

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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In the Matter of:

Joshua R. Wood
5796 Columbiana Road
New Middletown, OH 44442

:
: Case No. 03-LO-D-23-24
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

I. Introduction

This case came to be heard on July 22, 2003. Deputy Attorney General Paula Luna Paoletti represented the Department of Commerce's Division of Financial Institutions, and called one witness, Ms. Amanda M. Axtell, of the Division of Financial Institutions.

Despite having requested this hearing, Respondent Mr. Wood was not present, nor was any representative of Mr. Wood. Though the hearing was scheduled to begin at 10:30 a.m., it was delayed until 10:48 a.m. while efforts were made to determine the reason for Respondent's absence. See Transcript, pp. 6,15.

After due consideration of all the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

A. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C. 1322.01 to O.R.C. 1322.12, the Department of Commerce is charged with the responsibility to accept applications for Loan Officer licenses and determine whether applicants meet the statutory requirements.
2. On April 30, 2002, Respondent Mr. Wood, employee of Loan Star Mortgage, Inc., 8255

South Avenue, Boardman, Ohio, 44512, applied for a license to be a Loan Officer. See Application, State's Exhibit 1¹.

3. On April 30, 2003, the Department of Commerce issued a Notice of Intent to Deny a Loan Officer License to Mr. Wood. See Notice, State's Exhibit 5.
4. The Department of Commerce stated in its Notice of Intent to Deny Loan Officer's License that Mr. Wood had been convicted of five counts of "aiding and abetting bad checks," all felonies of the fifth degree. In addition, the Department alleged that Mr. Wood did not disclose these convictions on his Loan Officer application, in violation of O.R.C. 1322.07. See Notice, State's Exhibit 5.
5. The Department of Commerce alleged that Mr. Wood has not proven he is honest, truthful, and of good reputation; that he has not proven there is no basis in fact to believe 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; and Mr. Wood'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 purpose of the Ohio Mortgage Broker Act.
6. On May 27, 2003, Mr. Wood requested a hearing to appeal the proposed actions of the Department of Commerce. See Letter, State's Exhibit 6.
7. On June 4, 2003, the Department sent notice to Mr. Wood of this hearing via certified mail; the signature card was returned and appears to be signed by "Kathy Wood." See Letter, State's Exhibit 7, including copy of signed signature card, and Transcript, p.14.

¹ As a preliminary matter, the Hearing Examiner recommends that for his protection, Mr. Wood's social security number be redacted from the Application and all other documentation entered into the public record.

B. Conviction for Aiding Abetting Bad Checks (5 counts)

8. At the hearing, the Department admitted into evidence a Journal Entry from the Court of Common Pleas of Richland County, Ohio, indicating Mr. Wood was convicted of five felony counts of aiding and abetting bad checks on October 30, 2000. See State's Exhibit 3. He was sentenced to make one-third restitution, and to a term of community control for five years. See State's Exhibit 4.

C. Failure to Fully Disclose Convictions on Loan Officer Application

9. Question 5 on the Loan Officer Application, asks:

“[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or plead 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? If the answer is yes, furnish details.”

In response, Mr. Wood indicated, “yes,” and attached a letter stating that he had been convicted on one count of passing a bad check. He explained that several of his employees took over 20 checks from his company checkbook when he was out of town and forged his signature on them. He also wrote that he “was charged with one count of passing a bad check due to ignorance on [his] part.” See Application and Letter, State's Exhibit 3.

D. Letters Written on His Own Behalf

10. In two letters to the Department of Commerce explaining his convictions, Mr. Wood writes that he “can foresee [him]self excelling in” the mortgage brokering industry, and that he is a “hardworking, committed, and trusting individual.” See Letters, State's Exhibits 1 and 2.

III. Conclusions of Law

11. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

"...the superintendent of financial institutions shall issue a loan officer's license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code." O.R.C. 1322.041.

12. The criminal offenses incorporated by reference are:

"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." O.R.C 1322.031 (A)(2). Emphasis added.

13. The Hearing Examiner finds that this "aiding and abetting" crime, because of its close relationship to the commission of the crime itself, is a criminal offense "involving" passing bad checks, and thus falls under the purview of this statute.

14. Based on the documentation offered by the State (State's Exhibits 3 and 4), the Hearing Examiner finds that Mr. Wood was convicted of five felony counts of aiding and abetting bad checks on October 30, 2000.

15. Once the conviction is established, the statute allows for a burden-shift in which Mr. Wood assumes the burden of proving by a preponderance of the evidence that despite his conviction, he otherwise should receive a Loan Officer's license.

16. The statute sets out a number of criteria the applicant must meet, three parts of which are relevant to this analysis. The first part reads:

"The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...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." O.R.C. 1322.041 (A)(3).

17. His conviction for aiding and abetting bad checks occurred in 2000. The statute requires a

determination of whether, since then, his activities and employment record show he is honest, truthful, and of good reputation, and that there is no basis in fact to believe he will commit such an offense again.

18. Mr. Wood did not appear at the hearing to present a case. He expresses in two letters that he would like to continue as a Loan Officer and is committed to his industry, and that his five-count conviction stems from the activities of his corrupt employees, and not his own criminal behavior. Yet without the State having the opportunity to cross-examine him, this written testimony carries very little weight.

19. In addition, his representation that he was convicted of only one count of passing a bad check, when in fact he had been convicted of five felony counts, was never explained. This inconsistency erodes Mr. Wood's unsubstantiated written testimony that he was actually a victim of his employees. It would be odd indeed if though he bore no criminal responsibility for the crimes, a Court nonetheless ordered him to pay one-third restitution. With these questions unanswered, it is impossible to find Mr. Wood is honest and truthful.

20. Further, his lack of any testimony, written or oral, as to his activities since his conviction leaves him far short of proving by a preponderance of the evidence that his activities and employment record since then demonstrates no basis in fact to believe he will not repeat his past crime.

21. The second relevant part of the statute states:

"The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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." O.R.C. 1322.041 (A)(5).

22. In assessing Mr. Henry's character and general fitness to receive a license, the nature of his past crime must be considered.

23. Undoubtedly, his aiding and abetting bad checks bears a direct connection to the work performed by a Loan Officer, which requires the public trust. That the checks were corporate checks, and that the crimes were committed in the workplace make it difficult to find that Mr. Wood would operate his business honestly and fairly. In addition, the recency of the crime (2000), makes it less likely he has reformed such that he would not pose a risk to the public.

24. Mr. Wood did not appear at the hearing, and thus offered no testimony on his behalf to attempt to meet this statutory criteria. As such, the seriousness of his five-count criminal convictions, all of which were felonies, indicates Mr. Wood does not possess the character and general fitness to command the confidence of the public.

25. The third relevant part of the statute states:

"no...applicant for a certificate of registration or license under sections 1322.01 to 1322.12 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. O.R.C. 1322.07.

26. Mr. Wood's failure to disclose his four of his five counts for felony convictions on his application for a Loan Officer's license, or offer any explanation at all for not doing so, appears to be a misrepresentation of a material fact in violation of ORC 1322.07.

27. Based on the foregoing, the Hearing Examiner finds that Mr. Wood has not proven by a preponderance of the evidence that his activities and employment record since his conviction shows that he is honest, truthful, and of good reputation. Nor has he proven there

is no basis in fact for believing that he will commit such an offense again. His character and general fitness do not command the confidence of the public and do not warrant the belief that his business will be operated honestly and fairly in compliance with the intent of O.R.C. 1322.01 to 1322.12. In addition, the Hearing Examiner finds that Mr. Wood failed to fully disclose his criminal record as required by O.R.C. 1322.07.

IV. Recommendation

28. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent of the Division of Financial Institutions that Mr. Wood be denied a Loan Officer's License pursuant to O.R.C. 1322.041.

8/29/03
Date

Terrence O'Donnell
Hearing Examiner