

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0054-LOD
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Arnold A. Chura : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
May 27, 2005

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 10:30 a.m. on April 11, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Arnold A. Chura (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 failed to disclose a criminal conviction on his loan officer application filed in October 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'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).
2. By failing to disclose his criminal conviction on his loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

Timothy C. Loughry, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared with Counsel Eileen M. Joyce, Baughman & Joyce, LLC of Cleveland, Ohio. At the hearing, State's Exhibits A through E and Respondent's Exhibits 1 – 3 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on February 10, 2005 by certified mail, return receipt requested. (Exhibit C.) Respondent's hearing request was received by the Division on March 9, 2005. (Exhibit D.) The Division scheduled the hearing for March 21, 2005 but, on its own motion, continued the hearing to April 11, 2005. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit E.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on October 1, 2004. (Exhibit A.)
2. Question five 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 A; TR at 14.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which apparently revealed that the Respondent had been charged in 2001 with possession of dangerous ordnance. (Exhibit B.) By letter dated October 26, 2004, 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 judgment entry evidencing his plea and the court's finding. (Exhibit B.)
5. The Respondent provided a Journal Entry from the Cuyahoga County Court of Common Pleas. The Entry for Case No. CR 415673 showed that on February 26, 2002 the Court convicted the Respondent of unlawful distribution of fireworks in violation of R.C. 3743.65, a first degree misdemeanor. The Court fined the Respondent \$150.00, sentenced him to six months in jail, all six months suspended, placed him on one year of probation, ordered him to perform fifty hours of community service work and pay costs. (Exhibit B.)
6. In a letter to the Division dated November 19, 2004 and in his testimony, the Respondent explained that the violation occurred when he sold some fireworks to a family friend. (Exhibit B; TR at 14 - 17.)
7. At the hearing, the Respondent explained that he did not disclose the conviction on his loan officer application because he read Question 5 so that only an applicant who was an officer or more than five per cent owner of a corporation that had been convicted of a crime should answer "yes." He also read the first sentence following the question to instruct the applicant not disclose misdemeanors. He testified that, at the time that he completed

the application, he believed that his answer to Question 5 was true and correct of [his] own knowledge as he attested to on his application.

8. No witnesses appeared to testify on the Respondent's behalf. However, the Respondent submitted letters from three individuals attesting to his reliability and dependability. The first letter is from Victor J. Davila, a personal acquaintance of the Respondent since 1996. He stated that the Respondent would be an asset for any mortgage company that he works for. (Exhibit 1.) The second letter was written by Teresa Martin, a manager of 1st Team Mortgage, Inc. She stated that the Respondent would be a great asset in the mortgage business. (Exhibit 2.) The third letter was written by Robert S. Brewer, the marketing manager for 1st Team Mortgage. He stated that the Respondent is a great asset to their company. (Exhibit 3.)

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 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 certain conditions are met, including, among other requirements not relevant here:

* * *

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

* * *

(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. 1322.031(A)(4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense, other than minor misdemeanor traffic and parking offenses, in question 5 of the application.

4. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the 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.
5. When asked about his criminal record in Question 5 of the application, the Respondent answered "no" even though he had been convicted of unlawful distribution of fireworks. The Respondent contends that that he answered this question incorrectly because he misunderstood the question. This explanation is not credible. Question 5 itself is not long, only twenty-seven words and just over one and a half lines on the application. It asks if the applicant has ever been convicted of any criminal offense. The two sentences of instructions that follow the question are also short. The first instructs the applicant to exclude minor misdemeanor traffic and parking offenses. The second reminds the applicant that DUIs and DWIs are criminal offenses. Nothing in the question or the instructions suggests, as the Respondent contends, that an applicant should answer yes only if he has been an officer or owner of a corporation that was convicted of a criminal offense. Nor can the question be read, as the Respondent contends, to require a yes answer only for felony convictions. In order to understand the question as the Respondent says that he did, the reader has to ignore the first two words of the question and add a comma after the word misdemeanor in the first sentence following the question. This seems unlikely.
6. Moreover, the Respondent has not presented sufficient evidence to support his character and fitness. The three letters admitted into the record are all short and use similar language. The record does establish how long two of the authors of the letters have known the Respondent. None of the letters cite specific examples of instances or events that would establish that the Respondent has the character and general fitness necessary to be a loan officer. In the absence of reliable and probative evidence supporting his character and general fitness, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding 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).
7. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
8. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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.

* * *

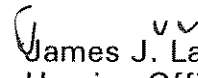
9. The Respondent failed to disclose his criminal conviction on his loan officer application as required by the Superintendent pursuant to R.C. 1322.031(A)(4). His failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
10. The Respondent argues that a license may be denied because of an omission or misrepresentation on a license application only if the omission or misrepresentation was intentional. The Respondent cites *In Re Wolfe* (1992), 82 Ohio App. 3d 675, 612 N.E.2d 1307. However, in *Wolfe*, the Court found that the license applicant made a statement on the application that, although technically inaccurate, was not a misrepresentation. The license applicant in *Wolfe* fully disclosed the information required by the application, that her medical license had been suspended in another state, but "ineptly" described the status of that suspension. In this case, the Respondent failed to disclose the information required by the loan officer application.
11. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) 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.

III. RECOMMENDATION

The record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

 James J. Lawrence
Hearing Officer
May 27, 2005