

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

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INSTITUTIONS
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In re: Janet J. Brant

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Case No. 04-0126-LOD

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

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Janet J. Brant not be granted. The Division conducted an investigation and found:

- a. In or around 2001, in the Rocky River Municipal Court in Cuyahoga County, Ohio, Ms. Brant was convicted of disorderly conduct, a misdemeanor of the fourth degree;
- b. In or around 2003, in the Cuyahoga County Court of Common Pleas, Ms. Brant pleaded guilty to and was convicted of attempted theft, a misdemeanor of the first degree;
- c. On or around March 12, 2002, Ms. Brant attested in a sworn statement that the information she provided on a licensing application was truthful, knowing that the information was false; and
- d. On or around March 18, 2002, Ms. Brant provided untruthful information to the Division.

2. As a result, the Division determined that:

- a. Ms. Brant has not proven that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will not commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Ms. Brant'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Ms. Brant violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";

- d. Ms. Brant violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law”; and
- e. Ms. Brant violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Ms. Brant’s address for service is 16987 Willow Wood Drive, Strongsville, Ohio, 44136. She is hereinafter referred to as the “Respondent.” The Respondent is employed by eLending Corp., 14955 Sprague Road, Strongsville, Ohio, 44136.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 5).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 5).

6. On February 11, 2004, the Division received a Hearing Request Form from the Respondent. (Exhibit 6).

7. On February 3, 2004, the Division wrote to the Respondent scheduling the hearing for 9:00 a.m. on February 23, 2004, and simultaneously continuing that Hearing until Monday, April 5, 2004 at 3:00 p.m. in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 7).

8. The hearing was held beginning at 3:10 p.m. Monday, April 5, 2004 in Room 1918 of the Vern Riffe Center, located at 77 South High Street, Columbus, Ohio. In attendance were Anthony D. Siciliano, an Assistant Attorney General of Ohio in the Executive Agencies Section, Robert E. Krebs, Esq. on behalf of the Respondent, and the Respondent.

9. 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 March 12, 2002, the Respondent signed a Loan Officer Application (the “Application”) under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

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 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? Exclude minor traffic and parking offenses.

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No".
4. As part of the Application, the Respondent signed a National Background Check consent. (Exhibit 1).

5. Following the submission of the Application, the Division received the report of the National Background Check which disclosed a February, 2001 arrest in Westlake, Ohio for assault, a first-degree misdemeanor. (Exhibit 2).

6. Following submission of the Application, the Division wrote to the Respondent to state that it was unable to make a decision as to whether to issue a license because of insufficient evidence. (Exhibit 3). The Division cited the February 6, 2001 arrest in Westlake and asked for a detailed explanation of the facts and circumstances as well as a copy of the certified journal entry.

7. In response to that letter, the Respondent submitted a written explanation as follows:

I am in receipt of your letter concerning my loan officer's application and am eager to relate the events of the case in question. Please find enclosed the certified copy of the journal entry that you requested. I took the liberty of also including the police incident report.

This incident arose out of an unfortunate political situation between the partners of Apple Banc and Lending Group which was my place of employment until February 6, 2001.

Jeff Niblock was attempting to relieve Kevin Smith of his share of the company and had instituted a lockout, effectively barring Kevin from the business that he co-owned and the suite that was in his, and only his name. I was subpoenaed as a witness for Kevin Smith. Upon seeing me appear in court on February 5, I suspected that Niblock was angry with me, but he did not, at the time, fire me.

I reported to work on the morning of February 6, 2001, pretty sure that I would not have a job. I decided to pack up my more valuable personal belongings in order to prevent their loss.

Misty Guerin Jeff Niblock's girlfriend visiting from Florida, approached me and asked me to leave. As I have never known her to be employed by Apple Banc and Lending Group or to have any authority whatsoever, I ignored her and continued to gather my belongings. My son was there helping me.

As I was carrying an armload of my personal belongings into the hall (I was carrying a wastebasket filled with personal items, a printer and a framed picture both of which I had brought from home to have in my office), I tried to hold the door with my foot.

The door has an automatic closing mechanism and no window so it is impossible to see through it. Trying to hold it ajar, I set my items down in the hall and was going back into the suite for more of my property.

It is at this point that Misty Guerin insists that I hit her with the door, but I do not recall that the door struck her at all. Certainly I did not pin her against the wall with it and certainly I did not move the door repeatedly to strike her with it. This last would have been impossible, as I have stated the door had an automatic pressure closing system. It was not a free-moving door. I am simply not strong enough to pump that mechanism repeatedly, which is what would have happened for the incident Misty related to be correct. It simply never happened.

Someone obviously called the police upon my arrival, because, as my son and I tried to get the rest of our belongings, the Westlake P.D. arrived. As Niblock, being the only person with the authority to fire me (other than Kevin Smith, of course) had not informed me of any such decision, this was my first concrete indication that my employment with Apple was indeed being terminated.

Misty reported no such incident as the fictitious door-slamming to the police at this time. The police asked us to leave the suite and we did.

At the time, I had insurance through Apple Banc and Lending Group and the policy was brokered through a company called Benefits Management which was located on the lower floor next to the front door of the same building that Apple was in.

I was talking to several people from Benefits Management (Bruce Westlake and Laura Harcula) about the incident and about my benefits and how I might continue them.

During our conversation, the Westlake PD was called again, apparently by Jeff Niblock returning from court. The police walked by me as they went up to the Apple suite. I was about to leave when they returned and told me to come upstairs. I soon learned of the fabricated assault incident and was arrested.

While my son and daughter were upset by the incident, the severity of their actions, especially of my daughter Jodi, were greatly misrepresented on the police report. Jodi was trying to approach quickly before the cops took me away and, unfortunately, the pavement was very slushy and slick due to winter weather and her car slid. She was not attempting to

endanger the lives of anyone. Indeed, my son and I were standing between the officers and Jodi's car. If she had hit anyone, it would have been her own mother and brother first. Of course, no one was hurt.

At no time during this incident was I or anyone else drinking or intoxicated. I seldom drink and was upset to discover the term "intox" on the court journal.

The fact is that I was unaware that this incident was on my record until my letter from you. I had a falling out with my lawyer in the days previous to the court case and so was about to enter on my own. My lawyer was coming out as I was coming in and told me the matter was settled. I had desired to go to trial on the incident because I wasn't guilty. My lawyer, Mr. Henry Hilow told me that nothing would be on my record and that the matter was settled. I trusted him, little suspecting just how it had been settled and that I would have such an erroneous blemish on my good name.

I want to thank you for bringing this to my attention. I have hired a new lawyer and am bringing a motion to vacate this plea that I never made to begin with. I am hopeful that this unfortunate incident will soon be removed from my record.

I hope that this letter helps you to understand what happened. I take great pride in my good name and in my work as a loan officer. I love this industry and am glad to see the state of Ohio making such bold moves to make this a real profession that we can be proud to work in.

If you have any further questions about this incident or have any other cause to doubt that I am a noble and honest citizen who will only bring honor to my profession, please do not hesitate to contact me.

(Exhibit 4A)

8. The Respondent also submitted a copy of the Journal Entry of the Rocky River Municipal Court finding that the Defendant pled guilty to disorderly conduct and paid a fine. (Exhibit 4).

9. The record also contains the Docket from the Cuyahoga County Court of Common Pleas showing a conviction for the misdemeanor offense of attempted theft. (Exhibit 8).

CONCLUSIONS OF LAW

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

(3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or 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 misrepresentations in any registration or license application;

(B) Make 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[.]

4. Because the Respondent was convicted of a misdemeanor offense of attempted theft, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing she will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. This matter arises out of a business dispute involving Apple Banc & Lending Corp. and its original owners Jeff Niblock and Kevin Smith. Niblock and Smith apparently went into the mortgage business with each other. It is alleged that in the year 2000, Mr. Niblock had a business dispute with Mr. Smith. A permanent split followed between the two and there has been considerable litigation over that "business divorce". Mr. Niblock formed a new corporation and attempted to transfer the name "Apple Banc" to it. Mr. Smith opened a separate checking account at a different bank and attempted to gain control over the funds. For a concise statement of the considerable litigation and background to that dispute, please see Respondent's Exhibit A.

2. In the year 2000, the Respondent was working at Apple Banc. (Tr. 25). Her position was a loan officer. (Tr. 26). At the time, Mr. Niblock was living in Florida but telephoning the office repeatedly throughout the day to give direction. (Tr. 26). According to the Respondent, Mr. Niblock was intimidating, demanding and abusive. (*Id.*). Ultimately, Apple Banc's checks began bouncing and Mr. Niblock asserted that he was the sole owner of that business. (*Id.*). At that point, the litigation between Mr. Niblock and Mr. Smith began. The Respondent was called to testify in that litigation. (Tr. 27). Respondent testified on behalf of Kevin Smith and not on behalf of Mr. Niblock. (Tr. 27).

3. Mr. Niblock pointed out in court that a check had been written to an appraisal company by a title agency. (*See*, Tr. 27, et seq.) At the direction of Mr. Niblock, the Respondent, in her position of employment, endorsed that check and deposited it into her own account. She then withdrew an identical amount and paid it to a different appraisal company. That incident occurred in the year 2000 but was not pursued by Mr. Niblock until after the Respondent gave testimony on behalf of his rival. (Tr. 29).

4. The Hearing Officer notes that the Application was completed on March 12, 2002. (Exhibit 1). The Respondent was convicted of attempted theft, a misdemeanor, on October 3, 2003. (Exhibit 8). The conviction occurred approximately eighteen months following submission of the Application. At the time of the submission of the application, the Respondent had been convicted of disorderly conduct in the Rocky River Municipal Court. (Exhibit 4).

5. The initial charge of assault, which was subsequently reduced to disorderly conduct, was initiated out of the circumstances by which the Respondent removed her personal belongings from the offices of Apple Banc.

6. The Respondent asserts that she answered Question 5 correctly because she thought she had been convicted a minor misdemeanor offense. (*See*, Tr. 36). It was, she claimed, not her intent to conceal that conviction. (*Id.*).

7. After leaving Apple Banc the Respondent began work at Midwest Equity Solutions. (Tr. 37). She worked there from March, 2001 to July, 2001. (*Id.*). She had no customer complaints or accusations of dishonesty while at Midwest Equity Solutions. (*Id.*).

8. In July, 2001, the Respondent began working at eLending and she has continued to work there through the present time. (Tr. 37). Again, she asserts that she has had no complaints from customers about improprieties, dishonesty and the like. (Tr. 38).

9. Since the theft conviction, the Respondent states that she has closed between 30 and 40 loans without any customer complaints. (Tr. 40). The Respondent has been married for twenty years and has an active family. (Tr. 41-42). She has worked in the loan industry for five and a half years. (Tr. 42).

10. The amount of the check that was prepared by a title agency on that title agency's bank account was in the amount of \$400.00. (Tr. 51). The check was made out to Riff Appraisal. (Tr. 52). According to the Respondent, Mr. Niblock told the Respondent to endorse "Riff Appraisals" across the reverse side and pay to the order of the Respondent. She then deposited it into her bank account. (Tr. 52-53). She then took the same amount of cash out of her account and paid a different real estate appraiser. (Tr., 53).

11. For more than twenty years, the Respondent worked for her parent's business as producers of concerts, circuses, rodeos and the like. (Tr. 54). Her territory included Pennsylvania and New York. (Tr. 54). After her father retired, the Respondent decided not to continue in that business. (Tr. 54).

12. Testifying in support of the Respondent was Kevin Smith, the owner-operator of eLending Corp. (Tr. 56, et seq.). He has been the head of eLending Corp. for nearly three years. (Tr. 56). Mr. Smith noted that the Respondent has more than thirty years of employment without a single complaint from a customer (Tr. 64). She has had no complaints since the incident involving Mr. Niblock. (*Id.*). Mr. Smith acknowledges that the Respondent did "an incredibly stupid thing" with the check. (Tr. 64). Mr. Smith recounted that, according to him, Mr. Niblock filed charges against the Respondent's son, Joshua, as well as a gentlemen named Bruce Wick. (Tr. 65). Mr. Smith stated that the Respondent has a great reputation. (Tr. 66).

13. Also testifying in support of the Respondent was Vincent Watkins, General Manager for World Title. (Tr. 68). He has known the Respondent through real estate closings. (*Id.*). Respondent has closed between 35 and 40 loans with Mr. Watkins' company. (Tr. 68). He found no discrepancies in the Respondent's loan package. (Tr. 70).

14. The Respondent submitted a letter from James J. Jaksik, an accountant with Lackey and Co. Mr. Jaksik noted that he has known the Respondent for more than three years and that she has brokered between six million and seven million dollars in mortgage refinancings. Mr. Jaksik has audited eLending and found no financial exceptions. (Respondent's Exhibit B).

15. The Respondent submitted a letter from Kenneth J. Bakos, Jr. of Midwest Equity Solutions, Inc. (Respondent's Exhibit C). He found the Respondent to have been honest and knowledgeable. He wished that more of his employees had her high character and dedication.

16. The Respondent submitted a letter from John J. Reulbach, Jr. an attorney. Mr. Reulbach believes that the Respondent got involved in the check signing incident only because she was instructed to do so by her employer at that time. (Respondent's Exhibit D).

17. The Hearing Officer has had the opportunity to personally observe the Respondent and to listen to her answer questions put to her by counsel. On one hand, the Respondent has two criminal convictions, both misdemeanors, arising out of her employment in the lending industry. Both of those convictions arose out of the litigious and acrimonious business divorce between Mr. Smith and Mr. Niblock. At the time of the completion of the Application, the Respondent had not been convicted of attempted theft. Her record at that time consisted only of her conviction for disorderly conduct. The Respondent should have included that conviction in her answer to Question 5 of the Application.

18. The Hearing Officer does not believe that the Respondent has the burden of proof to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis in fact for believing she will commit another theft offense again because, at the time of the completion of the Application, the Respondent had not been convicted of any theft offense.

19. The Hearing Officer finds that the issue here is whether 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 the Ohio Mortgage Broker Act. Here, the Hearing Officer is concerned that both convictions arise out of lending industry related incidents. Clearly, both criminal convictions have a common nexus to the dispute between Mr. Niblock and Mr. Smith. However, the endorsement of a check made payable to another party is a fact that does not weigh favorably for the Respondent. The financial services industry has a need to know that the process by which loans are closed and the various service providers are paid is honest and above board. The endorsement of another party's name on a check is difficult to justify in light of the Respondent's work record in this industry. The Hearing Officer is less persuaded by the conviction for disorderly conduct, which arose out of the removal of the Respondent's personal items from the Apple Banc's offices. However, in tandem, the two convictions cast a considerable doubt on the Respondent's character and general fitness. The endorsement of another party's name on a check gives the Hearing Officer cause for concern that the business will not be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. Adding to that concern is the failure of the Respondent to disclose the conviction for disorderly in the Application. That failure to disclose, the fact that the conviction for disorderly conduct arose out of an employment situation in the loan services industry, and the subsequent post-Application conviction for attempted theft combine in the Hearing Officer's belief to show that there is considerable doubt as to whether 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 the Ohio Mortgage Broker Act.

20. Further, the Hearing Officer finds that the failure to disclose the disorderly conduct conviction constitutes a violation of Revised Section 1322.07(A)(B) and (C).

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, 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,

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Kenneth R. Cookson ✓
Hearing Officer
May _____, 2004

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