

RECEIVED
NOV 22 2006
12:51

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

LAURA M. YEAGER

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. M2006-9992834

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued November 21, 2006

I. FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed and weighed the demeanor and credibility of the witnesses, the following factual findings are made:

A. BACKGROUND

The above matter came before the undersigned Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:30 PM on September 19, 2006, at 77 South High Street, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Laura M. Yeager, of Madison, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that in 1984, Respondent was convicted, in Lake County Common Pleas Court, of two felony four counts of Forgery, and, in 1992, Respondent was convicted, Mentor Municipal Court, of Petty Theft, a first degree misdemeanor, and, further, that Respondent failed to disclose her entire criminal background, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Todd A. Nist. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 12 were admitted into the record. Respondent's Exhibits A through C were admitted into the record over the Division's objections, as discussed in the transcript (hereinafter "Tr."). The division called one witness in addition to the respondent. The Respondent was her only witness.

B. JURISDICTION

The Division issued the NOH against Respondent on July 19, 2006 (Exhibit 3). Service was made on July 21, 2006. Respondent requested a hearing, which was received by the Division on August 18, 2006 (Exhibit 2). On August 22, 2006, the Division scheduled the hearing for August 28, 2006, but continued the hearing, on its own motion, to September 19, 2006, at which time the hearing went forward (Exhibit 1).

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 3.)
2. Respondent is an individual who applied to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 10; Tr. p. 121.)
3. On or about April 26, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 10.)
4. Respondent's Application was sent to the Division, on her behalf, by Respondent's employer, to whom she gave the completed Application and to whom she had previously given other documentation concerning her two convictions. (Tr. pp. 59-62.)

5. Respondent signed the Application on, or about, April 20, 2006. (Exhibit 10; Tr. p. 40.)
6. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (emphasis in original). (Exhibit 10; Tr. pp. 40-41.)
7. Attached to the Application was a letter explaining a 1983 conviction and related court records indicating that Respondent, when she was known as Laura M. Sobe, was found guilty of two counts of forgery on September 21, 1984, in the Court of Common Pleas of Lake County, Ohio. The court clerk's records relating to the 1984 conviction were dated April 18, 2006. There were no records or explanatory letter relating to the 1992 conviction. (Exhibit 10.)
8. On June 7, 2006, the Division sent a request to Respondent that she supply them with information regarding a 1992 conviction. (Exhibit 11.)
9. On July 7, 2006, the Division received from Respondent a cover letter over a two-page "Register of Actions" in the 1992 criminal case against Respondent in Mentor Municipal Court. The cover letter refers to a letter of explanation which the Division has not attached to the Exhibit and, on examination of the original file, does not find it is part of the Division's file in this matter. The certified copy of the court records was certified on July 6, 2006. (Exhibit 12.)
10. On September 21, 1984, in the Common Please Court of Lake County, Ohio, in case number 84-CR-144, Respondent was found guilty of two counts of forgery, fourth degree felonies, after pleading guilty to the same. Respondent was sentenced to one year in the state reformatory on each count, concurrent, execution suspended and Respondent was placed on probation for two years conditioned on restitution. (Exhibit 10.)
11. On May 26, 1992, in the Municipal Court of Mentor, Ohio, in case number 92-0598-CR-B, Respondent was found guilty of one count of petty theft after pleading guilty to the same. Respondent was sentenced to 30 days in jail, 23 days suspended, and a fine. (Exhibit 12.)

12. Respondent's explanation of the 1984 fraud conviction was as follows: in 1983, while working to put herself through a community college because her parents had not saved enough to help her pay to attend the art school she had intended to attend, she befriended a girl and allowed this girl to live with her. Her girlfriend convinced Respondent to cash numerous checks written on the girlfriend's closed, out-of-town bank account. The money was to be used to fix the girlfriend's car. (Exhibit 10; Tr. pp. 48-49.)
13. Respondent's explanation of the 1992 petty theft conviction was as follows: Respondent attempted to return a men's dress shirt to JC Penney, but the clerk wouldn't allow its return because she didn't have a receipt or a tag on it. The next day Respondent returned and attempted to switch the shirt for one with the tags. Respondent was caught and charged with shoplifting. (Tr. pp. 50-51.)
14. Respondent testified that she supplied the Division with a letter of explanation regarding the 1992 conviction and has no explanation why the letter is not in the Division's files. Respondent gave her employer all her documents for him to mail with the completed Application. Respondent did not keep her own copy of the documents. (Tr. pp. 54, 59-62.)
15. Respondent states that she twice earlier sent in applications but during the period of time of the first application her home was destroyed and during the other period her mother was terminally suffering from cancer. She sent a letter to the Division with one of the earlier Applications which detailed the 1992 conviction and it was Respondent's understanding that the Division would already have that information on file. Respondent believed her employer, who sent in the Application when he completed the employer's affidavit, would send in the same two letters explaining Respondent's two criminal convictions. (Tr. pp. 21-23, 52-53, 60-62.)
16. Respondent knew the Division was going to do a background check and uncover her criminal history. Respondent marked yes in response to Question 5. (Tr. pp. 40-41, 62.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119 .

B. LICENSE APPLICATION

2. In 1984, Respondent was convicted of a "criminal offense involving ... fraud ...," an offense specifically cited in section 1322.041(A)(3), O.R.C.
3. In 1992, Respondent was convicted of a "criminal offense involving theft ...," an offense specifically cited in section 1322.041(A)(3), O.R.C.
4. The fraud and theft offenses being proven by the Division, in order to obtain a license the Respondent must now prove, by a preponderance of the evidence, that the Respondent's "activities and employment record since the conviction[s] 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." Section 1322.041(A)(3), O.R.C.
5. Respondent did not present any evidence other than her own sworn testimony and three testamentary letters.
6. Neither conviction cited is close in time to the Application. The convictions are not close to one another, nor demonstrating a pattern of activity. Respondent's plausible explanations and credible demeanor during the hearing would be sufficient, if supported by corroborating evidence, to meet Respondent's burden to show there is no basis in fact for believing that she will commit such an offense again.
7. Respondent presented three letters from individuals familiar with her. However, the letters were not sworn statements, two of the letters were not signed, and the writers were not available for the Division to test the extent of their knowledge of Respondent and her reputation. It is difficult to give significant weight to such evidence.
8. Because the Application submitted by Respondent disclosed the criminal record, Respondent was able to demonstrate that, in this

instance, her activities since the offense show that the Respondent is honest or truthful.

9. Respondent did not present sufficient evidence to substantiate her own sworn testimony that her “activities and employment record since the conviction[s] 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.” The statute requires Respondent to meet a preponderance burden of proof; because she offered no evidence other than her own testimony, the three letters and the Application. Respondent has not met her burden.
10. The Application submitted by Respondent disclosed the criminal record. Respondent was able to demonstrate that she did not answer the question untruthfully, as the Division alleges. The fact that she did not include information on the lines below the question on the Application does not change the fact that she disclosed her criminal record with a “yes” response.
11. The Division also charged that 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.
12. The Division brought into question Respondent’s general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by alleging that Respondent had been convicted of fraud and, later, of petty theft, and, also, that Respondent failed to disclose if she had ever been convicted of a crime.
13. Respondent failed to provide sufficient evidence to overcome the Division’s evidence questioning her general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly based on her two convictions. Respondent’s only evidence was her own testimony, which must be weighed considering the bias nature of the testimony, and the three letters which, as earlier noted, carried reduced weight.
14. The Division did not prove Respondent’s general fitness does not command the confidence of the public and that the business will not be operated honestly and fairly as a result of a failure to disclose Respondent’s past criminal record. As shown, Respondent did disclose that she had committed a criminal act. The Question 5 does not require Respondent to list all crimes, but, by it’s wording,

may be answered truthfully by only listing one conviction of many. Even if Respondent did not send to the Division the explanation for the lesser of the two convictions, she did disclose the 1984 fraud conviction by responding "yes" and submitting the letter of explanation.

15. It is noted that the Division's files do not contain a letter from Respondent which explains the existence of the 1994 conviction. However, as testified by the Division, it is possible the letter was misplaced. It is further noted that the court records relating to the 1994 conviction were obtained just before their receipt by the Division, which was well after the mailing of the Application. However, it is unknown if Respondent dimply had to obtain a new copy, having already sent the copy she originally obtained to the Division.
16. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application, "yes" but failing to attach any description of the 1994 conviction.
17. Respondent stated that she provided the Division with letters describing both convictions. While the second of those letters are not in the Division's file, the Division cannot discount the possibility that it was somehow misplaced. As Respondent apply noted, why would she disclose the first and most serious of the offenses and try to hide the second, more innocuous offense. In addition, Respondent did answerer "yes" to Question 5 and cannot be said to have tried to hide the fact that she had a criminal record. While the Division wants to charge that the failure to disclose all convictions is a violation, first, that is not what their own question says, and, second, Respondent has offered a plausible explanation why the Division did not receive both the explanatory letters with this Application: i. e.: Her employer was to send it all in with his certificated of employment, but did not do so. That act cannot be said to be caused by Respondent's intent.
18. Intent is required for a finding of any of the three provisions and the Division has not proven such intent. The court in Webb v. State Med. Bd., 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001) noted that intent is required for a finding of fraud, misrepresentation, or deception when it observed "The trial court properly concluded that the


Ohio medical board committed error when it adopted a conclusion of law that indicated that appellant's intent was irrelevant." In Powell v. Administrator, 1984 Ohio App. LEXIS 10467 (Ohio Ct. App. 6th Dist., 1984), the court stated that:


A careful examination of the record fails to disclose substantial, credible evidence going to the specific intent to improperly secure unemployment benefits required to be proven under the definitions of false misrepresentation provided by the appellees. *** Both of the definitions adopted by the appellees, supra, require "knowledge" of the falsity on the part of the claimant. Once again, appellant's actions subsequent to receiving a profit from his arcade business negate any knowledge on his part that he was in fact self-employed.

19. Respondent is not in violation of section 1322. 07, O.R.C.

III. RECOMMENDATION

The Division has proven the prior fraud and theft convictions. Although her testimony was credible and, with evidence to support her statements Respondent may have prevailed, Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that her activities since the conviction show that she has been honest and truthful and of good reputation and there is no basis in fact for believing that she will not commit such an offense again, and that a license should be issued. Consequently, it is with reluctance that the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO LAURA M. YEAGER.**

Respectfully submitted, 

D. Michael Quinn 
Hearing Officer
November 21, 2006
Docket No. 06-DFI-176