

IN THE MATTER OF: : CASE NO. 04-0405-L0D
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:
Claudette I. Murray : James J. Lawrence, Hearing Officer

I. FINDINGS OF FACT

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 3:00 p.m. on July 13, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Claudette I. Murray (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 passing a bad check in 1998 and she failed to disclose that conviction on her loan officer application filed in March of 2004. 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 violated R.C. 1322.07 (A), (B) and (C) by failing to disclose a criminal conviction on her loan officer application filed in March of 2004;
2. Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would

not commit such an offense again as required by R.C. 1322.041 (A) (3);

3. 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).

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 9 and Respondent's Exhibits A through C were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on April 27, 2004 by certified mail return receipt requested. (Exhibits 5, 6.) The Division received the Respondent's hearing request on May 10, 2004. (Exhibit 7.) The Division scheduled the hearing for May 22, 2004 and, on its own motion, continued it to July 13, 2004. The Division sent notices of the hearings by ordinary mail to the same address to which it mailed the NOH. (Exhibits 8 & 9.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on March 11, 2004. (Exhibit 1.)
2. Question 5 of that application asked the following question:
 5. 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? Exclude minor misdemeanor traffic and parking offenses.
3. In response to Question 5, the Respondent answered "No." (Exhibit 1; TR at 16, 22.)
4. Respondent signed the application on February 8, 2004 before a notary public. Directly above the applicant signature line, the application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 1.)

5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check revealed that the Respondent had been convicted of passing a bad check. (Exhibit 2.) By letter dated April 6, 2004, the Division requested 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 evidencing the disposition and sentence. (Exhibit 3.)
7. The Respondent submitted a Case Information Report from the City of Cheviot Mayor's Court which states that Respondent was convicted of one count of passing a bad check in violation of City Ordinance 131.31 on July 13, 1998, fined \$50.00 and ordered to pay costs. (Exhibit 4.)
8. The Respondent explained that she had not meant to write a check with insufficient funds. She had simply made a bookkeeping error. At the time she was employed by Citi Corp Credit Services and did not need to write a bad check. (TR at 18.) The merchant referred the matter to Mayor's Court because its mail addressed to the address on the check had been returned by the U. S. Postal Service. The Respondent had moved between March and July of 1998. (Exhibit B; TR at 22.)
9. The Respondent testified that she has worked for several different employers since the conviction and none of them held the conviction against her. (TR at 18.)

D. Respondent's Failure to Disclose Conviction

1. The Respondent did not disclose the conviction for passing a bad check on her loan officer application. (Exhibit 1; TR at 16.)
2. The Respondent stated that she did not disclose the conviction because at the time that she completed the application, she read the question so that she was to exclude all misdemeanors, including traffic and parking offenses, in her response, rather than include all misdemeanors except traffic and parking offenses. She further stated that even if she had read the question correctly, she still would have answered it incorrectly because at the time that she completed the application, she did not understand that when she appeared at Mayor's Court and paid her \$50.00 fine, she was actually pleading guilty to a misdemeanor.

E. Respondent's Reputation and Character.

1. Mr. Kevin Horvath who is the office manager of the office of Fidelity Mortgage, Inc. where the Respondent works, testified on behalf of the

Respondent. Mr. Horvath has ten years experience in the loan industry. He currently supervises 20 – 25 loan officers. (TR at 24.) Since he reviews every loan written in his office, he is familiar with the Respondent's work. (TR at 26.) He testified that the Respondent has an exemplary work ethic (TR at 24.) and that customer feedback has been "absolutely excellent." He testified that in a business where you cannot please everybody no matter what you do, he has not received one complaint about the Respondent. (TR at 27.)

2. Most important to this matter, Mr. Horvath testified that the Respondent is trustworthy. His opinion of her trustworthiness is based upon his observation that the Respondent has turned down loans that were not in the best interest of the borrowers. He stated that if the loan does not truly benefit the borrower, the Respondent will not do the loan. This is a trait that is not present in all loan officers according to Mr. Horvath. (TR at 30-31.)

II. CONCLUSIONS OF LAW

A. Jurisdictional 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. R.C. 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 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.
2. R.C. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent of the Division of Financial Institutions requires.
3. R.C. 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:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 or the Revised Code.

(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.

4. R.C. 1322.07 provides:

No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under sections 1322.01 to 1322.07 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.

(B) Make any 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.

5. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119., the Superintendent may, among other things, refuse to issue a loan officer license if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

DISCUSSION

1. The Respondent was convicted in the City of Cheviot Mayor's Court of passing a bad check, a misdemeanor of the first degree.
2. The Division alleges that this conviction shows 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. However, the Respondent explained that the charge and conviction occurred because she made a bookkeeping error and the merchant did not know her new address. The conviction arose out of an act of negligence and not out of an act of avarice or deception. This single incident, while it may have violated a city ordinance, does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that she will not conduct herself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

3. The Division alleges that the Respondent's failure to disclose the conviction on her loan officer application shows that her 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. However, the Respondent explained that she incorrectly read question 5 of the application and misunderstood its meaning. Taken in an unfavorable light for the Respondent, her failure to disclose the conviction in her response to question 5 may show that she does not read and comprehend well or that she did not pay enough attention to detail. It is doubtful that at the time that she completed the application, the Respondent believed that the \$50.00 fine for having a \$14.74 check returned for insufficient funds would cause the Division to not give her a loan officer license. The facts show that the Respondent's failure to correctly answer question 5 on the application was not done with any intent to deceive the Division. Thus, the Respondent's incorrect answer to question 5 does not, by itself, establish that the Respondent's character and general fitness do not command the confidence of the public. Nor does it, by itself, warrant the belief that she will not conduct herself as a loan officer honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
4. R.C. 1322.041 provides, among other things, that since Respondent was convicted of a criminal offense involving the passing of a bad check, the Respondent must prove by a preponderance of the evidence, that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again.
5. The Respondent submitted a list of her employers since March of 1998 to show that these employers have not held her conviction against her. (TR at 18.) The list also shows that she was continuously employed from June of 1994 through October of 2003. She has also been employed by Fidelity

Mortgage, Inc. since March 15, 2004. The Respondent also presented the testimony of her office manager, Kevin Horvath, who testified, among other things, that Respondent is trustworthy and that feedback that he has received from her customers has been "absolutely excellent." The Respondent has shown by the preponderance of the evidence that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again.

6. When Respondent failed to disclose her conviction for passing a bad check on her loan officer application, she did violate R. C. 1322.07(A), in that she omitted a material fact required by state law from a license application.
7. Pursuant to R.C. 1322.10(A)(1) when an applicant for a loan officer license fails to comply with any provision of R.C. 1322.01 to 1322.12, the Superintendent may refuse to issue the loan officer license or impose a fine. The statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of R.C. 1322.07 was an unintentional omission caused by a misreading of the question and was not done with any attempt to deceive or mislead the Division. The purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A)(1)(a).

Respectfully Submitted,

James J. Lawrence
Hearing Officer
August 26, 2004