

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

OHIO DIVISION OF FINANCIAL INSTITUTIONS

04 APR -2 AM 7:44

IN RE: : CASE NO. 04-0031-LOD  
: :  
SCOTT HORNAK : JANE S. ARATA, HEARING OFFICER

---

ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued April 1, 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 on February 25, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Scott Hornak ("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 receiving stolen property, theft, and disorderly conduct and violated R.C. 1322.07(A), (B) and (C) by failing to disclose these convictions 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 convictions 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).

James M. Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. The Respondent appeared *pro se* and testified at the hearing. William Tisone testified on behalf of the Respondent. At the hearing, State's Exhibits 1 through 11, and Respondent's Exhibit A were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent's hearing request was received by the Division on January 27, 2004. The Division scheduled the hearing for February 9, 2004, and continued it until February 25, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

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

1. Respondent is an employee of Fidelity Mortgage Inc. who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibits 3B and 3C; TR at 20.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. 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).
3. On August 14, 2003, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on September 2, 2003. (State's Exhibit 3B.)
4. The Application's instructions stated, in a paragraph set out in boldface type, that questions on the application must be answered "fully and truthfully." (Application, Explanation and Instructions, State's Exhibit 2; TR at 17.)
5. Question 5 on the Application 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. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit 3B, emphasis and boldface type in original; TR at 18.)

6. Respondent answered "Yes" to Question 5 and only disclosed a 2001 driving under the influence conviction. (State's Exhibit 3B; TR at 18, 19.)

7. Respondent's signature on the Application is notarized. (State's Exhibit 3B.) Directly above the applicant signature line, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (State's Exhibit 3B; TR at 19-20.)
8. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
9. Respondent's background check revealed possible convictions for receiving stolen property in 1993, theft in 1996, and disorderly conduct in 2000. In response to the Division's inquiry, the Respondent submitted certified copies of Portage County Municipal Court records confirming the convictions. (State's Exhibits 4 through 9; TR at 22-29.)
10. Respondent admitted that he had been convicted of receiving stolen property in 1993, theft in 1996, and disorderly conduct in 2000. (State's Exhibit 5; TR at 20-21.)
11. The stolen property conviction was for the theft of a plastic trashcan and the theft conviction was the result of his attempt to remove a street sign. (State's Exhibit 5; TR at 22-24.)
12. The disorderly conduct conviction occurred after he was stopped by a police officer while walking home from a club. The arresting officer noted on the citation that Respondent was intoxicated and posed a risk of harm to himself. (State's Exhibits 5 and 9; TR at 27-29.)
13. Respondent was also convicted of driving under the influence of alcohol or drugs in 2002. (State's Exhibit 10; TR at 29-30.) At the hearing, he testified about a 2003 public intoxication conviction in Cuyahoga County, Ohio. (TR at 35-37.)
14. While Respondent's earlier convictions resulted from pranks during his early twenties, the later convictions are alcohol related. Despite alcohol rehabilitation programs and therapy, he continues to struggle. (State's Exhibit 5 and Respondent's Exhibit A; TR at 37-38.) His candor on this issue was admirable and his determination to improve, clear.

**D. Respondent's Failure to Disclose Convictions on Application.**

15. The 1993 receiving stolen property, 1996 theft, and 2000 disorderly conduct convictions were not disclosed by the Respondent on his Application. (State's Exhibit 3B; TR at 18-19.)

16. The Respondent admitted that he knew the convictions should have been disclosed. He failed to disclose the convictions because the job meant a lot to him. He was "tired of being haunted by stuff from {his} past" and "wanted to change his life." (TR at 19, 44.)

**E. Respondent's Reputation and Character.**

17. William Tisone, a Regional Vice President at Fidelity Mortgage, Inc., testified about Respondent's experience working in the industry. Respondent has worked for him for six months. Respondent is a valued member of his staff and does very good work. He is very productive and a leader among his peers at work. (TR at 46-47.)

**II. CONCLUSIONS OF LAW**

**A. Jurisdiction and Procedural Matters.**

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

**B. Loan Officer License Application.**

1. 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.
2. 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.
3. 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).

4. Respondent was convicted of receiving stolen property in 1993, theft in 1996, and disorderly conduct in 2000. Receiving stolen property and theft are offenses specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. 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.
7. Respondent's response to Question 5 of the Application indicating that he only had one driving under the influence conviction was a substantial misrepresentation on 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 other criminal convictions, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his receiving stolen property and theft convictions required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
10. Respondent engaged in improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that he only had one criminal conviction, the 2001 driving under the influence conviction, on his loan officer license application.
11. 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).

12. Once the receiving stolen property 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 convictions 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).
13. Instead, the evidence established a subsequent theft conviction and several alcohol related convictions. Of these convictions, only the 2001 driving under the influence conviction was disclosed on the Application. The Explanation and Instructions portion of the Application emphasizes the importance of accurate disclosure. The Respondent's failure to disclose all of the convictions preclude him from meeting his burden of proof under R.C. 1322.041(A)(3).
14. Despite knowing that he should disclose all of the convictions on the Application, Respondent failed to do so. Thus, he has not established 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

### **III. RECOMMENDATION**

The Respondent's testimony at this hearing touched the hearts of everyone present. The Respondent's criminal convictions and evident distress are the result of alcohol abuse. He has finally accepted this and is working toward a better future. His convictions reflect a lifestyle he no longer wants but struggles to leave behind. While nothing changes the past, his future can be entirely different.

As for this license application, Respondent has not established the conditions set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions deny Respondent application for a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
April 1, 2004