

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0398-LOD
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Robert L. Blakemore : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
December 20, 2004

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 1:00 p.m. on November 5, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Robert L. Blakemore (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 passing a bad check in 1996 and that he failed to disclose that conviction on his loan officer application filed in May of 2004. 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 violated R.C. 1322.07 (A), (B) and (C) by failing to disclose a criminal conviction on his loan officer application filed in May of 2004;
2. 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

not commit such an offense again as required by R.C. 1322.041 (A) (3);

3. 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).

Martine Jean, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent was represented by Rick D. DeBlasis of Lerner, Sampson & Rothfuss, Cincinnati, Ohio. At the hearing, Exhibits 1 through 7 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent under date of August 24, 2004 and mailed the NOH to the Respondent by certified mail, return receipt requested. (Exhibits 1A & 1B.) The Division received the Respondent's hearing request on September 3, 2004. (Exhibit 1C.) The Division scheduled the hearing for September 20, 2004 and, on its own motion, continued it to October 22, 2004. The hearing was continued at the Respondent's request to November 5, 2004. The Division sent notices of the hearings by ordinary mail to the address of Respondent's counsel. (Exhibits 1D & 1E.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on May 5, 2004. (Exhibit 2.)
2. Question 5 of that application asked the following question:
 5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "No." (Exhibit 2; TR at 26.)
4. Respondent signed the application on May 3, 2004 before a notary public. Directly above the applicant signature line, the application states:

"Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 2.)

5. As part of the application process and pursuant to R.C. 1322.031 (B), the Division conducted a criminal background check which apparently revealed that the Respondent had been charged with domestic violence and passing a bad check. In response to the Division's request, the Respondent submitted certified copies of two journal entries from the Hamilton County Municipal Court. (Exhibit 4.)
6. The Journal Entry for case number C95CRB044070 states that the Court acquitted the Respondent of one count of domestic violence on January 16, 1996. The Journal Entry for case number 96CRA271 states that the Court convicted the Respondent of passing a check with insufficient funds in violation of R.C. 2913.11(B)(2), a first degree misdemeanor, on August 29, 1996, fined him \$250.00 plus costs, sentenced him to 180 days in jail with all days in jail suspended and ordered him to pay restitution. (Exhibit 4.)
7. The Respondent explained that he had not intended to write a check with insufficient funds. He wrote two checks to his landlord for rent. He explained to his landlord that he was expecting funds to be wired to him from California. When the funds did not arrive, his landlord pressed charges. (TR at 31 - 35.)

D. Respondent's Failure to Disclose Conviction

1. The Respondent did not disclose the conviction for passing a bad check on his loan officer application. (Exhibit 2; TR at 26.)
2. The Respondent stated that he did not disclose the conviction because at the time that he completed the application he read the instructions to Question 5 to require him to not list any misdemeanor convictions. (TR at 26 - 27.) He believes that he may have read the question too quickly and not thought enough about it. But, he would not have intentionally given a false answer to Question 5 because he knew that the Division would conduct a criminal background check. (TR at 29 - 30.)

E. Respondent's Reputation and Character.

1. The Respondent testified that in 1996 when he wrote the checks, he was an alcoholic. The bad check charge woke him up. The only way that he could show respect for his wife and for himself was to leave alcohol alone. So he quit drinking, attended Alcoholics Anonymous meetings, disassociated

himself from anyone who drank. He went through the Alcoholic Anonymous twelve-step program and completed a twenty-one day program at Rinda Center. (TR at 46 – 49.)

2. The Respondent testified that he has worked steadily since 1996 and purchased a house in 2000. (TR at 44, 50 – 51.)
3. The Respondent testified that he currently receives Social Security benefits. If he is able to work as a loan officer, he will stop receiving these benefits and depend upon himself for his living.
4. Jennifer Hammiel, owner of United Security Mortgage, Inc., has known the Respondent for four years. Ms. Hammiel testified that she runs her company with integrity and off of referrals and based on what they can do for the consumer. She said the Respondent fits that business model because he cares about people first. (TR at 52 - 56.) Ms. Hammiel has never seen the Respondent take a drink of alcohol. (TR at 56.)
5. Cathy White, a loan processor for United Security Mortgage, Inc., has known the Respondent for a couple of years. Ms. White testified that the Respondent is honest, hard working and loyal. She says that the Respondent is the best assistant that she could imagine and that she could not imagine a better loan officer. She testified that she has never seen him take a drink of alcohol. (TR at 59 – 58.) When asked about the Respondent's reputation in the loan industry, she testified that every one from title people, other loan officers, other agencies and appraisers thinks very highly of him. (TR at 66.)
6. Barry D. Gallinger, a loan officer with Mortgage Resource Group, has known the Respondent for four years. Mr. Gallinger testified that the Respondent talks to him a lot about his personal life. Mr. Gallinger tries to give the Respondent good advice. He has seen the Respondent use the advice and has seen it work. He described the Respondent as a "very, very, very quality man" who is honest and will make very good loan officer. He testified that he has never seen him take a drink of alcohol. (TR at 67 - 72.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

1. R.C. 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. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 or 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 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 sections 1322.01 to 1322.12 of the Revised Code.

3. R.C. 1322.07 provides:

No mortgage broker, registrant, licensee, or applicant for a 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, 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. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the Hamilton County Municipal Court of passing a bad check, a misdemeanor of the first degree.
2. R.C. 1322.041 provides, among other things, that since Respondent was convicted of passing a bad check, the Respondent must prove 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 there is no basis in fact for believing that he will commit such an offense again.
3. The offense, while serious, occurred during a period when the Respondent was an alcoholic. Since the conviction the Respondent joined Alcoholics Anonymous, attended a twenty-one day treatment program at Rinda Center, completed the Alcoholics Anonymous twelve-step program and changed his life and behavior in such ways that he no longer associates with people who drink excessively or attends functions where alcohol is available. Since the Respondent faced his problem with alcohol, he has not committed another offense again. The witnesses who testified on Respondent's behalf established that the Respondent is currently honest and truthful and of good reputation. The Respondent has shown 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.

4. The Division alleges that his conviction shows 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. However, the Respondent has shown that he has changed in ways that have improved his character and general fitness. The witnesses' testimony corroborated the Respondent's testimony that he has changed for the better. This single incident, while it was a serious violation the Ohio Revised Code, occurred under circumstances that do not exist today and therefore does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
5. The Division alleges that the Respondent's failure to disclose the conviction on his loan officer application 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. However, the Respondent explained that he answered Question 5 incorrectly because he misunderstood the question. Additionally, he knew when he completed the application that the Division would complete a criminal background. As such, his failure to disclose the conviction in his response to Question 5 may show that he did not pay enough attention to the application and did not give his response adequate thought. The facts in the record show that the Respondent's failure to correctly answer Question 5 on the application was not done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to Question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that he will not conduct himself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
6. The Division alleges that when the Respondent failed to disclose his conviction on his loan officer application, he violated R. C. 1322.07(A), in that he made a substantial misrepresentation in his loan officer license application; he violated R.C. 1322.07(B) in that he made a false or misleading statement of a material fact or omitted a statement required by state law; he violated R.C. 1322.07(C) in that he engaged in improper, fraudulent or dishonest dealings. When the Respondent failed to disclose his

conviction, he violated R.C. 1322.07 (A) and (B) in that he did, albeit unintentionally, misrepresent his criminal record and omit a material fact or statement required by state law. However, the record does not support the Division's allegation that he engaged in improper, fraudulent or dishonest dealings.

7. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent of Financial Institutions (Superintendent) may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts in the record show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading and/or a misunderstanding of the question and was not done with any intent to deceive or mislead the Division. In light of the unintentional nature of the Respondent's violation and considering the evidence of his current excellent employment record as an employee of a mortgage broker, the purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,



James J. Lawrence
Hearing Officer
December 20, 2004