

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS

04 AUG 20 AM 8:57

IN RE: : CASE NO. 04-0047-LOD  
: :  
CHET PEASE : JANE S. ARATA, HEARING OFFICER

---

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued August 20, 2004

---

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 19, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Chet Pease ("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").

The Division alleged that Respondent was convicted of drug trafficking in 1987. Therefore, the Division asserted 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 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 another similar offense again as required by R.C. 1322.041(A)(3); and
2. 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).

James M. Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. John Neal represented the Respondent at the hearing. At the hearing, State's Exhibits 1 through 14, 16, 17 and 19 were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on February 19, 2004. The Division scheduled the hearing for March 4, 2004, and continued it indefinitely on its own motion. The hearing was then set for May 5, 2004. Respondent's motion for a continuance was granted and the hearing was continued to May 19, 2004. The Respondent received the NOH by certified mail and received notice of the date, time, and location of hearing.

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

1. Respondent is an individual who sought to conduct business in Ohio as a mortgage loan officer. (State's Exhibits.)
2. 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).
3. The Division received Respondent's Loan Officer Application ("Application") on July 29, 2002. (State's Exhibit 1.)
4. Question 5 on the Application 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 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.

(Application, State's Exhibit 1.)

5. Respondent answered "Yes" to Question 5 and disclosed only that he had been convicted of a drug offense in 1987. (State's Exhibit 1.) Later, in response to the Division's inquiry, Respondent submitted certified copies of court records evidencing his 1987 conviction for aggravated trafficking of LSD. Respondent was incarcerated from January of 1987 through March of 1988. (State's Exhibits 4 and 5.)

6. Much to the surprise of Respondent's boss and his counsel, evidence of yet another conviction emerged at the hearing. After Respondent's boss testified favorably about Respondent, he was asked on cross-examination if he was aware that Respondent had plead guilty to a charge of drug abuse in January of 2000. He was not.
7. Respondent pleaded guilty to a charge of drug abuse in January of 2000. After his plea, the charge was vacated and reduced to disorderly conduct. Respondent pleaded guilty to disorderly conduct later in 2000. (State's Exhibits 16, 17 and 19.)

**D. Respondent's Motion to Withdraw Testimony and Stipulation Regarding Evidence.**

8. After a short recess, Respondent's counsel asked to withdraw the testimony of Respondent's boss and stipulate that the Respondent offered no evidence to counter the State's position.
9. Respondent, through his counsel, admitted that the Division had made a prima facie case establishing the existence of criminal convictions that shifted the burden of proof to the Respondent pursuant to R.C. 1322.041(A)(3).
10. Respondent understood that if he did not offer evidence to counter the evidence in the record, only a recommendation that his license be denied could be made.
11. While a hearing transcript can not be undone, the Hearing Officer finds that the testimony from Respondent's boss is no longer being offered by Respondent as evidence related to any disputed issues. Therefore, that testimony was not relied upon by the Hearing Officer in this case.
12. Pursuant to the Respondent's request, this case was viewed as if no evidence to counter the State's position was offered by the Respondent.

**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 1322.031(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.
3. 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:

(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)(3) and (5).

4. Respondent was convicted of drug trafficking in 1987. Drug trafficking is a criminal offense specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
5. Once the drug trafficking conviction was proven by the Division, the Respondent had the burden to prove, 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" in order to obtain a license. R.C. 1322.041(A)(3).

6. Instead, the record shows that Respondent pleaded guilty to drug abuse that resulted in a conviction for disorderly conduct in 2000. Respondent did not disclose that conviction on his Application. Respondent elected not to offer evidence to meet his burden of proof under R.C. 1322.041(A)(3). Respondent did not establish the licensing prerequisites set forth in R.C. 1322.041(A)(3).
7. For the reasons stated above, Respondent also failed to establish that his character and general fitness command the confidence of the public and warrant the belief that his 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).

### **III. RECOMMENDATION**

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(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  
August 20, 2004