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DIVISION OF FINANCIAL INSTITUTIONS

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

2004 JUN -8 AM 10:07

In re: Steven A. Maynard

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Case No. 04-099-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Steven A. Maynard not be granted. The Division conducted an investigation and found:

- a. In or around 1991 in the Hamilton County Municipal Court, Hamilton County, Ohio, Mr. Maynard pleaded guilty to, and was convicted of, attempted drug trafficking, a misdemeanor of the first degree;
- b. On or around March 7, 2002, Mr. Maynard attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and was again convicted of prostitution, a second offense;
- c. On or around March 18, 2002, Mr. Maynard provided untruthful information to the Division.

2. As a result, the Division determined

- a. Mr. Maynard has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Maynard'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Mr. Maynard violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Mr. Maynard violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and

- e. Mr. Maynard violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Maynard's address for service is 6676 Fountain Blvd, 208 Calis, Westchester, Ohio 45069. He is hereinafter referred to as the "Respondent." The Respondent is employed by The Mortgage Network of Ohio, 636 Northland Blvd, Suite 100, Cincinnati, Ohio 45420.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 7).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 7).

6. On February 18, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 8).

7. On February 19, 2004, the Division wrote to the Respondent acknowledging receipt of the Request for a Hearing and scheduling the hearing for 9:00 a.m. on March 1, 2004. (Exhibit 9). The hearing was simultaneously continued on the Motion of the Division until March 26, 2004 at 1:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 9). The hearing was held beginning at 1:00 p.m. on Friday, March 26, 2004 in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. Attending was Daniel P. Jones, an Assistant Attorney General of Ohio in the Executive Agencies Section.

8. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On March 7, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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 including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No".

4. Following the submission of the Application, the Division received the report of the National Background Check which disclosed a 1991 arrest by the Greenhills Police Department, Cincinnati, Ohio, for trafficking in drugs, as well as a 1997 arrest by the Westchester Police for menacing by stalking which was ultimately dismissed. (Exhibit 2).

5. On August 28, 2002, the Division wrote to the Respondent indicating that it was not able to make a decision whether to issue a license because of insufficient evidence. The Division cited the 1991 arrest by the Greenhills Police and the 1997 arrest. (Exhibit 3). The Respondent was asked to provide a detailed written explanation of the facts and circumstances of each charge and a certified copy of the appropriate court entry. (Exhibit 3).

6. In response to that letter, the Respondent submitted a written explanation as follows:

Please accept this correspondence as a response to yours of August 28, 2002. Also enclosed please find the certified copies of the journal entries evidencing the charge and disposition of both cases from my background check.

Charge #1 – Drug trafficking

In late March or early April of 1991 the police searched my garbage at the apartment complex where I was living and found some remnants of marijuana. On April 2 they came to my home and arrested me for drug trafficking. They searched my apartment and found less than an ounce (approximately \$80 of marijuana).

I pled not guilty to the trafficking charge. At the first hearing the police told the prosecutor who told my attorney that they knew I was not trafficking and that the marijuana was for my own use. They then reduced the charge to a misdemeanor and I admitted to having the marijuana. I do admit that I used marijuana at that time.

I was placed on probation and completed an outpatient drug program. I was released from probation and do not participate in that behavior any more.

Charge #2 Menacing by stalking

On March 2, 1997 I was in my apartment when the police knocked at my door and arrested me for menacing by stalking. I had no idea what they were talking about. A woman (whom I know) told them that she had seen me earlier that night in the dark in my car stalking her home. I had a time and date stamped receipt from a video store where I had been at the time I was supposedly stalking her, but the police said they had to arrest me anyway. I was ordered to stay away from the woman and not to contact her. I obeyed the order. On the day of the trial she came to court and she

and the police told the judge that it was mistaken identity. The court dismissed the case.

(Exhibit 4).

7. The Respondent also submitted a copy of the Hamilton County Municipal Court records showing his plea to a misdemeanor charge of attempted drug trafficking.

8. On March 17, 2003, the Division wrote a letter to the Respondent entitled Warning of Disqualification. (Exhibit 5).

9. In response to the letter the Respondent wrote to the Division as follows:

I became a loan officer in February of 1998. Since that time I have grown both personally and in business and have learned much about the mortgage broker industry. Throughout that time I have had the opportunity to work with some outstanding people. They have taught me the importance of doing business the right and ethical way. As the assistant manager of the Mortgage Network, I am now passing those learning experiences and values on to new loan officers. I very much enjoy helping people with their needs, whether it comes to a new purchase or refinancing. I feel that I have helped hundreds of families since 1998. I have had a lot of repeat business and client referrals, which is evidence of client satisfaction. I enjoy my profession very much. I always conduct myself in a responsible and professional manner. I frequently attend OMBA events because I like to stay abreast of new changes and developments in the industry.

The passing of this new licensing law is actually a blessing in disguise to me. I believe it will eliminate many of the people in my profession who are not forthright with customers and therefore give the industry a bad name. Although I have made mistakes in my life, I sincerely believe that I am honest, truthful and of good reputation. There is no basis in fact for believing that I will commit an offense in the future.

I have attached letters from people who know me personally and professionally. Please accept these as further written evidence for the Division to consider when reviewing my application. Thank you for your consideration.

(Exhibit 6).

10. The Respondent also attached 14 letters of support.

a. First, Tim McCoy, Human Resource Director of the Klosterman Baking Company, wrote to say that he has known the Respondent for thirty years and has found him to be both genuine and forthright.

- b. Second, Donna J. Bauer, President of All-Ohio Title Agency, Inc., which is located in Cincinnati, Ohio, wrote to say that she has known the Respondent for several years and that the Respondent is one of the most ethical and experienced loan officers with whom she has dealt.
- c. Robert B. Norris, Sales Manager for SIB Mortgage Corp., wrote to say that the Respondent had several qualities which Mr. Norris found favorable.
- d. Loren S. Flanigan, an attorney, wrote to say that frequently in the Hamilton County court system, plea bargains involving "attempted" offenses take place but that such a plea is not necessarily evidence of guilt.
- e. Jeffery J. Steinacker, President of The Mortgage Network of Ohio, Inc., wrote to say that the Respondent has been an employee of The Mortgage Network of Ohio since June, 2001, and that the Respondent is hard-working, honest and energetic.
- f. Likewise, Dawn Parks, Branch Manager for The Mortgage Network of Ohio, Inc. wrote to say that the Respondent has been an employee for two years and has been a role model for others.
- g. Next, Rob Kinnaman, an account executive / branch manager (with an unnamed entity) wrote to say that he found the Respondent to be honest, forthright and a conscientious loan officer.
- h. Next, Chris Wheeler wrote that he had worked with the Respondent between October, 1997, and September, 1999, and that the Respondent was very honest and dependable.
- i. Christopher R. Hawk, a senior loan officer with The Mortgage Network of Ohio, wrote that he has worked as a loan officer for five years and that the Respondent was trustworthy.
- j. Zachary A. Fugate, sales manager with SIB Mortgage Corp., wrote a letter indicating that the Respondent was an outstanding team mate and co-worker and that he provided assistance to other employees.
- k. Robert J. Setser wrote a letter indicating that he had worked with the Respondent for two years and that the Respondent acted in a professional and confidential way with the clients.
- l. Ron Bryant, a licensed loan officer with an unnamed entity, wrote a letter indicating that the Respondent has been "nothing short of exemplary".
- m. Finally, Angela Pugh, a loan officer with an unnamed entity, wrote to state that she has known the Respondent for three years and has found him to be a hard worker. (Exhibit 6).

CONCLUSIONS OF LAW

1. 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 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.

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

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 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 misrepresentations in any registration or license application;
- (B) Make 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[.]

....

4. Because the Respondent has been convicted of an attempted drug offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent did not attend the hearing scheduled in this matter and no one attended on his behalf. (Tr. 6-7).

2. The Hearing Officer is faced with a scant record in this matter. On one hand, the Respondent stands convicted of a single misdemeanor offense, which occurred in 1991, apparently involving a small quantity of marijuana. The Respondent did not answer Question 5 of the Application in a way that reflected the fact of that conviction. The Respondent submitted letters of support as a response to the Warning of Disqualification but did not attend the hearing and presented no witnesses or testimony.

3. The misdemeanor offense of attempted possession of drugs occurred approximately thirteen years prior to the hearing in this matter, and, based on the tiniest of evidence in the record, appears to have no relationship to the financial services industry. According to the materials submitted by the Respondent, he did not enter the financial services industry until 1998. (Exhibit 6).

4. In the absence of the presence of the Respondent or a representative on his behalf at the hearing in the matter, the Hearing Officer finds it difficult to find for the Respondent. The Division has established the fact of a criminal conviction and that it was undisclosed on the Application. The Respondent has the burden of proof to establish that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. Based solely on the materials before him, the Hearing Officer cannot make that finding.

5. The Hearing Officer finds that, in the absence of other evidence, the Division has met its burden to show that the Respondent's character and 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 and likewise that there have been violations of Revised Code Sections 1322.07(A)(B)(and (C).

6. The findings contained herein are limited to the facts set forth in the record in this matter.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer
June 4, 2004