

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Dennis R. Blakeslee**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0413-LOD**

**FINDINGS OF FACT**

1. On or about March 15, 2004, Dennis R. Blakeslee ("Respondent" herein) submitted an application (the "Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about May 13, 2004, the Division notified Respondent that it intended to deny the Application, and provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Notice charged that Respondent failed to meet certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on October 12, 2004. At the Hearing, the Division was represented by Assistant Attorney General Emily A. Smith, Esq., and Respondent was represented by Brent L. English, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true, through stipulation with respect to admission of the Notice and other documents. (Tr. Page 39)
5. As of the date of the Application, Respondent was employed by the Mortgage Zone.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

## **DISCUSSION**

Procedurally, prior to the Hearing Respondent had submitted a motion captioned "Motion to withdraw application for loan officer's license without prejudice and to withdraw corresponding request for hearing thereon without prejudice or in the alternative to continue hearing due to a jury trial conflict". It is noted that Respondent's request to continue the hearing from the original date was in fact granted in order to address a timing conflict for Respondent's counsel. The Division submitted a response to the remainder of Respondent's motion immediately prior to the Hearing, captioned "Memorandum in opposition to withdraw". Respondent's original motion was withdrawn by Respondent at the Hearing without further action or response by the Division or further consideration at the Hearing. (Tr. Pages 8 and 9)

At the Hearing, Respondent and the Division stipulated to the evidence relating to Respondent's criminal record as described in the Notice. (Tr. Page 39)

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record includes conviction of a crime which, unfortunately, reflects the very kind of criminal offenses the legislature found to be an antithesis to the mortgage broker industry and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2).

The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual, which have occurred since the facts that gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is

honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of “bad players” whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

Applicable law, as set forth in the referenced provisions of the Ohio Revised Code, clearly requires the Respondent in this instance to prove, by a “preponderance of the evidence”, that he meets the statutory criteria necessary to overcome the “automatic disqualifier” provisions set forth in Ohio Revised Code section 1322.041(A)(3), and reserves to the Superintendent appropriate discretion in the licensing decision.

Further, Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent’s consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent’s character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant’s character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

At the Hearing, Respondent presented only his own testimony, testimony of his spouse, and testimony of his mother, as well as certain unsubstantiated written general testimonials by others, in support of the statutory factors considered under Ohio Revised Code sections 1322.041(A)(3), 1322.041(A)(5), and 1322.07. Without elaboration, the testimony of Respondent’s witnesses may be generally characterized as supportive of Respondent’s position, including their perceptions of Respondent’s honesty and integrity. Respondent and the witnesses provided testimony generally describing Respondent’s personal, employment, educational, and family background and history; facts and circumstances surrounding Respondent’s criminal history regarding bad check charges (including the charge in Florida which was withdrawn by the prosecution; State’s Exhibit C); and Respondent’s past business ventures.

While Respondent answered question five of the Application in the affirmative and disclosed the previous bad check charge in Florida, Respondent failed to disclose the more recent bad check conviction in Ohio in 2000.

Respondent testified that his failure to disclose the 2000 conviction was because he “forgot” about the conviction. (Tr. Pages 23, 41, 42, 43, 44, 61) Respondent’s failure to disclose the conviction in the Application unfortunately calls into question Respondent’s character and fitness, and whether Respondent meets the criteria contained in Ohio Revised Code section 1322.041(A)(5).

In addition, Respondent’s incomplete response to question five of the Application may be construed as being false, misleading, and dishonest with regard to the 2000 bad check conviction. There is therefore support for the Division’s assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal conviction, and in providing information which could be construed as false, misleading, and dishonest in conjunction with the Application.

Other than his own testimony and that of his spouse and mother (who is also an owner of Respondent’s prospective employer; Tr. Page 68), Respondent did not present any other testimony: (i) to overcome the preponderance burden imposed by Ohio Revised Code sections 1322.041(A)(2) and (3); (ii) to respond to the Division’s contentions regarding his character and general fitness contained in Ohio Revised Code section 1322.041(A)(5); (iii) to respond to the Division’s contentions regarding the failure to disclose the 2000 conviction as required by Ohio Revised Code section 1322.07; or (iv) to explain generally his incomplete response to the referenced question five in the Application.

While despite the prior bad check charge and Respondent’s single bad check criminal conviction does not appear to evidence a pattern of ongoing criminal behavior, the fact remains that Respondent unfortunately failed to disclose the conviction as required by the Application. The purpose of the Hearing is not to reexamine whether the underlying criminal charges or conviction were, in fact, just or appropriate. The underlying criminal record stands on its own, and relevant provisions of Ohio law do not provide an excuse for non-disclosure to the Division due to forgetfulness, lack of recollection, mistake, or misunderstanding, or require in fact any evidence with respect to intent or knowledge.

In light of the limited objective testimony provided by Respondent, including the absence of testimony at the Hearing from any unrelated third party witnesses: (i) to overcome the statutory “preponderance” requirement; (ii) in support of Respondent’s character and general fitness, or (iii) to explain Respondent’s failure to disclose the 2000 conviction, Respondent has failed to provide evidence sufficient to overcome the Superintendent’s findings under Ohio Revised Code sections 1322.041 and 1322.07.

There is therefore support for the Division’s assertion that Respondent fails to meet the basic statutory criteria established by Ohio Revised Code sections 1322.041 and 1322.07.

**RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

  
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~~Jeffery E. Smith, Hearing Examiner~~

  
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Date