

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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In the Matter of:

Thomas L. Ross
382.5 Michael Street
Centerburg, OH 43011

:
: Case No. 04-0305-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on June 2, 2004. Appearing on behalf of the Department of Commerce's Division of Financial Institutions ("the Division") were Assistant Attorney General Daniel P. Jones and Mr. Mark L. Rhea, staff attorney with the Division.

Despite having requested this hearing, Respondent Mr. Ross was not present, nor was any designated representative. After waiting approximately twenty minutes after the scheduled starting time for the hearing, the hearing proceeded. At the outset, Assistant Attorney General Jones noted that the day before the hearing, he attempted to reach Mr. Ross. Mr. Ross's sister informed him that Mr. Ross had moved to Michigan and would not be attending the proceedings. See Transcript, p. 8.

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 Division

is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.

2. On April 25, 2002, Respondent Mr. Ross, employee of American Mortgage Express Financial Services, Inc., 9389 Dunham Road, Mount Vernon, OH, 43011, applied for a license to be a loan officer. See Application, State's Exhibit 1.
3. On January 27, 2004, the Division issued a Notice of Intent to Deny a Loan Officer License to Mr. Ross. See Notice, State's Exhibit 14.
4. The Division stated in its Notice of Intent to Deny Loan Officer's License as its basis for the intent to deny the license that Mr. Ross was convicted of domestic violence in 1991, attempted domestic violence in 1994, driving under the influence in 1996 and 1997, non-support of dependents in 1999, and that he knowingly provided false information to the Division on his license application. See Notice, State's Exhibit 14.
5. The Division further alleged in its Notice of Intent to Deny Loan Officer License that Mr. Ross's character and general fitness do not command the confidence of the public, nor warrant the belief that his business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act. In addition, the Division alleged that Mr. Ross violated O.R.C. 1322.07 by making a false or misleading statement on his application for licensure. See Notice, State's Exhibit 14.
6. On March 10, 2004, Mr. Ross requested a hearing to appeal the Division's proposed actions. See Letter, State's Exhibit 15.
7. On April 29, 2004, the Division sent notice to Mr. Ross of this hearing via certified mail. See Letter, State's Exhibit 1D, including signed and returned signature card.

B. Convictions

8. At the hearing, the Department admitted into evidence several journal entries documenting Mr. Ross's crimes. These include a domestic violence conviction in 1991 (State's Exhibit 8), a domestic violence conviction in 1994 (State's Exhibit 9), a driving under the influence conviction in 1996 (State's Exhibit 10) and 1997 (State's Exhibit 11), and a non-support of dependents conviction in 1999 for which it appears he served jail time (State's Exhibit 12).
9. It also appears that the Court required him to submit to domestic violence and substance abuse counseling in 1991 and 1994. See Journal Entry, State's Exhibits 8 and 9.
10. Mr. Ross acknowledged some of these convictions in two letters to the Division. See Letters, State's Exhibits 4 and 5. In one handwritten letter, he appears to indicate that his domestic violence convictions were "non-violent," and that his non-support conviction arose when a car accident left him unable to earn enough income to make payments.

C. Failure to Disclose Convictions to the Division

11. In response to Question 5 on his loan officer application, asking if he has ever been convicted of or plead 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," Mr. Ross indicated "no." (Emphasis added). See Application, State's Exhibit 1.
12. After the Division's background check uncovered his criminal record, Mr. Ross wrote to the Division that he did not disclose the convictions because someone at the Division "told [him] they were looking for crimes assoc[iated] with theft, grand larc[eny], money, and embezz[lement] related crimes." See Letter, States's Exhibit 4.

II. Conclusions of Law

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

“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)(5).

14. The Journal Entries indicating Mr. Ross was found guilty of domestic violence in 1991 and in 1994, driving under the influence in 1996 and 1997, and non-support of dependents in 1999 are undisputed, as neither Mr. Ross nor his representative appeared at the hearing. Thus the Hearing Examiner finds that Mr. Ross was convicted of them all.

15. The Division put forth strong evidence of Mr. Ross’s significant criminal record, and each conviction reflects poorly on his character. Domestic violence, DUI, and perhaps most important, failure to care for his dependents. This crime, his most recent, suggests a financial irresponsibility that seems particularly relevant to the work of a loan officer. Mr. Ross sent a written explanation to the Division that a car accident caused him injury, which in turn prevented him from making child support payments. But unsupported by anything else in the record, this assertion alone does not outweigh the evidence of Mr. Ross’s criminal record.

16. Mr. Ross did not appear at the hearing to present any evidence that demonstrates a positive character. No personal testimony, no character witnesses, no letters of reference. It is not clear from the record that he completed his court-ordered domestic violence and substance abuse counseling, let alone what benefits, if any, the counseling conferred.

17. That being the case, the Hearing Examiner finds that Mr. Ross’s character and general

fitness do not command the confidence of the public, nor warrant the belief that his business will be operated honestly and fairly in compliance with the law.

18. In addition, Mr. Ross asserted on his loan officer application that he had not been convicted of "any criminal offense," when in fact he has been convicted of many. This severely undermines any effort he might have made to demonstrate his character commands the confidence of the public in a position requiring the public trust.
19. Mr. Ross contended in writing that Division personnel indicated to him, contrary to the instructions on the loan officer application, that he need not disclose these convictions. Without any testimony to support this claim, his written assertion alone was unpersuasive. Therefore, the Hearing Examiner finds that he also violated O.R.C. 1322.07 in failing to make required disclosures to the Division.

B. RECOMMENDATION

20. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, it is recommended to the Superintendent that Mr. Ross be denied a loan officer's license pursuant to O.R.C. 1322.041.

12/30/04
Date

Terrence O'Donnell
Hearing Examiner