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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 06-0095-LOD
: :
JODI LYNN GRATE : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 28, 2006

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and 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 on May 10, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jodi Grate ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH"). Respondent's previous married name was Jodi Lynn Noland.

The Division alleges that Respondent was convicted petty theft in 1986 and theft in 1988. The Division further alleges that she violated R.C. 1322.07(A), (B), and (C) by failing to disclose her criminal convictions on her loan officer license application. 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 her criminal convictions on her application;
2. Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit such an offense involving theft, money or securities again as required by R.C. 1322.041(A)(3); and
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).

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through I, and Respondent's Exhibit 1 were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 27, 2006, and served it upon her by certified mail. (State's Exhibit A.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to her by certified mail. (State's Exhibits A and B.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing was continued once and set for May 10, 2006. The Respondent was notified of the date, time, and place for all scheduled hearing dates. (State's Exhibit C.)

C. Respondent's Loan Officer Application and Criminal Convictions.

4. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
5. Respondent applied for an Ohio mortgage loan officer license in March of 2004. (State's Exhibit D.)
6. Respondent answered "No" to Question 5 on the Application, which asked:

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.)

(Application, State's Exhibit D, emphasis and boldface type in original; Hearing Transcript ("TR") at 25.)

7. Respondent's signature in the Attestation on the Application is notarized. Directly above that signature, 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." (Application, State's Exhibit D.)
8. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).

9. Respondent was convicted of petty theft in 1986, petty theft in 1987, and theft in 1988. (State's Exhibits E, F, G, and H.)
10. The 1986 petty theft conviction and the 1988 theft conviction were based upon shoplifting charges filed by stores. The 1987 conviction was based upon an incident involving missing money at Respondent's college dorm. The incidents underlying all three convictions occurred when Respondent was 20 years old or younger. She has no criminal convictions since the 1988 conviction. (State's Exhibits D, E, F, G, and H; TR at 16, 26-31, 34-41.)
11. Eighteen years without incident indicates that it is not likely that the Respondent will commit another crime involving theft, money or securities again.

D. Respondent's Failure to Disclose Convictions on Application.

12. Respondent did not disclose her three convictions on the Application. She testified that she did not disclose the two shoplifting convictions because she thought they were expunged and not on her record. She stated that she did not disclose the conviction based upon the dorm incident because she thought it was not on her record. (State's Exhibit D; TR at 17.)
13. Respondent filed a Petition/Application to Expunge/Seal Records in Case No. K88 CRA 14 with the Portage County Municipal Court in 2002. Before she did that, she consulted with an attorney who told her that she would most likely only be able to expunge one case and could just fill out the paperwork herself at the court. Respondent testified that when she went to fill out the paperwork, a woman at the court told her that she could do both cases. This testimony is contradicted by the very document she completed and filed with the Portage County Municipal Court. That document only refers to Case No. K88 CRA 14, which involved felony charges based upon the shoplifting incident for which she was convicted of misdemeanor petty theft in 1988. Case No. K88 CRA 14 was dismissed when she agreed to plead guilty to misdemeanor petty theft in Case No. K88 CRB 0043-S. She only checked Statement 4, one of 5 possible reasons that could be checked as the basis for her request. Statement 4 represents that, "The case against the Defendant was dismissed and there are no criminal proceedings now pending against the Defendant." (State's Exhibit I, emphasis in the original.) The very document she filed only requests the sealing of records pertaining to the dismissed 1988 charges. Respondent's claim that based upon it she thought both shoplifting convictions were expunged when she marked "No" in response to Question 5 is not credible. (State's Exhibits G and I; TR at 17, 38-51.)
14. The record only contains the June 2, 2002 Journal Entry sealing the records in Case Number K88 CRA 14. The record remained open until June 12, 2006, for submission of any additional documents sealing any of Respondent's criminal convictions. No additional evidence was submitted. (TR at 104-109.)

15. The Respondent's testimony as to why she did not disclose the 1987 conviction based on the dorm incident was inconsistent and unconvincing. She knew she had that conviction and did not disclose it on the Application and in her subsequent letter to the Division about the two shoplifting convictions because she thought it would not be found. (State's Exhibit E and H; TR at 27-34.)
16. Respondent's testimony about her response to Question 5 and the evidence in the record establish that she knew about her three convictions at the time she filled out the Application and failed to disclose them hoping that they would not be discovered. Her false and inaccurate response to Question 5 reflects negatively on her honesty, truthfulness, and ability to be a loan officer. It also raises concerns about whether Respondent's business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

E. Respondent's Reputation and Character.

17. Respondent has worked as a loan processor since 2003. In that capacity, she orders title work and appraisals, communicates with lenders, and works with loan files until closing. She is currently employed by 1st Resource Mortgage and has done well there. Respondent is not aware of any concerns about her honesty and integrity. Respondent also worked in the nursing field for several years before she became a loan processor. (TR at 61-69.)
18. Lisa Gottschalt, the Chief Financial Officer at 1st Resource Mortgage, testified about Respondent's abilities in the mortgage industry. She has known Respondent since April of 2005 and they have worked in the same office for the past three months. Ms. Gottschalt testified that Respondent's processor work is done well and that she would trust Respondent to handle her personal loan. While she is aware of Respondent's work quality, she is not a loan officer responsible for reviewing the files worked on by Respondent. (Respondent's Exhibit 1; TR at 79-97.)

II. 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. Loan Officer License Application.

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 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 of 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.

R.C. 1322.041(A)(2), (3), and (5).

3. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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. Each of Respondent's convictions is for a "criminal offense involving theft" for the purposes of R.C. 1322.031(A)(2).

4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
6. Respondent's response to Question 5 on the Application indicating that she did not have any criminal convictions when in fact she had been convicted of petty theft in 1986, petty theft in 1987, and theft in 1988, was a substantial misrepresentation in that Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that she did not have any criminal convictions when in fact she was convicted of petty theft in 1986, petty theft in 1987, and theft in 1988, in violation of R.C. 1322.07(B).
7. Respondent violated R.C. 1322.07(B) by omitting the statement regarding her petty theft and theft convictions required to be in an application by R.C. 1322.031(A)(2).
8. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
9. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the Application that she did not have any criminal convictions when in fact she was convicted of petty theft in 1986, petty theft in 1987, and theft in 1988.
10. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
11. Once the 1986 petty theft conviction was proven by the Division, the burden of proof shifted to Respondent to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
12. The evidence established that after that conviction she was convicted of additional criminal offenses involving theft and failed to disclose them on her Application. Respondent's testimony about her response to Question 5 and the evidence in the record establish that she knew about her three convictions at the time she filled out the Application and failed to disclose them hoping that they would not be discovered. Although it is not likely that the Respondent will commit another crime involving theft, money or securities again, she did not prove that

she is honest and truthful. Therefore, she has not established that she meets the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3).

13. For the reasons described above, 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).
14. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to any applicant who does not meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

C. Records, Information, and Data Pertaining to Sealed Criminal Records.

15. Furthermore, the Division's official records, the transcript, this Report and Recommendation, and the exhibits in the record, as well as copies in the hands of counsel and others must be maintained and handled in a manner consistent with R.C. 2953.35(A), which, in relevant part, provides:

(A) Except as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code or by Chapter 2950. of the Revised Code, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, or were expunged by an order issued pursuant to section 2953.42 of the Revised Code as it existed prior to the effective date of this amendment, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

R.C. 2953.35(A).

16. Pursuant to R.C. 2953.35(A), the Division must carefully evaluate the Journal Entry sealing the records in Case No. K88 CRA 14 to see if it specifically orders the sealing of any pertinent official records of that administrative agency. If it encompasses the Division's records specifically, the Division must seal its official records and the portions of the record in this case, including this Report and Recommendation, pertaining to or including Respondent's sealed records, and only release, disseminate, or make available those records, and information or other data concerning the sealed records in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. If the Journal Entry does not specifically order the sealing of the pertinent official records of Division, the Division may seal its official records and the portions of the record in this case, including this Report and Recommendation, pertaining to or including Respondent's sealed records. Even if sealing of those records is discretionary, R.C. 2953.35(A) requires the Division to only release, disseminate, or make available those records and information or other data concerning the sealed records in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. In either situation, the materials must be maintained separate from the Division's public files. Counsel representing the Division in this case and the Ohio Attorney General's Office now have knowledge of the sealed records and fall within the purview of R.C. 2953.35(A). They should also evaluate the documents, data, information, and the materials in their possession, including this Report and Recommendation, pertaining to or including Respondent's sealed records and only release, disseminate, or make available those records and information or other data concerning the sealed records in Case No. K88 CRA 14 in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. 1993 Ohio Op. Att'y Gen. No. 93-38 [also cited as Opinion No. 1993-038] (Syllabus at Paragraphs 1, 2, 3, and 4.)
17. The Journal Entry sealing the records in Case No. K88 CRA 14 does not specifically order the sealing of the Division's pertinent official records. The Division has the authority to seal its official records and the record in this case, including this Report and Recommendation, because they pertain to and may include the sealed records in Case No. K88 CRA 14. The Hearing Officer, pursuant to 119.09, has the same powers and authority in conducting the hearing as the agency. Pursuant to this authority, the Hearing Officer granted the Division's request to seal the record in this case, including this Report and Recommendation, because they pertain to the sealed records from Case No. K88 CRA 14. The Hearing Officer strongly recommends that the Division seal its official records and maintain the record in this case, including this Report and Recommendation, under seal. Regardless of whether the pertinent records are sealed by the Division, they should at a minimum be segregated from public files and only released, disseminated or made available in accordance with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. 1993 Ohio Op. Att'y Gen. No. 93-38 [also cited as Opinion No. 1993-038] (Syllabus at Paragraphs 1 and 4.) If the Division does not believe that the records can be sealed without a separate

court order, it should obtain such a court order to avoid violating R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. *In re T.F.K.*, 136 Ohio Misc. 9, 2005-Ohio-7143.

III. RECOMMENDATION

Initially, I recommend that the Division seal its official records and maintain under seal the record in this case, including this Report and Recommendation, and only release, disseminate, or make available those records, and information or other data concerning the sealed records in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3), and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
June 28, 2006

