

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

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

04 FEB 13 PM 12:34

In re: Robert L. Pustelnik

: Case No. 03-LO-D-94-95

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

The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License Application of Robert L. Pustelnik not be granted because Mr. Pustelnik'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)(1)¹.

Mr. Pustelnik's address for service is 1424 Henning Drive, Lyndhurst, Ohio 44124. (Exhibit 1). He is hereinafter referred to as the "Respondent". The Respondent is presently employed by Sunset Mortgage (Exhibit 1).

This matter was initiated by the Superintendent of the Division by the issuance on September 22, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 1).

On October 16, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 2).

On October 17, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing, scheduling a hearing for Tuesday, October 28, 2003 at 10:00 a.m. and simultaneously continuing that hearing to a later date. (Exhibit 3).

On October 29, 2003, the Division wrote to the Respondent scheduling the hearing in this matter for Thursday, November 13, 2003 at 10:30 a.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 4).

The hearing was held beginning at 10:30 a.m. on November 13, 2003 and was attended by John A. Izzo, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio, Yuri E. Linetsky, Esq., the Respondent and Martine Jean, an intern for the Office of the Attorney General.

¹ The Division initially alleged that Mr. Pustelnik was convicted of assault in 2002, of underage possession of beer in 2003 and drug abuse in 2003; and, therefore, Mr. Pustelnik has not proven that he is honest, truthful, and of good reputation, and 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. See Ohio Revised Code §§ 1322.031(A)(2) and 1322.041(A)(3). These allegations were withdrawn at the outset of the hearing. (Tr. 8).

The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On August 5, 2003, the Division received an updated Loan Officer Application (the "Application") signed by the Respondent under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 5).

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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.) Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances, which gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

3. In response to Question 5, the Respondent answered "Yes" and further wrote: "Please see attached copies: 2 separate offenses". (Exhibit 5).

4. The Respondent submitted a letter of explanation together with the journal entry from the Cuyahoga County Court of Common Pleas showing that the Respondent was convicted of misdemeanor assault on January 22, 2002; was convicted in the Lyndhurst Municipal Court on July 1, 2002 of underage possession of beer; and on March 10, 2003 of drug abuse, a fourth degree misdemeanor. (Exhibit 6).

CONCLUSIONS OF LAW

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

(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.

2. The Respondent has been convicted of three misdemeanors. One was for misdemeanor assault, one for underage possession of beer and one for drug abuse. (Exhibit 6). All three offenses took place within a short time span and all three within two years of the hearing in this matter. (Exhibit 6).

3. Disclosure of the three convictions triggers the requirement that the Applicant's character and general fitness must be found to 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.

DISCUSSION

1. Robert Levy Pustelnik lives at 1424 Henning Drive, Lyndhurst, Ohio 44124. On August 5, 2003, the Division received an Loan Officer Application from the Respondent. Question 5 of that Application asks whether the Respondent has ever been convicted of any criminal offense. To that question, the Respondent answered, "Yes" and further added, "Please see attached copies: 2 separate offenses." In fact, the Respondent has been convicted of three separate offenses as outlined above.

2. The assault charge arose out of a party that the Respondent attended when a fight broke out. (Tr. 16). At the time of the party, the Respondent was 20 years of age. Apparently, a fight broke out between two men over the attention of a young woman. (Tr. 16). The police were called. (Tr. 17). Simultaneously with the arrival of the police, all of the party-goers scattered. (Tr. 17). The Respondent stayed behind to locate his lost cell phone. The police arrested him and searched his car. (Tr. 17). In the car, they found beer and a baseball bat. (Id). In the same episode, the Respondent was charged with preparation of drugs for sale, a charge that was later dropped. (Tr. 18).

3. The Respondent pleaded guilty to Misdemeanor Assault. (Tr. 18). The conviction for underage possession of beer occurred in the same episode. (Tr. 19). In connection therewith, the Respondent was also charged with criminal trespassing. (Id).

4. The Respondent was also charged in a separate episode with possession of marijuana. (Tr. 19). Marijuana was indeed found in his car. (Tr. 19-20). The Respondent denies smoking marijuana. (Tr. 20). He plead "no contest" to the marijuana charge. (Tr. 21). It was the Respondent's marijuana in the car. (Tr. 21). The marijuana episode happened in February of 2003. (Tr. 22). That is only 10 months before the hearing in this matter and only weeks before the Respondent completed his Application.

5. The Respondent completed high school with the benefit of a GED and went on to two years of college. (Tr. 27). He attended Cuyahoga Community College and Lakeland Community College. Initially, the Respondent studied paralegal courses and later studied business. (Tr. 28).

6. After high school, the Respondent was an assistant manager at a Cricket West Store, a men's clothing store. (Tr. 28). After that, he worked for a company called, "TEACCO", which sold computer hardware and software. (Tr. 29). Then, he worked for E-Specials, another computer retailer. (Tr. 29). Following that, he was unemployed for between 6 and 7 months. (Tr. 30). His next position was with Sunset Mortgage Company. (Tr. 30). He began work on June 16th or 17th, 2003. (Tr. 31).

7. The Respondent provided one letter of support for his Application. Exhibit A is a letter dated November 12, 2003 from Frank Black, the Branch Manager of Sunset Mortgage Company.

8. The Hearing Officer notes that the Respondent correctly answered Question 5 on his Application. (Exhibit 5).

9. The Respondent's involvement with the criminal justice system is well documented in the record. The Respondent presented no witnesses in support of his contentions other than Respondent's Exhibit A, a letter from his supervisor.

10. While the convictions are for misdemeanors, the Hearing Officer notes that there were three such offenses and all of them occurred relatively recently. Indeed one offense occurred within months of the filing of the Application. Having had a firsthand opportunity to observe the Respondent's demeanor and appearance, the Hearing Officer cannot say that the Respondent presented evidence indicating that he had learned from his involvement in the criminal justice system. The Hearing Officer is not convinced that the proximity of the offenses to the Application can simply be overlooked. The Hearing Officer is not convinced that the Respondent has met his burden in this matter. The convictions are in the very recent past. The Hearing Officer is not satisfied that the Respondent has proven by a preponderance of the evidence that the Respondent'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 Section 1322.01 to 1322.12 of the Revised Code.

11. Accordingly, the Hearing Officer determines that the record does not show that the Respondent'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 Section 1322.01 to 1322.12 of the Revised Code and that the record does not show that the purpose of the Ohio Mortgage Broker Act will be served by the issuance of a license in this matter.

RECOMMENDATION

Based on the above-findings of fact, conclusions of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
February 11, 2004