

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 02-LO-D-56
)	
MELVIN LALICH)	<u>DIVISION ORDER</u>
2091 Lamberton)	Denial of loan officer license application
Cleveland Heights, Ohio 44118)	&
_____)	Notice of Appellate Rights

Respondent, Melvin Lalich, submitted a loan officer license application to the Division of Financial Institutions ("Division") on March 21, 2002. On October 2, 2002, the Division notified Lalich that it intended to deny his loan officer license application because: (1) he had been convicted of trafficking in marijuana in 1990 and had not proven to the Division that he was honest, truthful, and of good reputation and that there was no basis in fact to believe that he would not commit another offense involving drug trafficking; and (2) because his character and general fitness did not 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 R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Lalich requested a hearing and an administrative hearing was held on December 11, 2002. A Report and Recommendation was filed with the Division on January 10, 2003, recommending that the Division approve Lalich's application and grant him a loan officer license. Lalich did not object to the report and/or recommendation.

In accordance with R.C. 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

The introduction on page 1 of the Report and Recommendation states that Judith Edwards, Robert M. Grieser, and Amanda Axtell appeared on behalf of the Division. Only John Izzo appeared on behalf of the Division. Ms. Edwards, Mr. Grieser, and Ms. Axtell were observers at the hearing. The introduction on page 1 of the Report and Recommendation is modified accordingly.

Paragraph 2 on page 1 of the Report and Recommendation under the heading Findings of Fact and subheading Background is modified to reflect that Lalich applied to the Division for his loan officer license on March 21, 2002, not March 31, 2002. (Exhibit 3.)

The Division modifies paragraph 6 on page 2 of the Report and Recommendation. Paragraph 6 states that a reason the Division sought to deny Lalich's loan officer license application was the he "**failed to prove** he was honest, of good character, that his character and general fitness did not command the confidence of the public[.]" This is not legally correct. The Division did not allege that Lalich failed to prove that his character and general fitness command the confidence of the public, but rather stated in its notice that "his character and general fitness 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 Ohio Mortgage Broker Act." (Exhibit 1A.) The burden of proof is on the Division to show that Lalich's character and general fitness do not command the confidence of the public. The paragraph 6 on page 2 of the Report and Recommendation is modified to accurately reflect what was contained in the Division's notice and to reflect the accurate legal burden.

Paragraph 7 on page 2 of the Report and Recommendation is modified to reflect that the hearing was not requested until the Division received the hearing request, which was October 9, 2002, not October 4, 2002. (Exhibit 1B.)

The Division modifies paragraph 9 on page 2 of the Report and Recommendation to reflect what is cited from pages 12 and 42 of the transcript is not testimony as it was not made under oath, but rather in the opening and closing statements.

The Division disapproves paragraph 14 on page 3 of the Report and Recommendation. First, Lalich never stated that he was "consistently gainfully employed" in the transcript pages cited. (See Transcript, pp. 30-32.) The dates contained in the pages cited show a pattern of employment, but the testimony does not show that there were no gaps in employment.

Division Modifications and Disapprovals of the Section Titled "Conclusions of Law"

The Division disapproves the last sentence of paragraph 22 on page 4 of the Report and Recommendation. It is the Division that must prove that Lalich'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 Ohio Mortgage Broker Act. As a result the last sentence of paragraph 22 on page 4 is disapproved.

The Division disapproves paragraphs 23 and 24 on pages 3 and 4 of the Report and Recommendation; disapproves the last sentence of paragraph 25 on page 5 of the Report and Recommendation; disapproves the last two sentences of paragraph 26 on page 5 of the Report and Recommendation; and disapproves paragraphs 30, 31, and 32 (the recommendation) on page 6 of the Report and Recommendation.

Contrary to the second sentence of paragraph 26 on page 5 of the Report and Recommendation, Respondent testified that he had in fact been convicted of a crime related to drug trafficking. (Transcript, pp. 20-21.) Further, the record contains the journal entry evidencing Lalich's conviction for trafficking in marijuana in 1990. (Exhibit 4.)

The Ohio General Assembly made it clear with the enactment of the Ohio Mortgage Broker Act if a person is convicted of an offense involving drug trafficking, regardless of how much time has passed since the conviction, the burden is placed on the person to show, by a preponderance of the evidence, that their employment record and activities since the conviction show that person to be honest, truthful, and of good reputation and there is no reason in fact to believe that they will commit that offense again. See R.C. 1322.031(A)(2) and 1322.041(A)(3). The Report and Recommendation relies on Ohio Evidence Rule 609 in its reasoning, however, that rule applies to situations where a witness is being impeached. The Division did not offer proof of the drug trafficking conviction to impeach Lalich on cross examination, but rather to establish that Lalich had been convicted of a crime enumerated in 1322.031(A)(2.) As result of the Division establishing the drug trafficking conviction, pursuant to R.C. 1322.041(A)(3), Lalich has the burden of proof. Further, the Division is not bound by the "strict rules of evidence applied in court." *Summit County Board of Health v. Pearson*, 157 Ohio App.3d 105, 2004-Ohio-2251.

As Lalich was convicted of a crime enumerated in R.C. 1322.031(A)(2), the burden was on him to show, by a preponderance of the evidence, that his employment record and activities since his drug trafficking conviction show that he is honest, truthful, and of good reputation and there is no basis in fact to believe that he will commit another offense involving drug trafficking again. See R.C. 1322.041(A)(3). To that end, the only documents that Lalich offered into the

record were a copy of a degree from Kent State University, a stock purchaser agreement, and a credit report. (Exhibits A, B, and C.) None of these documents directly address or provide statements to Lalich's honesty, truthfulness, or good reputation. Further, in places in the Report and Recommendation, the report relies on "testimony" that does not exist. Testimony is defined as "Evidence given by a competent witness **under oath or affirmation**; as distinguished from evidence derived from writing, and other sources." Black's Law Dictionary, Sixth Edition, 1990, p. 1476. According to the transcript, Lalich's sworn testimony was given from page 15 to page 33 of the transcript. Any cites to the transcript contained in the Report and Recommendation that refer to any statement made by Lalich not made between page 15 and page 33 is not testimony, but rather unsworn statements or statements made during a closing argument. Mary Cornely, who has a business relationship with Lalich and in turn has a interest in him obtaining a loan officer license, did not provide any testimony concerning Lalich other than she did not think he was a bad mortgage broker. (Transcript, p. 35.) Given the insufficiency of evidence presented by Lalich, the record does not show that Lalich met his statutory burden which required him to prove by a preponderance of the evidence that his employment record and activities show he is honest, truthful, and of good reputation. (See R.C. 1322.041(A)(3).)

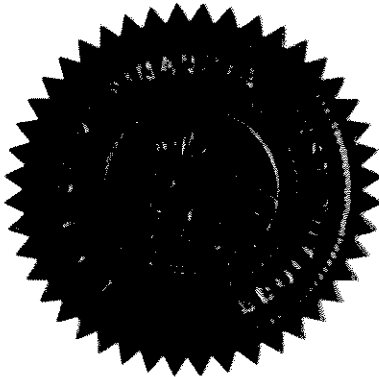
Lalich testified that he been convicted of Driving Under the Influence, yet he did not disclose that conviction to the Division of his loan officer license application, despite being asked to disclose any criminal convictions per Question 5 of the loan officer license application. (Transcript 20, 32, and Exhibit 2.) Further, although he is Melvin Lalich, Jr., he did not put that on his loan officer application that in fact he was a junior. Not providing the Division with all of the information it asks for on its loan officer license application is evidence which demonstrates that Lalich lacks attention to detail and does not have the general fitness to be a licensed loan officer. This, coupled with the fact that Lalich has a felony drug trafficking conviction, a conviction stemming in part from his unapologetic refusal to cooperate with law enforcement (Transcript pp. 16-19), shows that Lalich's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated in compliance with the Ohio Mortgage Broker Act. Loan officers deal with what is often their client's single largest investment. Lalich does not have the character and general fitness to originate loans.

In accordance with the foregoing, the loan officer license application of Melvin Lalich is hereby denied.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.



Signed and sealed this 30th day of December 2005

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

Exhibit A

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

STATE OF OHIO
DIVISION OF FINANCIAL
INSTITUTIONS

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In the Matter of:

Melvin Lalich
3113 Van Aken Blvd.
Shaker Heights, OH 44120

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: Case No. 02-LO-D-56
:
: Terrence O'Donnell, Hearing Examiner
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HEARING EXAMINER'S
REPORT AND RECOMMENDATION

I. Introduction

This case came to be heard on December 11, 2002. Appearing were Respondent Mr. Melvin Lalich and Ms. Mary Cornely, a character witness for Mr. Lalich. Appearing on behalf of the Department of Commerce were Assistant Attorneys General Mr. John Izzo and Ms. Judith Edwards, Mr. Robert M. Grieser, Deputy Superintendent of the Division of Financial Institutions, and Ms. Amanda M. Axtell, in-house counsel for the Division of Financial Institutions. After due consideration of all the evidence, the hearing examiner makes the following findings.

II. Findings of Fact

A. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C 1322.01 to O.R.C. 1322.12, the Department of Commerce is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.
2. On March 31, 2002, Respondent Mr. Melvin Lalich, President of Express Mortgage Services Inc., 16141 Puritas Ave., Cleveland, Ohio, 44135, applied for a license to be a loan officer. See Application, State's Exhibit 3.
3. On October 2, 2002, the Department of Commerce issued Mr. Lalich a Notice of Intent to

Deny a Loan Officer License to Mr. Lalich. See Notice, State's Exhibit 1A.

4. The Department of Commerce stated in its Notice of Intent to Deny Loan Officer's License as its basis for the intent to deny the license that Mr. Lalich was convicted of trafficking in marijuana on or about August 27, 1990. State's Exhibit 1A.
5. Mr. Lalich had disclosed the fact of his conviction for trafficking in marijuana on his application to be a loan officer. State's Exhibit 3.
6. The Department of Commerce further alleged in its Notice of Intent to Deny Loan Officer License that Mr. Lalich failed to prove he was honest, of good character, that his character and general fitness did not command the confidence of the public, and that the public would be best served if Mr. Lalich were denied a mortgage broker's license. State's Exhibit 1A.
7. On October 4, 2002, Mr. Lalich requested a hearing to appeal the proposed actions of the Department of Commerce. See Letter, State's Exhibit 1B.

B. Drug Conviction

8. At the hearing, Mr. Lalich admitted that he was convicted on August 27, 1990, of one count of trafficking in marijuana. Mr. Lalich's judgment of conviction in the Geauga County Common Pleas Court was made part of the record. State's Exhibit 4.
9. According to his testimony, Mr. Lalich's violation occurred when he was nineteen (19) years of age and a student at Kent State University. See Transcript, p. 12, 42.
10. At the hearing Mr. Lalich described the circumstances surrounding his crime. Transcript, pp. 16-21. He indicated that in 1989 he sold marijuana to a co-worker. Transcript, p. 16. He testified that he was an occasional user of marijuana and that a co-worker at a fence-installation company repeatedly solicited him for drugs.
11. When Mr. Lalich was later at a party where marijuana was present, he took the opportunity

- to “make the connection” and sell his co-worker four ounces of marijuana. Transcript, p. 18. This co-worker was a police informant. Transcript, p. 16.
12. For his crime, Mr. Lalich received a one-year jail sentence (suspended), served two years probation, and paid a substantial fine. See Journal Entry, State’s Exhibit 4.
13. Mr. Lalich has since attained a bachelor’s degree from Kent State University. See Diploma, Respondent’s Exhibit A.
14. According to his testimony, Mr. Lalich has been consistently gainfully employed since finishing college. See Transcript, pp. 30-32.
15. According to his testimony, Mr. Lalich has worked in the mortgage broker industry since 1993. See Transcript, pp. 30-31.
16. Mr. Lalich has owned and served as President of Express Mortgage Services since 1997. See Transcript, p. 30; Stock Purchase Agreement, Respondent’s Exhibit B.

C. Possible Undisclosed Alias

17. The State established through testimony that Mr. Lalich shares a first name with his father. Transcript, p. 25.
18. On his application to be a loan officer, Mr. Lalich indicated he has never used and is not known by any name other than “Melvin Lalich.” State’s Exhibit 3.
19. In testimony, Mr. Lalich indicated that he does not represent himself as “junior” even though that name appears on his driver’s license. See Transcript, p. 26.

III. Conclusions of Law

20. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been

convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041.

21. The criminal offenses incorporated by reference are:

“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.” O.R.C 1322.031 (A)(2).

22. It is undisputed that Mr. Lalich has been convicted of one count of trafficking in marijuana. However, once the fact of conviction is established, the statute allows for a burden-shift in which Mr. Lalich then assumes the burden of proving that despite his conviction, he otherwise should receive a loan officer’s license. It states:

“The superintendent shall issue a loan officer license to the applicant if 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... The superintendent shall issue a loan officer license if the superintendent finds 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.” O.R.C. 1322.041 (A)(3), (A)(5).

23. The fact that Mr. Lalich’s drug trafficking offense occurred approximately fourteen (14) years ago, and that his two-year period of probation ended approximately twelve years ago, must be considered. The Ohio Rules of Evidence do not strictly govern this proceeding, but the Rules do inform it. On how much weight to assign a past conviction, the Rules are instructive:

“Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or the release of the witness from the confinement, or the termination of

probation, or shock probation, or parole, or shock parole imposed for that conviction whichever is the later date, unless the court determines in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect..." Ohio R. Evid. 609(B), Impeachment By Evidence of Conviction of Crime.

24. This Rule setting barring the admission of convictions greater than ten years old under certain circumstances reflects both that a witness or defendant should benefit from a passage of significant amounts of time on "good behavior," and that constitutional due process prohibits the introduction of highly prejudicial evidence when the value of that evidence is so diminished by its age. That principle informs this Report and Recommendation both because of its rational basis and because on appeal, a court reviewing this matter *de novo* could rule the conviction too old to be considered.
25. Since his conviction in 1989, including his two-year probation, Mr. Lalich's record is free from criminal offenses related to drug trafficking. He testified credibly at the hearing that he no longer uses nor sells marijuana, and that he has not done so since his conviction. Transcript, p. 20. His testimony concerning the price he has paid for his conviction, as well as the lessons he has learned since graduating from college and entering the business world, was particularly compelling. Transcript, p. 42, 43.
26. In the meantime, Mr. Lalich has worked for several different mortgage brokering businesses and now operates his own. He testified credibly that he has never been accused, let alone charged with or convicted of, a crime related to drug trafficking, nor has he committed a crime related to fraud or dishonesty. In his career, he has processed or helped process thousands of mortgage loans. Transcript, p. 12, 13.
27. The State also raised the "possibility of misrepresentation or at least an omission" on Mr. Lalich's application to be a loan officer in reference to his not disclosing that he is actually a

“junior,” since he and his father share a first name. Transcript, p. 40.

28. Misrepresentation or intentional omission on an application to be a loan officer is indeed serious. But while Mr. Lalich is in fact a “junior,” he testified credibly that he does not hold himself out as such. Transcript, p. 26.
29. In addition, the State did not allege that Mr. Lalich’s omission had the effect, or could have had the effect, of concealing criminal conduct or otherwise incriminating information such that Mr. Lalich could benefit from the omission. According to the State, Mr. Lalich voluntarily disclosed his past drug conviction, (Transcript, p. 11), in which Court proceedings refer to him only as “Melvin Lalich,” and not “Melvin Lalich, Jr.” See State’s Exhibit 4. The omission was therefore both unintentional and immaterial, and thus not probative evidence on the issue of Mr. Lalich’s character.
30. Mr. Lalich has proven by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that Mr. Lalich will commit such an offense again.
31. Mr. Lalich’s 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 intent of O.R.C. 1322.01 to 1322.12.

IV. Recommendation

32. Therefore, I recommend to the Superintendent that Mr. Lalich be granted a loan officer’s license pursuant to O.R.C. 1322.041.

1/10/03
Date

Terrence O'Donnell
Hearing Examiner