

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0087-LOD
:
:
Christopher H. B. Meister : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 10, 2005

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 10:00 a.m. on April 19, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Christopher H. B. Meister (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of two counts of attempting passing bad checks in 2002 and failed to disclose the convictions on his loan officer application filed in August of 2004. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. The Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would commit such an offense again as required by R.C. 1322.041 (A) (3);
2. 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).
3. By failing to disclose his criminal conviction on his 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, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent did not appear at the hearing without explanation for his absence. At the hearing, State's Exhibits 1 through 16 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on April 5, 2005 by certified mail, return receipt requested. (Exhibit 9.) Respondent's hearing request was received by the Division on April 7, 2005. (Exhibit 10.) The Division scheduled the hearing for April 19, 2005. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to the same address as the NOH. (Exhibit 11.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on August 25, 2004. (Exhibit 1.)
2. Question five of that application asked the following question:
 5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "No." (Exhibit 1.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which revealed that the Respondent had been charged in 2002 with passing bad checks. (Exhibit 3.) By letter dated September 23, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and a certified copy of the judgment entry evidencing his pleas and the court's findings. (Exhibit 4.)
5. The Respondent provided two certified Entries from the Fairfield Municipal Court. The Entries for Case Nos. 2002 CR A 00154 and 2002 CR A 00155 show that on March 21, 2002 the Court found the Respondent guilty of two counts of attempting to pass bad checks in violation of city ordinance 501.09(A). The Court sentenced the Respondent to 180 days in jail, all 180 days suspended, fined the Respondent \$1,000.00 plus costs, with \$850.00 suspended, for each count and placed the Respondent on two years probation. (Exhibit 8.)
6. In an undated letter to the Division, the Respondent explained that the violations occurred when he messed up his checking account when trying to pay rent to his landlord. (Exhibit 5.)

7. The Respondent provided no information about his activities and employment record since his convictions or information to support his character and general fitness to be a loan officer. No witnesses appeared, either personally or in writing, on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

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(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

* * *

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

* * *

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), or, if the applicant has been convicted of or pleaded guilty to such an offense, 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.

* * *

(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.

The NOH states the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again, as required by R.C. 1322.041(A)(3). R.C. 1322.041(A)(3) requires that if the applicant has been convicted of or pleaded guilty to an offense described in R.C. 1322.031(A)(2), the applicant must prove 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. Passing bad checks is one of the offenses described in R.C. 1322.031(A)(2). Since the Respondent was convicted of attempting to pass bad checks in 2002, the burden is on the Respondent to prove by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again.
4. The Respondent has provided no information about his activities and employment record since his convictions. Accordingly, the Respondent has not met the burden of proving by the preponderance of the evidence that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again as required by R.C. 1322.041(A)(3).
5. The NOH asserts that the Respondent's loan officer application should be denied because 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5). The Division bases this finding upon the Respondent's convictions for attempting to pass bad checks and his failure to disclose the convictions on his loan officer application.
6. The Respondent's convictions are evidence that he does not possess the character and general fitness to be loan officer. In the absence of any information supporting the Respondent's character and general fitness, they establish 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).
7. The Respondent failed to disclose his criminal convictions on his loan officer application as required by R.C. 1322.031(A)(2). When asked about his criminal record in Question 5 of the application, the Respondent answered "no" even though he had been convicted of attempting to pass bad checks. The Respondent offered no reason for answering this question incorrectly. Moreover, the Respondent presented no information to support his character and fitness. In the absence of any such evidence, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that his 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).

8. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
9. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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, 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.
 - (C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

* * *


10. The Respondent's failure to disclose the convictions constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
11. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2), (A)(3) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. 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 issue a loan officer license.

III. RECOMMENDATION

The record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and that his 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, the Respondent has not proven that his activities and employment record since the conviction show that he is honest,

truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

 James J. Lawrence
Hearing Officer
June 10, 2005