

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. M2006-9993024
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Wayne A. Hinchman, Jr. : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
December 29, 2006

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 3:15 p.m. on November 20, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Wayne A. Hinchman, Jr. (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of unauthorized use of property in 2006. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would commit such an offense again as required by R.C. 1322.041 (A) (3);
2. Respondent's conviction shows that 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A) (5);

Laura A. Meechan, Esq., Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at

the hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits A through G and Respondent's Exhibits 1 and 2 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on October 17, 2006 by certified mail, return receipt requested. (Exhibit E.) The Division received Respondent's hearing request on October 25, 2006. (Exhibit F.) The Division scheduled the hearing for November 2, 2006 and, on its own motion, rescheduled the hearing for November 20, 2006. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit G.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on August 11, 2006. (Exhibit A.)
2. Question 6 of that application asked the following question:
 6. Have you been arrested for, convicted of or pleaded guilty to any criminal offense involving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking or any criminal offense involving money or securities?
3. In response to Question 6, the Respondent answered "Yes" (Exhibit A; TR at 19.) The Respondent made a statement in his application in which he explained that the charge arose out of a verbal confrontation at the Bureau of Motor vehicles.
4. By letter dated August 29, 2006, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing the plea and the court's findings with respect to the charge of theft. (Exhibit B.)
5. The Respondent submitted two certified Judgment Entries from the Hamilton Municipal Court. The Entry for case number 06-CRB-00736-A shows that on February 8, 2006 the Court found the Respondent guilty of unauthorized use of property in violation of R.C. 2913.04, a fourth degree misdemeanor. The Court imposed fines and costs totaling \$135.00. The Court suspended thirty days of incarceration and placed Respondent on two years community control. (Exhibit D.) The Court did not attach terms or reporting requirements to the community control. (TR at 25.) The Entry for case number 06-CRB-00736-B shows that on February 8, 2006 the Court nolledd a charge of criminal damaging, a violation of the City of Hamilton ordinance section 541.03, a second degree misdemeanor.
6. The Respondent submitted a written explanation of the facts and circumstances which gave rise to the charges. It states that the incident occurred when he went to an office of the Bureau of Motor Vehicles to get a refund of a fee that he had paid for personalized vehicle license plates.

When the clerk told him that she could not refund the full fee, Respondent removed a ball point pen from a chain on the counter and took it with him when he left the office. The Respondent hoped that his action would encourage the clerk to treat others more fairly. (Exhibit C.) Instead, she called the police who arrested and charged Respondent with theft, a first degree misdemeanor, and criminal damaging, a second degree misdemeanor. (Exhibit D.)

7. At the hearing, Respondent elaborated that he had ordered personalized license plates from the Bureau of Motor Vehicles. When these plates were not available, he went to the Hamilton West License Bureau to get a refund of the fee that he had paid for the plates. The clerk at that office refunded all but four dollars of the fee. She refused to explain why she would not refund the full amount of the fee. (TR at 21 - 22.) Instead, she gave Respondent a telephone number to call in Columbus, Ohio. (Respondent subsequently discovered that it was not the correct number.) (TR at 43.) He was holding a BiC-type pen that was attached with tape to a chain attached to the counter. As he left, the pen came loose from the chain and he took it with him. (TR at 22.)
8. One witness appeared at the hearing on Respondent's behalf. Mr. James E. Wenzel is a sales manager for Midwest Financial & Mortgage Services, Inc. Mr. Wenzel testified that he has known Respondent for two months. He supervises Respondent's work as a telemarketer for the mortgage company. In this capacity he has the opportunity to observe Respondent every day. He testified that Respondent is a fine young man who has tremendous potential to be a successful loan officer. He is sincere and communicates well with customers who seem to respond to him. (TR at 33 - 36.)
9. Respondent submitted a letter from Ms. Jessica L. LaGory an employee of the Hamilton West License Bureau who was present when Respondent "took" the pen. The letter confirms Respondent's testimony that he was to receive a full refund and that the bureau attendant failed to explain why the full fee was not refunded. (Exhibit 1.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Respondent presented a letter from an employee of the Hamilton West License Bureau explaining some of the circumstances that occurred at the office when Respondent took the pen. The Attorney General objected to admission of the letter into the record because the statements in the letter are hearsay. The hearing officer allowed the letter into the record but has not given the statements in the letter much weight because he had no opportunity to observe the witness as she gave testimony, to judge the

credibility of her testimony and to benefit from her responses to cross examination by the Attorney General.

3. Respondent attempted to testify about oral statements made by a coworker at Midwest Financial & Mortgage Services. The Attorney General objected to the admission of this testimony as hearsay. The hearing officer allowed the objection and has not considered the testimony at lines 20 through 25 of page 38 of the transcript.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041 (A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that the applicant meets certain conditions including:

* * *

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), or, if the applicant has been convicted of 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 R.C. 1322.01 to 1322.12.

3. The NOH states that Respondent has not shown 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, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if an applicant for a loan officer license has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Unauthorized use of property is a theft offense, one of the types of offenses described in R.C. 1322.031(A)(2). R.C. 2913.01(K). Since the Respondent was convicted of unauthorized use of property, the burden is on the Respondent to prove by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good

reputation, and there is no basis in fact for believing that he will commit such an offense again.

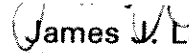
5. The Respondent has met this burden. The preponderance of evidence means evidence which is more convincing than the evidence which is offered in opposition to it. R.C. 1322.041(A)(3) provides that an applicant convicted of certain types of offenses must prove his or her honesty, truthfulness and good reputation by a preponderance of the evidence. It does not say what weight should be given to the offense as evidence probative of poor character. That determination is left to the Superintendent. In this case, the Respondent did not commit the offense for his own economic profit or to disadvantage another person; he did not want the pen or even the use of the pen. Instead, he committed the offense as an expression of his frustration. As such the offense itself is not particularly reliable or probative evidence of the Respondent's honesty, trustworthiness or reputation. In opposition to this evidence, Respondent testified that this was his first offense in twenty-six years. He has not been charged with any offense involving theft or even deception or moral turpitude before or since the incident. Since the conviction he has obtained full-time employment with a mortgage company. Moreover, his current employer took time to come to the hearing to testify in support of Respondent's character and aptitude as a loan officer. Finally, it is to the credit of the Respondent and his employer, Midwest Financial & Mortgage Services, that they disclosed the conviction on the loan officer application as it is not apparent from the application form that the offense of unauthorized use of property is a theft offense. In other words, Respondent's testimony and Mr. Wenger's testimony are more probable and credible evidence that Respondent is honest, truthful and of good reputation than the single conviction for taking a BiC-type pen.
6. The NOH states that the 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 purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5). The Division bases this finding solely on the fact that the Respondent was convicted of a criminal offense involving theft.
7. The Respondent's criminal conviction does not support a finding that the 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 purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5). As stated above, Respondent did not take the pen because he wanted the pen or because he wanted to use the pen for his own purposes. He took the pen to express his frustration. As such it is weak evidence of Respondent's character that does not, by itself, support a finding 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 purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

8. Respondent has proven by a preponderance of the evidence that his activities and employment since his conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that Respondent will commit such an offense again. Moreover, the record in this proceeding does not contain evidence that the 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 purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has fully met the requirements for a loan officer license under R.C. 1322.041(A). Therefore, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A).

Respectfully Submitted,


James W. Lawrence
Hearing Officer
December 29, 2006