

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

COY A. BRIDGES

CASE NO. 04-0132-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued February 28, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned 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 AM on May 17, 2004, at 77 South High Street, 22nd Floor Conference Room, Columbus, Ohio.

The hearing was held at the request of Respondent Coy A. Bridges, of Florence, Kentucky (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 allegation that Respondent was convicted of six different alcohol-related offenses between 1991 and 2002, all in Kentucky, and, also, that Respondent failed to disclose the past criminal offenses on his sworn Application, 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 Emily A.

Smith. Respondent appeared and was represented by John Tanoury, Esq., of Columbus, Ohio.

At the hearing, State's Exhibits 1, 2, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 4, 5, 6, 7a and 7b were admitted into the record. Respondent's Exhibits 1 through 8 were admitted into the record over the Division's hearsay objections, all subject to the weight deemed to be appropriate to be afforded the documents, as discussed in the transcript (hereinafter "Tr.").

B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent requested a hearing, which was received by the Division on February 18, 2004. On February 25, 2004, the Division scheduled the hearing for March 3, 2004, but continued the hearing to March 23, 2004 on its own motion. A request by Respondent for a continuance was granted to May 18, 2004, and then, on May 5, 2004, as a result of a scheduling conflict, the hearing was reset for May 17, 2004, at which time the hearing went forward.

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 4.)
2. Respondent is an individual who has conducted, and wishes to continue to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 1, Respondent's Exhibit 3; Tr. p. 16.)
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 March 22, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1.)
5. Respondent signed the Application on March 7, 2002, which he had filled out on, or about, the same day. (Exhibit 1; Tr. p. 43.)
6. Respondent turned in his Application to his supervisor at his current place of employment and doesn't know how or when the Application came to be notarized. (Tr. pp. 40-42.)

7. The notarization was done by a woman who also wrote a letter of recommendation for Respondent and was someone who works with respondent at Midwest Financial, the mortgage broker's office. (Exhibit 8; Tr. pp. 41-42.)
8. 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, theft, ...forgery, ... , or any criminal offense involving money or securities?" (Exhibit 1; Tr. p. 17.)
9. On, or about, December 19, 1991, Respondent was convicted of operating a motor vehicle while under the influence of an intoxicating beverage (sometimes hereafter referred to as "OMVI"), in the Kenton District Court, Kentucky. (Exhibits 3a, 3b.)
10. On, or about, April 30, 1992, Respondent was convicted of alcohol intoxication, in the Kenton District Court, Kentucky. (Exhibits 3a, 3c.)
11. On, or about, April 27, 1994, Respondent was convicted of alcohol intoxication, in the Kenton District Court, Kentucky. (Exhibits 3a, 3d.)
12. On, or about, July 21, 1998, Respondent was convicted of operating a motor vehicle while under the influence of an intoxicating beverage, in the Campbell District Court, Kentucky. (Exhibits 3a, 3e.)
13. On, or about, May 11, 1999, Respondent was convicted of operating a motor vehicle while under the influence of an intoxicating beverage, in the Campbell District Court, Kentucky. (Exhibits 3a, 3f.)
14. On, or about, May 1, 2002, Respondent was convicted of alcohol intoxication, in Kenton District Court, Kentucky. (Exhibits 3a, 3g.)
15. The Division introduced Exhibit 3h relating to a 1992 conviction of operating a motor vehicle under a suspended license, but the NOH did not cite that charge as a reason to deny Respondent's loan officer's license. (See Exhibits 3a, 3h, 4.)
16. Respondent's explanation of the various alcohol offenses was that from about 1990 to 2002 he was employed in a bar. The general lifestyle, including the late hours and the people he associated with,

beginning at the time he was 21 years old, had an affect on his behavior. (Tr. pp. 28-29.)

17. Respondent testified that, since leaving the "bar industry" and working as a loan officer, his lifestyle has changed so that alcohol is not as much a part of his life. (Tr. pp. 28-29.)
18. Respondent was brought into court on all occasions, entered a plea on all occasions and sentenced to a fine on all occasions. Respondent lost his license for one year on one OMVI conviction, was arrested and, at least for one of the OMVIs, handcuffed, and spent the night in jail for each of the OMVIs. (Exhibits 3b – 3h; Tr. pp. 46-47, 52.)
19. Respondent testified that the only treatment for substance abuse was a requirement to attend alcohol counseling after his second and third OMVI. There is no continuing counseling. (Tr. p. 50.)
20. Respondent acknowledges his commission of the offenses. (Exhibit 3a.)
21. The Application does not limit the response sought on Question 5 to felonies, or to a particular type of conviction, or for those offenses for which there exists a record, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit 1.)
22. Respondent's explanation of why he answered Question 5 on the Application as "no" when he knew that he had felony convictions on his record was that, he didn't understand that his OMVIs and other alcohol-related convictions were criminal offenses. Respondent stated that he did not read the question carefully. (Tr. pp. 46-53.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.
2. Respondent asserts a due process argument that the language of Question 5 is overbroad because it goes beyond the statutory list of offenses found in section 1322.041, O.R.C. However, the lists

found in subsections (A)(3) and (A)(4) are not exclusive. Because the Division is required to make a decision about an applicant's character and fitness, generally, and compliance with the Mortgage Broker's Act, it is not inappropriate that an applicant's entire criminal record be reviewed. Given that, although the language may have been more artfully drawn, asking Respondent to reveal his criminal history, or the criminal history of any company he controlled, would assist the Division in making their mandated determinations and it is therefore not overbroad.

B. LICENSE APPLICATION

3. Respondent has been proven to have been convicted of six criminal offenses involving alcohol. The alcohol related offenses are not offenses specifically cited in sections 1322.041(A)(3) or (4), O.R.C., or on the Application.
4. The proven offenses are not in the category which automatically requires the Respondent to prove, by a preponderance of the evidence, that the Respondent'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." Sections 1322.041(A)(3) and (4), O.R.C.
5. The Division charged that 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.
6. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's pattern of convictions.
7. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's inaccurate response to Question 5.

8. Respondent's Exhibits 1 through 8 are letters from Respondent's current employer, past customers and other acquaintances who were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, Respondent's Exhibits were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, Respondent's Exhibits have been afforded reduced weight.
9. Respondent's Exhibits were not as persuasive because they were usually lacking in specific explanations for the broad statements offered.
10. The alcohol convictions began when Respondent was still immature, but, because they continued even after Respondent submitted the Application, Respondent's explanation of causation by environmental factors appears to be incomplete.
11. Respondent's recent conviction without treatment, and the pattern of convictions suggesting disrespect for the law, must give rise to a concern regarding his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
12. In eliciting evidence whether Respondent's character is honest, the Division demonstrated that, on or about March 7, 2002, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained false information, to wit: the "No" response to Question 5.
13. Even accepting Respondent's explanation of his response to Question 5 at face value, it demonstrates a lack of attention to detail. The Application specifically asks for any criminal convictions. Respondent knew or should have known he was criminally convicted and he simply did not read the Application carefully. The Application does not limit the response to financial crimes.
14. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with

law, including the lack of attention to detail and, in this case, a failure to regard the process seriously.

15. The Division proved Respondent was not honest in his activities – specifically relating to his response to Question 5.
16. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
17. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application "No."
18. The Division demonstrated that Respondent's response to Question 5 was a substantial misrepresentation or a false statement of a material fact required by law on the license application, even though there was no evidence of intent. The mens rea standard must be one of negligence – knew or should have known – in Respondent's answering the questions on the license application. Respondent knew those events occurred in his past and it was incumbent on him to determine if those events were in the categories of activities of which he was required to report.

C. DISCUSSION

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Respondent's criminal convictions were not felonies specifically cited in sections 1322.041(A)(3) and (4), O.R.C., and, if the convictions were removed in time or of a limited number, a tendency toward leniency for the non-financial nature of the crimes would be appropriate. However, the convictions cited are of a continuous nature up to a time close enough to the Application to belie Respondent's argument of past immaturity. Respondent's pattern of convictions and cavalier approach to the licensing process argue against a likelihood of the business being operated in compliance with the law. Also, because Respondent did not answer Question 5 on the Application honestly, he cannot show that he has been honest and truthful, demonstrating 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.

III. RECOMMENDATION

The Division has proven the prior criminal convictions. Respondent did not present sufficient evidence to prove that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO COY A. BRIDGES.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
February 28, 2005
Docket No. 04-DFI-046