

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2004 AUG 24 PM 3:01

IN RE: : CASE NO. 04-0052-LOD
: :
DEBORAH ELAINE EVANS : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued August 24, 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 20, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Deborah Elaine Evans ("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 unauthorized use of property, aggravated burglary, and theft. The Division also alleged that she violated R.C. 1322.07(A), (B) and (C) by failing to disclose those convictions on her loan officer license application. 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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose the convictions on her application;
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 commit a similar offense again as required by R.C. 1322.041(A)(3); and
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 Siciliano, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Mark Rhea, an attorney with the Division, attended the hearing as the Division's representative and testified at the hearing. The Respondent did not appear and was not represented by counsel at the hearing. At the hearing, State's Exhibits 1 through 11, including State's Exhibit 4A, were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 22, 2004, and served it upon her by certified mail. (State's Exhibit 7; Hearing Transcript at 14-15.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".) It is clear that the Respondent received the NOH because she sent the Division the hearing request form sent to her with the NOH. (State's Exhibit 8; TR at 16.)
2. Respondent's hearing request was received by the Division on January 28, 2004. (State's Exhibit 8.)
3. The Division scheduled the hearing for February 9, 2004, and continued it until February 26, 2004. On January 30, 2004, the Division sent a letter to Respondent notifying her of the date, time, and location of the hearing. (State's Exhibit 9.) That letter was sent by regular mail to the Respondent at the most recent address she provided to the Division and where she received the NOH by certified mail. (State's Exhibits 6, 7, 8, and 9.)
4. Thereafter, Respondent requested that the February 26, 2004 hearing be continued and it was rescheduled for May 20, 2004. The Order continuing the case was sent by regular mail to Respondent at the most recent address she provided to the Division and where she received the NOH by certified mail. The Order notified the Respondent of the date, time, and location of the May 20, 2004 hearing. That Order was not returned as undeliverable. (State's Exhibit 11; TR at 18.)
5. The Respondent did not contact anyone at the Division or the Hearing Officer to indicate that she could not be present at the May 20, 2004 hearing or to make a continuance request. (TR at 4, 7.)
6. The hearing was held on the date and at the location set forth in the Order continuing the case to May 20, 2004. The hearing started 40 minutes after the time set forth in that Order to make sure that Respondent was not running late or in the wrong location. (State's Exhibit 11; TR at 1, 4, 7.)
7. The Respondent received the NOH by certified mail and received written notice of the date, time and location of the hearing.

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

8. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1.)
9. 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).
10. The Division received Respondent's Loan Officer Application ("Application") on May 3, 2002. Respondent's maiden name was Deborah Elaine Larson. (State's Exhibit 1.)
11. Respondent answered "No" to Question 5 on the Application, which 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.)
12. Respondent's signature on the Application is notarized. 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." (State's Exhibit 1.)
13. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
14. Respondent's background check revealed possible criminal convictions. In response to the Division's inquiry, Respondent submitted certified copies of court records confirming convictions in 1992 for aggravated burglary and theft. (State's Exhibits 2, 3, and 4.) The Division obtained a certified copy of a court record confirming Respondent's subsequent 1992 conviction for unauthorized use of property. (State's Exhibit 4A.)
15. Respondent explained the convictions in a letter she sent to the Division prior to the issuance of the NOH. In 1992, she and a friend broke into their ex-boyfriend's houses and stole a few things. She was arrested and sent to jail. After she got out, she and another friend found a bag with credit cards in it. Her friend used the cards, without authorization, to purchase items. (State's Exhibit 4.)

16. Respondent also sent the Division a letter describing her work history in retail stores, cleaning homes, at a title company and in the mortgage industry. She indicated that she has been gainfully employed and not in trouble after the convictions. (State's Exhibit 6.)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her right to request a hearing. The Division's NOH properly notified the Respondent that she was entitled to request a hearing and was served upon her by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of her right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once the hearing is set. The Division's January 30, 2004 letter including this information was sent to the Respondent by regular mail at the most recent address she provided to the Division and where she received the NOH by certified mail. Thereafter, the Order continuing the case including that information was sent by regular mail to Respondent at the most recent address she provided to the Division and where she received the NOH by certified mail. That Order was not returned as undeliverable.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78.
4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the hearing in this matter.
5. The Respondent received proper notice of the hearing. Therefore, it was appropriate for the hearing to proceed in her absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124, 125-26, 532 N.E.2d 189, 191.
6. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

7. 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.
8. 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.
9. A conviction for the unauthorized use of property constitutes being convicted of a "criminal offense involving theft" for the purposes of R. C. 1322.031(A)(2).
10. 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:

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

(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)(2), (3) and (5).

11. Respondent was convicted of unauthorized use of property, aggravated burglary, and theft in 1992.

12. The 1992 convictions are all for criminal offenses involving theft, which are specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
13. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
14. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
15. Respondent's response to Question 5 of the Application indicating that she did not have any criminal convictions when in fact she had several was a substantial misrepresentation on her application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that she did not have any criminal convictions, in violation of R.C. 1322.07(B).
16. Respondent violated R.C. 1322.07(B) by omitting the statements regarding her aggravated burglary, theft and unauthorized use of property convictions required to be in an application by R.C. 1322.031(A)(2).
17. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
18. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that she had no criminal convictions, when in fact she had several, on her loan officer license application.
19. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
20. Once Respondent's 1992 aggravated burglary and theft convictions were proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that her "activities and employment record since the convictions 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" in order to obtain a license. R.C. 1322.041(A)(3).
21. Instead, the evidence established an additional conviction for unauthorized use of property later in 1992 and Respondent's recent failure to disclose any of her criminal convictions on her Application. Respondent's failure to disclose her criminal convictions, the nature of the convictions, and the lack of independent evidence of Respondent's good character, preclude her from meeting her burden of proof under R.C. 1322.041(A)(3).

22. For these same reasons, Respondent has not established that her character and general fitness command the confidence of the public and warrant the belief that her 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)(2), (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,

Janè Stempel Arata
Administrative Hearing Officer
August 24, 2004