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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: : CASE NO. M2006-9992900
: :
: :
Donald W. Ehrhardt : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
January 2, 2007

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 11:15 a.m. on December 14, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Donald W. Ehrhardt (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 theft by deception in 1995. 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 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 commit such an offense again as required by R.C. 1322.041 (A) (3);
2. Respondent's conviction shows 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A) (5);

Laura A. Meechan, Esq., Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits A through E and Respondent's Exhibits 1 and 2 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on October 26, 2006 by certified mail, return receipt requested. (Exhibit C.) The Division received Respondent's hearing request on November 13, 2006. (Exhibit D.) The Division scheduled the hearing for November 24, 2006 and, on its own motion, rescheduled the hearing for December 14, 2006. The Division sent notice of the hearing by ordinary mail to the same address to which it mailed the NOH. (Exhibit E.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on June 9, 2006. (Exhibit A.)
2. Question 6 of that application asked the following question:
 6. Have you been arrested for, 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?
3. In response to Question 6, the Respondent answered "Yes" (Exhibit A; TR at 12.) On the application Respondent explained that he had been convicted of theft by deception for taking welfare benefits while employed. (Exhibit A.)
4. By letter dated July 25, 2006, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry which evidenced his plea and the court's finding. (Exhibit B.)
5. The Respondent submitted Judgment Entry from the Hamilton County Court of Common Pleas in Case No. B 950422. The Judgment Entry shows that the Court found the Respondent guilty of theft by deception (welfare) in violation of R.C. 2913.02. The Court sentenced Respondent to be imprisoned for one year, and then considering, among other things, the nature of the offense and Respondent's history, character and condition suspended the prison sentence and placed Respondent on probation for three years and ordered Respondent to pay restitution of \$2,043.00 at \$100.00 per month. (Exhibit B.)
6. Respondent also submitted a written statement describing the facts and circumstances which gave rise to the charge. He explained that in 1992 he applied for welfare benefits because he had lost his job, his business, and all of his money. He had moved in with his parents even though his father was

dying of kidney failure. His teenaged son moved in with him. After receiving welfare benefits for six months, he obtained a job. Unfortunately, he failed to notify the welfare officials that he was working. For two and one-half months he drew welfare benefits while working. (Exhibit B.)

7. At the hearing the Respondent testified that in 1992 he was receiving food stamps, aid to dependant children and Medicaid benefits. (TR at 13.) At the time that he obtained employment he was having work done on his teeth. (TR at 13.) Respondent paid the restitution in eighteen months and was released from probation early. (TR at 13.)
8. Respondent testified that since his conviction he worked at Velvet Ice Cream as a truck driver. He then worked for Taylor Distributing as a truck driver from 1995 to 1998. (TR at 20.) He then worked for Superior Chevrolet as a salesman. While at Superior he received some training in finance and handled money for customers without any problems. (TR at 20.) He left there and went to work for Pontiac Beechmont and then Saturn of Beechmont as a salesman. (TR at 21.) He joined U.S. Mortgage Corp. in June of 2006. (TR at 14.)
9. Two individuals wrote letters on behalf of Respondent. Matthew Lyons is a sales manager with US Mortgage Corp. He wrote that Respondent is a very honest, loyal and trustworthy employee and a hardworking individual. (Exhibit 1.) Richard D. Heimbrock was a co-worker with Respondent at Pontiac of Beechmont and then Saturn of Beechmont. He wrote that Respondent has displayed a professional attitude and a charitable nature. He mentioned that Respondent supports his elderly mother, disabled brother and unemployed nephew. (Exhibit 2.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Attorney General objected to the admission of the letters from Mr. Lyons and Mr. Heimbrock as hearsay evidence. The hearing officer admitted the letters into the record as evidence with the condition that he would give the statements in the letters lesser weight than he would have given similar sworn testimony because he had no opportunity to observe the witnesses as they gave testimony, to judge the credibility of thier testimony and to benefit from their responses to cross examination by the Attorney General.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.

2. R.C. 1322.041 (A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that the applicant meets certain conditions including:

* * *

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), 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 R.C. 1322.01 to 1322.12.

3. The Superintendent has promulgated Ohio Adm. Code 1301:8-7-21 (A) and (B) which provide that in determining "character and general fitness" as those terms are used in R.C. 1322.041(A)(5) the Superintendent shall consider whether the applicant [for a loan officer license] has, among other things, been found guilty within the prior ten years of any felony or of any misdemeanor involving deception, moral turpitude, or any offense listed in R.C. 1322.031(A)(2).
4. The NOH states that Respondent has not shown that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if an applicant for a loan officer license has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Theft by deception is one of the types of offenses described in R.C. 1322.031(A)(2). Since the Respondent was convicted of theft by deception in 1993, the burden is on the Respondent to prove by the 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 Respondent has met this burden. Although the offense committed by the Respondent was serious, the Respondent committed the offense more

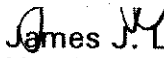
than thirteen years ago. The fact that Respondent committed the offense many years ago somewhat lessens the fact of the offense as having probative value of Respondent's character today or of the likelihood that Respondent will commit another similar offense again. On the other hand, the record shows that Respondent's life in the intervening years is free of similar incidents. The hearing officer finds the Respondent's testimony in this matter to be probative, reliable and credible evidence. The Respondent's testimony establishes by a preponderance of the evidence that his employment and activities since his conviction prove that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.

6. The NOH states that the 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). The Division bases this finding on the fact that the Respondent was convicted of theft by deception in 1995.
7. The Respondent's criminal conviction does not support a finding that the 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). The conviction occurred more than ten years prior to Respondent's application for a loan officer license. Pursuant to Ohio Adm. Code 1301:8-7-21 (A) and (B), the Superintendent will not consider such a conviction in determining character and general fitness for purposes of R.C. 1322.041(A)(5). In the absence of the single criminal conviction in 1995, the record is devoid of evidence that questions the Respondent's character or general fitness today. Even without the Rule, in light of the Respondent's activities since his conviction, the record does not support a finding that Respondent's character does 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).
8. Respondent has proven by a preponderance of the evidence that his activities and employment in the years since his conviction prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing that Respondent will commit such an offense again. Moreover, the record in this proceeding does not support a finding that the 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).

III. RECOMMENDATION

The Respondent has fully met the requirements for a loan officer license under R.C. 1322.041(A). Therefore, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A).

Respectfully Submitted,


James J. Lawrence
Hearing Officer
January 2, 2007