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DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS 07 JAN -4 AM 9:44

IN THE MATTER OF: : CASE NO. M2006-9993060
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:
Jacqueline M. McCaskey : 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 1:30 p.m. on October 26, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jacqueline M. McCaskey (Respondent) to consider the allegations in the Division's Notice of Intent to Deny 2005 Loan Officer License Renewal Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent failed to provide complete and accurate information about her criminal background on her 2004 loan officer renewal application filed in April of 2004. Therefore, the Division asserts that Respondent is not eligible for a loan officer license renewal pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. 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).
2. By failing to disclose her criminal background on her loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

James M. Evans, Esq., Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. James M. Perlman, Esq. of Toledo, Ohio represented the Respondent. At the hearing, State's Exhibits 1 through 15 and 17 and 18 were admitted into

the record. Exhibit 16 was not admitted into evidence but was proffered into the record. The record was left open for Exhibit 19, the Certificate of Registration Application filed by McCaskey Financial Services, LLC. Exhibit 19 was received on December 30, 2006.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on September 21, 2006 by certified mail, return receipt requested. (Exhibit 1.) Respondent's hearing request was received by the Division on September 29, 2006. (Exhibit 6.) The Division scheduled the hearing for October 6, 2006 but, on its own motion, continued the hearing to October 26, 2006. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to the same address as the NOH. (Exhibit 7.) The hearing on this matter was consolidated with the hearing on a Notice of Intent to Deny Mortgage Broker Certificate of Registration Application filed by McCaskey Financial Services, LLC, Case No. M2006-9993062.

C. Respondent's Loan Officer Renewal Application

1. The Division issued the Respondent a loan officer license on September 3, 2002 and renewed that license on May 8, 2003. (Exhibits 4 & 5.)
2. The Respondent filed a loan officer renewal application on April 22, 2004. (Exhibit 2.)
3. Question 1 of that application asked the following question:
 1. Have you been arrested, charged, or convicted by any state or federal authority of any criminal offense [within the past sixteen months]? (Exhibit 2.)
4. In response to Question 1, the Respondent answered "No." (Exhibit 2; TR at 22.)
5. The Division apparently renewed her loan officer license in 2004. (TR at 86.)
6. The Respondent filed a 2005 loan officer renewal application in April of 2005. (Exhibit 3.) This 2005 loan officer renewal application is the subject of the NOH.
7. The Respondent was charged in 2003 with theft in violation of R.C. 2913.02(A)(3), a felony of the fifth degree, in the Lucas County Court of Common Pleas. As a result of that charge, the Court placed Respondent in a diversion program, stayed the criminal proceedings, placed Respondent on supervision by the Pretrial-Presentence Department for a term of 3 years and ordered Respondent to comply with all provisions of the Diversion Agreements. Additionally the Court ordered Respondent to pay restitution and a program fee. (Exhibit 18.)
8. Respondent successfully completed the Pretrial Diversion Program and on October 5, 2005 the Court dismissed all charges against her. (Exhibit 12.)

On June 8, 2006 the Court ordered all official records regarding the criminal case be sealed pursuant to R.C. 2953.52 and 2953.53. (Exhibit 13.)

9. Respondent testified that she consulted with the Lucas County Prosecutor's office and her own attorney before she answered question 1. They advised her that the correct answer was "no." (TR at 23, 103.)
10. Respondent testified that she believes that her "no" answer to question 1 is correct because she was not arrested, charged with or convicted of any criminal activity. (TR at 24.) Respondent testified that the Lucas County Prosecutor's office called her downtown to make a statement (TR at 32); that she appeared in Court; that the prosecutor recommended pretrial diversion; that her counsel did not object and that the judge agreed. They then walked downstairs where she provided additional information. (TR at 37.)
11. Respondent signed a Diversion Agreement agreeing to its terms which included a requirement that Respondent make a "written confession to the subject pending charges." (Exhibit 13.)
12. The Lucas County Prosecutor's office wrote a letter dated January 27, 2004 addressed "to whom it may concern" stating that Respondent's placement in the diversion program was not a criminal conviction. (Exhibit 12; TR at 103 - 104.) Respondent testified that she attached this letter to her 2004 loan officer renewal application. (TR at 24 -26, 105.)
13. On November 27, 2003, the Toledo Blade published an article about a Lucas county woman who had been convicted of theft and forgery. The article also stated that Respondent had been charged in connection with the crime and was going through a court diversion program in lieu of conviction. (Exhibit 17.)
14. Mr. Mark Rhea, Staff Attorney in the Division's Consumer Finance Section testified that the Division began looking into the matter of Respondent's loan officer license in 2003 when it received a copy of the Toledo Blade newspaper article. (TR at 71, 75.) In 2004, the Division proceeded to renew Respondent's loan officer license apparently unaware of its own ongoing investigation. (TR at 87.)
15. Mr. Rhea also testified that the January 27, 2004 letter from the Lucas County Prosecutor's office is attached in the Division's file to another document which came in to the Division in October 2005. Therefore, he believes that the Respondent did not submit the letter with her 2004 loan officer renewal application. (TR at 117.) However, he admitted that the letter in the Division's file does not bear the Division date-received stamp. (TR at 119 - 120.)
16. Ms. Kimberly Poling also testified at the hearing. Ms. Poling is a loan officer with Marketplace Mortgage. She testified about her own involvement with the Lucas county woman, her participation in the Lucas county diversion program and about how she answered question 1 on her 2004 loan officer renewal application. (TR at 49 - 69.)

17. The record does not disclose that the Respondent was furnished any instructions regarding question 1 other than the instructions which are part of question 1 on the loan officer renewal application form.
18. Additionally, the Order of the Lucas County Common Pleas Court in Case No. G-4801-CR-0200303314 journalized under date of October 4, 2005 states that all charges against Defendant were dismissed upon her successful completion of the Pretrial Diversion Program. (Exhibit 12.)
19. No witnesses appeared on the Respondent's behalf.

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. Respondent's counsel objected to the admission of Exhibit 14. Exhibit 14 is a booking summary from the Lucas County Sheriff's Office. Counsel contended that the document had not been properly authenticated. However, it includes a statement of certification. The Hearing Officer admitted Exhibit 14 into the record over the Counsel's objection.
3. Respondent's counsel objected to the admission of Exhibit 15. Exhibit 15 is the transcript of the testimony of Kimberly Poling from proceedings before the Division on August 25, 2004. Counsel contended that the document is irrelevant to the proceedings in this matter. The Hearing Officer admitted Exhibit 15 into the record over Counsel's objection to the extent that it contains information about the criminal proceedings involved in this matter. The Hearing Officer noted that he would not consider statements about how Kimberly Poling answered question 1 on her 2004 loan officer license renewal application due to lack of relevancy.
4. Respondent's counsel objected to the admission of Exhibit 16. Exhibit 16 is the 2004 loan officer renewal application filed by Kimberly Poling. Counsel objected that the Exhibit lacks relevancy to this matter. The Hearing Officer did not admit Exhibit 16 into the record and has not considered it in his Report and Recommendation. The Attorney General proffered Exhibit 16 into the record.
5. Respondent's counsel objected to the admission of Exhibit 17. Exhibit 17 is the article from the Toledo Blade. Counsel objected that it is hearsay. The Hearing Officer admitted the Exhibit over Counsel's objection because it is part of the Division's investigative file and testimony indicated that it was the document that caused the Division to look into the matter of Respondent's loan officer license. The Hearing Officer did not consider Exhibit 17 as evidence of statements made in the article.
6. Respondent's counsel objected to the admission of Exhibit 18. Exhibit 18 purports to be a Docket for the matter of Case No. CR-200303314 from the

Lucas County Clerk of Court's office. Counsel objected that it is not an official court record. The Hearing Officer admitted the record as being part of the Division's investigative file.

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(B) provides that the Superintendent of Financial Institutions (Superintendent) shall renew a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here, the applicant meets the conditions set forth in R.C. 1322.041(A)(2) to (5).
3. R.C. 1322.041(A)(2) provides:

The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
4. R.C. 1322.041(A)(5) provides:

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.
5. The NOH asserts that Respondent's 2005 loan officer renewal application should be denied because Respondent did not meet the condition set forth in R.C. 1322.041(A)(5). The Division asserts that Respondent was arrested and charged with theft in the sixteen month period preceding her 2004 loan officer renewal application and failed to disclose this information on the form as required by the Superintendent. The Division infers from this failure that 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).
6. The Respondent's asserts that she did not disclose the criminal proceedings because she was not arrested, charged with or convicted of a criminal offense. Respondent testified that no one told her that she was under arrest and no one attempted to restrain her. The only evidence indicating that Respondent was arrested is an entry on the Sheriff Office's booking summary that states a date time and place that Respondent was arrested. Respondent testified that she was never told that she was under arrest. No information was submitted to show what the entries on the booking summary mean. Accordingly, the record contains insufficient information to support a finding that Respondent was arrested.
7. Respondent asserts that she was not charged with a crime. However, she testified that the Lucas County Prosecutor's office called her to the

Courthouse (TR at 32); she appeared before a judge; the Prosecutor offered Pretrial Diversion and the judge agreed. They then walked downstairs where she completed the information necessary to enter the Pretrial Diversion Program (TR at 37.) The Respondent signed a Diversion Agreement agreeing to its terms which included the requirement that Respondent agreed to provide a "written confession the subject pending charge(s)." (Exhibit 13.) Accordingly, the Respondent had to know that she had been charged with a criminal offense when she completed her 2004 loan officer renewal application.

8. Respondent also asserts that she notified the Division about the criminal proceedings by including the letter from the Lucas County Prosecutor's office which stated that she was in the Pretrial Diversion Program with her 2004 loan officer renewal application. However the face of the application does not indicate that anything was attached to it. Moreover, Respondent did not present any correspondence that indicated that she had transmitted the letter with the application. She testified that she sent the application to the processor for the net branches at Challenge Financial Investors Corp. But no one from Challenge Financial appeared to testify that they had seen the letter. The record does not support Respondent's assertion that she notified the Division about the criminal proceeding. Moreover, Mr. Rhea testified that the Division file does not indicate that the letter accompanied Respondent's 2004 loan officer renewal application.
9. Respondent answered question 1 "no" on her 2004 loan officer renewal application knowing that she had been charged with a criminal offense within the sixteen month time period. This action supports the Division's finding that 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).
10. The NOH alternately asserts that Respondent's loan officer renewal application should be denied because her failure to disclose the criminal proceeding in her 2004 loan officer renewal application violated R.C. 1322.07(A), which prohibits a loan officer from obtaining a 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 license application; R.C. 1322.07(B), which prohibits a loan officer from making false or misleading statements of 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; and R.C. 1322.07(C) which prohibits a loan officer from engaging in conduct that constitutes improper, fraudulent or dishonest dealings.
11. The Superintendent is authorized by R.C. 1322.031(A)(4) to require information on a loan officer application. The Superintendent requires loan officers seeking to renew their loan officer licenses to disclose if they have been charged with a criminal offense. This is information that the Superintendent would use in determining whether or not the applicant met the requirements to renew a loan officer license. Respondent violated R.C. 1322.07(A) by omitting a material fact required by state law from her loan

officer renewal application. Respondent argues that R.C. 1322.07(B) does not apply because it is limited to statements or omissions in advertising. However, R.C. 1322.07(B) prohibits omissions of statements required by state law through advertising or other means. Accordingly, by omitting a material fact required by state law, Respondent violated R.C. 1322.07(B). Taken together this constitutes engaging in conduct that constitutes improper, fraudulent, or dishonest dealings with the Division in violation of R.C. 1322.07(C).

12. As a result of the Respondent's failure to meet the requirements of R.C. 1322.041 (A)(2) and (A)(5), the Superintendent is not required by R.C. 1322.041(B) to renew Respondent's loan officer license. Under such circumstances, R.C. 1322.10(A)(1) 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 renew a loan officer license.

III. RECOMMENDATION

The record in this case establishes 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 Ohio's Mortgage Broker Act. Moreover, Respondent has not complied with the provisions of R.C. 1322.01 to 1322.12 as required by R.C. 1322.041(B). Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's 2005 loan officer renewal application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

James J. Lawrence
Hearing Officer
January 2, 2007