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STATE OF OHIO
DEPARTMENT OF COMMERCE

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

JOSEPH P. GAINES

Case No. 04-0278-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH

Issued July 9, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 10:30 A.M. on May 13, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Joseph P. Gaines (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1989, Respondent pleaded guilty to and was convicted of Attempted Trafficking in Marijuana, a misdemeanor of the first degree, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Martine Jean. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 5A and 5B were admitted into the record. Respondent offered no exhibits.

B. JURISDICTION

The Division issued the NOH against Respondent on March 16, 2004. The Respondent requested a hearing, which was received by the Division on March 19, 2004. On March 23, 2004, the Division scheduled the hearing for March 29, 2004. The Division, upon its own motion continued the hearing to May 13, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 1).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as owner of a body shop and garage mechanic. (Tr.p.9).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about November 21, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 2).
5. Respondent filled out and signed the Application on or about, October 28, 2003. (Exhibit 2).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you...ever been convicted of or pleaded guilty to any criminal offense including, but not limited to . . . drug . . . trafficking . . ." (Exhibit 2).
7. In 1989, 15 years prior to the submission of the Application Respondent was charged and convicted of one count of attempted trafficking in marijuana. (Exhibit 3,5B; Tr.pp.20-26)
8. Respondent did not provide any letters of reference to attest to his character nor did he bring any character witnesses.
9. Respondent does not currently work in the Mortgage business and has a high school diploma from vocational school. 9Tr. pp. 9-10).

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. Ohio Revised Code Section 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.

3. Ohio Revised Section 1322.041 provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

(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. Ohio Revised Code Section 1322.07(A) and (B) provide:

NO mortgage broker, registrant, licensee, or applicant for 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 or any omission or 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;

5. Because the Respondent answered no to Question 5 of the Application, but in fact did have misdemeanor conviction, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
6. Respondent provided no character references.

DISCUSSION

1. The Respondent stated that he currently owns his own body shop and mechanical garage business (Tr.p.9).
2. The Respondent testified that in 1989 he was found guilty of attempted trafficking marijuana and was put on probation for five years. (Tr. pp.20-25; Ex.5B).
3. The Respondent did not admit to having this criminal charge on his mortgage loan application. (Ex. 2). This conviction was 15 years ago. (Tr.p.20;Ex. 5B).
4. Even though it appears that the Respondent has had no involvement with the criminal justice system since his release from probation in 1994, the Respondent did not honestly answer Question 5 of the Application. (Exhibit 2).
5. Respondent did not provide any character witnesses to attest to his honesty, integrity and good character. Nor did Respondent submit any letters of character reference.
6. Respondent states in his testimony that he understood question 5 to mean "exclude" or disregard misdemeanor traffic and parking offenses. He understood that he was convicted of a misdemeanor so he excluded it. (Tr.p. 16).
7. When questioned by Martine Jean regarding the Divisions concerns with respect to the respondents interpretation of question 5, Respondent testified " ... that he did not read it carefully and did not have any help filling out the application. (Tr. p 19).
8. Respondent testified he has been to court for traffic offenses (Tr.p.26)
9. Respondent testifies he "misinterpreted the question and that he has nothing to hide from nobody". (Tr. p. 26)
10. Respondent provided no character witnesses and no letters of character reference. Respondent's did not over come his burden of proof therefore his character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division deny a Loan Officer License to the Respondent.

Respectfully submitted,

Julie M. Lynch
Hearing Officer
July 9, 2004