false statements on a loan application and the underlying events. Additionally, Respondent will be on federal probation until April of 2008.
7. The evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5) and 1322.041(B)(3) for license renewal.
8. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by not renewing a mortgage loan officer license if the Division can not find that a licensee's character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5) and 1322.041(B)(3). R.C. 1322.10(A)(1)(a). Mortgage loan officers have access to confidential personal and financial information and play a critical role in the financing process for a home, the most valuable asset owned by most individuals. It is extremely important to protect the integrity of the loan process and proceed with caution when concerns regarding a licensee exist.

III. RECOMMENDATION

The Respondent has not established the licensing renewal prerequisites set forth in R.C. 1322.041(B)(3) as it incorporates R.C. 1322.041(A)(5). Therefore, I respectfully recommend that Respondent's loan officer license renewal application be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
August 31, 2006