

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL INSTITUTIONS
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IN THE MATTER OF: : CASE NO. 04-0371-LOD
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:
David R. Kopf : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
July 6, 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 3:00 p.m. on May 27, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent David R. Kopf (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 receiving stolen property in 1992 and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his Loan Officer Application filed in July of 2002. 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 July of 2002;
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).

Daniel P. Jones, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 13 were admitted into the record. The Respondent presented no Exhibits for admission into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on April 15, 2004. Respondent's hearing request was received by the Division on May 17, 2004. The Division scheduled the hearing for May 27, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time and location of the hearing.

C. Respondent's Loan Officer Applications

1. The Respondent filed a Loan Officer Application on July 29, 2002. (Exhibit 1.)
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 or pleaded guilty to any criminal offense including, but not limited to, theft, receiving 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 5, the Respondent answered "No." (Exhibit 1; TR at 8.)
4. Respondent signed the application on July 25, 2002 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 1.)
5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).

6. The background check on Respondent's application revealed that he had been arrested and charged with larceny and possession of burglary tools. (Exhibit 2.) By letter dated December 2, 2002, the Division requested the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and certified copies of the journal entries evidencing the disposition and sentence. (Exhibit 3.) The Respondent did not respond to the Division's request. The Division notified the Respondent by letter dated April 28, 2003 that his loan officer license application had been withdrawn. (Exhibit 4.)
7. The Respondent filed a second Loan Officer Application on February 25, 2004. (Exhibit 5.)
8. 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 or pleaded guilty to any criminal offense? (Emphasis in original.) Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)
9. In response to Question 5, the Respondent answered "Yes." (Exhibit 4; TR at 9, 14.)
10. The Respondent attached a statement to his 2004 application in which he explained the events which led to his arrest and conviction. (Exhibit 6.)
11. A certified copy of the Criminal Journal Entry in case no. CR-277178, Cuyahoga county Court of Common Pleas shows that Respondent pleaded guilty to Receiving Stolen Property, value less than \$300.00, in violation of R.C. 2913.51. The Court ordered Respondent to serve six months in jail, sentence suspended, and one-and-one-half years probation with conditions to pay court costs, pay a fine of \$200.00, submit to monthly urinalysis and breathalyzer tests, and obtain GED within thirty days and fulltime employment within sixty days. (Exhibit 9.)

D. Respondent's Failure to Disclose Conviction on 2002 Application

1. The Respondent did not disclose the conviction for receiving stolen property on his 2002 application.

2. The Respondent stated that he did not disclose the conviction because at the time that he completed the 2002 application he did not remember that he had been convicted of the offense of receiving stolen property. (TR at 13.)
3. The Respondent also stated that he did not disclose the conviction because he thought that the conviction had been expunged from his record. (TR at 14.)
4. The Respondent also stated that he did not disclose the conviction because he believed that it would not show on his record because it was for a fourth degree misdemeanor and happened so long ago. (TR at 14, 15.)
5. The Respondent stated that he did not check with the Cuyahoga County Court of Common Pleas to determine the nature of his conviction or if the conviction had been expunged and that he did not check with his attorney because he could not remember his attorney's name. (TR at 17.)

E. Respondent's Reputation and Character.

1. The Respondent testified that he believes that his friends and neighbors believe him to be honest and that they trust in him. (TR at 21.)
2. No witnesses appeared to testify on the Respondent's behalf.
3. Since the conviction, the Respondent has completed his GED. (TR at 26.) He completed a few courses at Columbus State Community College in Restaurant Management. (TR at 25.)
4. Since the conviction, the Respondent has worked for a number of employers including Parking Solutions and Ritz Carlton in Cleveland, Ohio and Crown Plaza, Holiday Inn, Adams Mark, FN, the Hyatt on Capital Square in Columbus, Ohio as well as two mortgage companies. (TR at 22 - 23.) He was terminated involuntarily from two of these jobs for tardiness. (TR at 24.)

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. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must furnish any other information that the Superintendent of the Division of Financial Institutions requires.
3. 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.

4. 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.

5. 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 Common Pleas Court of Cuyahoga County of the offense of receiving stolen property in violation of R.C. 2913.51.
2. When Respondent failed to disclose his conviction for receiving stolen property on his 2002 application, he violated R. C. 1322.07(A), in that he omitted a material fact required by state law from a license application; he violated R. C. 1322.07(B), in that he made a false or misleading omission of a statement required by state law; and he violated R. C. 1322.07(C), in that he engaged in conduct that constitutes improper, fraudulent, or dishonest dealings.
3. Respondent's violations of R. C. 1322.07 (A), (B) and (C) preclude him from being in compliance with R. C. 1322.01 through 1322.12, a condition required in order for the Superintendent to approve his loan officer license application. R.C. 1322.041 (A) (2).
4. R.C. 1322.041 provides, among other things, that since Respondent was convicted of a criminal offense involving the receipt of stolen property, the Superintendent cannot issue a loan officer license unless the Respondent proves 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.

5. The only evidence that the Respondent has submitted to prove that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation is his own testimony that he believes that his friends and neighbors believe him to be honest and that they trust in him. This evidence does not rise to the level of proof by a preponderance of the evidence.
6. The Respondent's failure to disclose his conviction in his 2002 application is an act subsequent to his conviction that tends to show that he is not honest, truthful, and of good reputation.
7. The Respondent has not proved to the Superintendent 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, a condition required in order for the Superintendent to approve his loan officer license application. R.C. 1322.041 (A) (3).
8. The Respondent's conviction for receiving stolen property and Respondent's failure to disclose the conviction on his 2002 application, establish 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, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A) (5).

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A) (2), (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer's application be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,


James J. Lawrence
Hearing Officer
July 6, 2004