

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL
INSTITUTIONS
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IN RE: : CASE NO. 04-0032-LOD
: :
RICARDO TROTTER : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued March 17, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held beginning at 11:03 a.m. on February 24, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Ricardo Trotter ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of nonsupport of dependents and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserted 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. Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application;
2. 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 not commit such an offense again as required by R.C. 1322.041(A)(3); and
3. 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).

Martine Jean, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Earlene Smitherman, an Executive Secretary with the Division, attended the hearing as the Division's representative and testified at the hearing. The Respondent did not appear and was not represented by counsel at the hearing. At the hearing, State's Exhibits 1 through 9 were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 22, 2004, and served it upon him by certified mail. (State's Exhibit 7; Hearing Transcript at 11.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. Respondent's hearing request was received by the Division on January 29, 2004. (State's Exhibits 8 and 9.)
3. The Division scheduled the hearing for February 10, 2004, and continued it until February 24, 2004. On February 2, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location of the hearing. (State's Exhibit 9, TR at 12-13.) That letter was sent by regular mail to the Respondent at the address he provided to the Division in his Application and where he received the NOH. (State's Exhibits 1, 7 and 9; TR at 13.)
4. The Respondent did not contact anyone at the Division or the Hearing Officer to indicate that he could not be present at the hearing or request a continuance. (TR at 11.)
5. The hearing was held on the date and at the location set forth in the Division's February 2, 2004 letter. The hearing started 33 minutes after the time set forth in that letter to make sure that the Respondent was not running late. (State's Exhibit 9, TR at 4.)
6. Earlene Smitherman, an Executive Secretary with the Division, testified that she spoke with the Respondent by telephone at 10:50 a.m. on February 24, 2004. He was aware that a hearing was set for that day and told her that he and his boss had decided to cancel the hearing and withdraw his application. The Respondent was informed by the Division that he would need to withdraw his application in writing. (TR at 13-14.) There is no indication that the Respondent has withdrawn his Application. (TR at 14.)
7. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of the hearing.

C. **Respondent's Loan Officer Application and Criminal Conviction.**

8. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 8-9.)
9. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
10. On July 3, 2003, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on July 9, 2003. (State's Exhibits 1.)
11. Respondent answered "No" to Question 5 on the Application, which asked:

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.

(Application, State's Exhibit 1, emphasis and boldface type in original; TR at 8-9.)

12. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
13. Respondent's background check revealed a possible felony conviction for nonsupport of dependents in June of 2000. In response to the Division's inquiry, the Respondent submitted a certified entry from the Franklin County Court of Common Pleas confirming the conviction. (State's Exhibits 4 and 5; TR at 10.)
14. Respondent did not disclose his nonsupport of dependents conviction on his Application. (State's Exhibit 1.)
15. Respondent sent a letter to the Division explaining the conviction as follows:

In 1992 I moved to Toledo, OH to go to college at Toledo University, so from 1992 to 1996 I was a full-time student, working part-time. During this time, I still sent money to my ex-wife whenever I could to help take care of my daughter. Also, during my school years, I bought my daughter clothes and toys. Unfortunately I never reported to Franklin County Child Services the money I was sending to my ex-wife. After I graduated I bought a house in Toledo. In 1999, when my ex-wife saw that I had a nice house, she decided to charge me with back child support. The courts ruled in her favor. I have always taken care of my daughter financially and I

was able to spend time with her. For seven years, I would drive to Columbus and pick her up and bring her back with me to Toledo every other week. I have been paying child support regularly for years. My daughter turned 18 in June of this year, so the child support has ended, and now I only pay back child support from the time I was in college. I am doing everything I can to get this taken care of. I send no less than \$186 per month, sometimes as much as \$500 per month, depending on what I have.

(State's Exhibit 4; TR at 10.)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's NOH properly notified the Respondent that he was entitled to request a hearing and was served upon him by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of his right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once a date is set. The Division's February 2, 2004 letter including this information was sent to the Respondent by regular mail at the address he provided to the Division in his Application and at which he received certified mail service of the NOH less than one month before. It is clear that the Respondent received the NOH because he sent the Division the hearing request form that had been sent to him with the NOH.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78. The person who typed and mailed the February 2, 2004 hearing notice letter identified the letter and testified that it was sent to the Respondent.
4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place for the hearing in this matter.
5. The Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124,125-26, 532 N.E.2d 189, 191.

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

B. Loan Officer License Application.

7. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
8. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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.
9. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(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 division (A)(2) of section 1322.031 of the Revised Code, 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.

R.C. 1322.041(A)(2), (3), and (5).

10. Respondent was convicted of felony nonsupport of dependents in June of 2000.

11. Nonsupport of dependents, which involves the failure to pay money owed another for child support, is a "criminal offense involving money" for the purposes of R.C. 1322.031(A)(2) and 1322.041(A)(3).
12. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
13. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
14. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions, was a substantial misrepresentation in his application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions, in violation of R.C. 1322.07(B).
15. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his nonsupport of dependents conviction, a criminal offense involving money required to be in an application by R.C. 1322.031(A)(2).
16. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
17. Respondent has engaged in improper and dishonest dealings in violation of R.C. 1322.07(C) by engaging in the activities resulting in his criminal conviction and by falsely indicating that he did not have any criminal convictions on his loan officer license application.
18. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
19. Once the nonsupport of dependents conviction was proven by the Division, the Respondent had the burden to prove, by a 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" in order to obtain a license. R.C. 1322.041(A)(3).
20. Instead, the evidence established that he failed to disclose a recent criminal conviction on his Application. The Respondent's unexplained failure to disclose the conviction precludes him from establishing that he is honest, truthful, and of good reputation. He also failed to prove by a preponderance of the evidence that there is no basis in fact to believe that he will commit the criminal offense of

which he was convicted again. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).

21. Respondent's criminal conviction and his failure to disclose it on his Application, establish 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. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
March 17, 2004