

STATE OF OHIO
DEPARTMENT OF COMMERCE

2004 DEC 23 AM 9:51

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

HOWARD ERIC CHAMPION

CASE NO. 04-086-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued December 20, 2004

I. FINDINGS OF FACT

A. BACKGROUND

The above 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 9:00 AM on April 22, 2004, at 77 South High Street, 19th Floor, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Howard Eric Champion, of Cincinnati, OH (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 in 1995 of Coercion, a misdemeanor; and, also, that Respondent failed to disclose the past criminal offenses; and, as a result of each and both of those actions, is ineligible to obtain a license as a Mortgage Loan Officer. The Division was represented by the Ohio Attorney General's Office, Assistant Attorney General Martine Jean. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 7 were admitted into the record. Respondent's Exhibits A, B and D were successfully objected to and Exhibit C was proffered into the record after the Division's successful objection to its introduction.

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 20, 2004. On February 24, 2004, the Division scheduled the hearing for March 2, and, on its own motion, continued the hearing to April 22, 2004, at which time the hearing went forward. (Exhibits 5, 6, 7.)

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 5.)
2. Respondent is an individual who desires to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1; Tr. pp. 15 – 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. Respondent filled out and signed a Loan Officer Application (hereinafter the "Application") on, or about, March 17, 2003. (Exhibit 1; Tr. p. 17.)
5. On or about April 14, 2003, Respondent submitted to the Division the Application. (Exhibit 1.)
6. 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, ... or any criminal offense involving money or securities?" (Exhibit 1; Tr. pp. 17 – 18.)
7. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or for those offenses for which there exist 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; Tr. pp. 17 – 19.)

8. Respondent signed a Release of Background Check Results, on, or about, March 10, 2003, and submitted it to the Division with the Application. (Exhibit 2A.)
9. On, or about, January 19, 1995, over eight years prior to the submission of the Application, Respondent pleaded guilty, in Hamilton County Municipal Court, to one count of Coercion. (Exhibits 4A, 4B, 4C.)
10. Respondent's explanation of the Coercion conviction was that the offense involved what might be generally characterized as a termination, initiated by Respondent, of a relationship with a former girlfriend that became difficult. Respondent was forthcoming when questioned about his actions and his responsibility for those actions. His testimony was that he was provoked. (Exhibit 4A; Tr. pp. 26 – 34, 36 – 39.)
11. Respondent knew he had a criminal conviction on his record at the time he filled out the Application. (Tr. pp. 21 – 22.)
12. The coercion conviction was a traumatic experience for Respondent. (Tr. p. 44.)
13. Respondent's explanation of why he answered Question 5 on the Application as "no" when he knew he had felony convictions on his record was that he simply misread what the Application was asking. He had not committed any of the named offenses so he responded in the negative. (Tr. pp. 21 – 23.)
14. Respondent's testimony concerning Question 5 was credible because of Respondent's general demeanor and specifically his apparent remorse and candor regarding his mistake in responding to Question 5. In addition, Respondent repeatedly pointed out that he knew that the Division would be conducting a background check and that the Division would find his past conviction. The Respondent's testimony is deemed reliable. (Tr. pp. 19 – 25.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. The Division did not prove that the Respondent committed an offense specifically cited in section 1322.041(A)(3), O.R.C. so it is not necessary that the Respondent now 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" in order to obtain a license. Section 1322.041(A)(3), O.R.C.
3. It is necessary to make an affirmative finding that Respondent'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. Section 1322.041(A)(5), O.R.C.
4. 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.
5. The Division brought into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's inaccurate response to Question 5.
6. In eliciting evidence whether Respondent's activities since the offenses prove that Respondent'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 the Mortgage Broker Act, the Division demonstrated that Respondent signed, on March 17, 2003, and filed with a state agency – i.e.: the Division – on April 14, 2003, an application to obtain a license to engage in an occupation and that application contained false information.

7. 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 such as would be necessary in dealing with mortgage and real estate documents.
8. The Respondent presented credible evidence to show that the false response to Question 5 on the Application was the result of his misreading the Application and not a reflection on his honesty.
9. There was very little evidence by Respondent to demonstrate that his activities since the offense show that Respondent is honest or truthful or the nature of his character.
10. 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.
11. 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."
12. Misrepresentation suggests an overt act, as does the charge of engaging in conduct that constitutes improper, fraudulent, or dishonest dealings. Respondent has demonstrated that the conduct of falsely responding to Question 5 was a mistake and not intentional. The Division has not proven violations of the Ohio Mortgage Broker Act, sections 1322.07(A) and (C), O.R.C.
13. The Division demonstrated that Respondent's sworn response to Question 5 was a false statement of a material fact required by law. 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 not only could have learned the true nature of the facts to which he was attesting but he was already in possession of that knowledge. 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 which he was required to report. The Division has proven a violation of the Ohio Mortgage Broker Act, section 1322.07 (B), O.R.C.

C. DISCUSSION

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Attention to detail is an issue that will inspire customer confidence.


Respondent appeared to be open and honest about his prior conviction, albeit he felt he was as much a victim as the other person in the relationship. However, it is not the purpose of these proceedings to relitigate the prior conviction. The criminal conviction was de minimis in relation to the license being applied for, considering Respondent's unrefuted testimony.

Respondent was credible in his explanation that the filing of the false statement was an unintentional act, but he failed to provide sufficient evidence to allow a finding that his 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 the Mortgage Broker Act.

III. RECOMMENDATION

The Division brought into question Respondent's character and general fitness to command the confidence of the public. Respondent did not present sufficient evidence to prove that Respondent's character and general fitness do command the confidence of the public. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO HOWARD E. CHAMPION**. However, because Respondent has demonstrated that the response to Question 5 was a mistake, it is recommended to the Division that Respondent be allowed to reapply and any new application be acted on without consideration of the Application at issue herein. Because there has been a significant time between the Application and the hearing in this matter, Respondent has already served what is equivalent to a suspension of sufficient duration.

Respectfully submitted,


D. Michael Quinn
Hearing Officer
December 20, 2004
Docket No. 04-DFI-034