

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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INSTITUTIONS

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In the Matter of:

Jameel R. Burhan
4301 Swaffield Drive
South Euclid, OH 44121

:
: Case No. 04-0454-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on December 21, 2004. Appearing on behalf of the Department of Commerce's Division of Financial Institutions ("the Division") were Assistant Attorney General Timothy C. Loughry and Mr. Mark L. Rhea, staff attorney with the Division. Deputy Attorney General Matthew Lampke and intern Adam Barbina also observed the proceedings.

Despite having requested this hearing, Respondent Mr. Burhan was not present, nor was any designated representative. After waiting approximately thirty minutes after the scheduled starting time for the hearing, the hearing proceeded. Mr. Rhea noted that he had received no communications from the Respondent indicating a reason for his failure to appear. See Transcript, p. 7.

After due consideration of all the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C 1322.01 to O.R.C. 1322.12, the Division

is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.

2. On August 12, 2004, Respondent Mr. Burhan, employee of North Coast Home Mortgage, 3645 Warrensville Center Road, Shaker Heights, OH, 44122, applied for a license to be a loan officer. See Application, State's Exhibit A.
3. On November 8, 2004, the Division issued a Notice of Intent to Deny a Loan Officer License to Mr. Burhan, sent via certified mail. See Notice, State's Exhibit B, with copy of returned signature card.
4. The Division stated in its Notice of Intent to Deny Loan Officer's License that Mr. Burhan was convicted of attempted trafficking in marijuana in 2002. See Notice, State's Exhibit B. As such, the Division alleged that Mr. Burhan has not shown he is honest, truthful, and of good reputation, nor that there is no basis in fact to believe he will not commit another offense in the future. The Division also alleged that his character and general fitness do not command the confidence of the public, nor warrant the belief that his business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act. See Notice, State's Exhibit B.
5. On November 26, 2004, Mr. Burhan requested a hearing to appeal the Division's proposed actions. See Hearing Request Form, State's Exhibit C.
6. On December 1, 2004, the Division sent notice to Mr. Burhan of this hearing. See Letter, State's Exhibit D.

b. Attempted Trafficking in Marijuana (2002)

7. At the hearing, the Division admitted into evidence documentation indicating Mr. Burhan was convicted of attempted trafficking in marijuana in 2002. See Journal Entry, State's

Exhibit A.

8. It appears that for his crime, the Court sentenced him to 180 days in jail, with 120 days suspended, and fined him \$1,000.00. See Journal Entry, State's Exhibit A. In a letter to the Division, he also alludes to serving time in prison. See Letter, State's Exhibit A.
9. Also in that letter, he indicates that he now receives treatment for addiction to marijuana. He says he is now a "different person." See Letter, State's Exhibit A.

II. Conclusions of Law

a. Statutory Analysis

10. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

"...the superintendent of financial institutions shall issue a loan officer's license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code." O.R.C. 1322.041.

11. The criminal offenses incorporated by reference are:

"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." O.R.C 1322.031 (A)(2). Emphasis added.

12. Based on the documentation offered by the State, and Mr. Burhan's admissions in his letter and on his Loan Officer Application (State's Exhibit A), the Hearing Examiner finds that Mr. Burhan was convicted of attempted trafficking in marijuana in 2002. This is a crime "involving drug trafficking."
13. Once the conviction is established, the statute allows for a burden-shift in which Mr. Burhan assumes the burden of proving by a preponderance of the evidence that despite his convictions, he otherwise should receive a Loan Officer's license.

14. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part reads:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...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.” O.R.C. 1322.041 (A)(3).

15. Mr. Burhan did not appear at the hearing to present any evidence as to his activities and employment record since his conviction and release from prison. Aside from his letter, which was introduced by the State, there is no testimony at all pertaining to his honesty, truthfulness, or good reputation.

16. By itself, the letter does not carry Mr. Burhan’s burden. While he describes efforts he is undertaking to stay drug-free, serious questions remain concerning the circumstances surrounding his crime and his activities since his release from prison. What made him sell drugs in the first place? How is his treatment for addiction coming along? How many loans has he closed without incident? These questions are unanswered.

17. Without any testimony from Mr. Burhan, his colleagues or associates, even to verify the assertions in his letter, Mr. Burhan does not meet his burden to demonstrate honesty, truthfulness, or good reputation, or that he is not likely to commit a similar crime in the future.

18. The second relevant part of the statute states:

“The superintendent shall issue a loan officer license if the superintendent finds 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.” O.R.C. 1322.041(A)(5).

19. The Division put forth evidence of Mr. Burhan’s attempted drug trafficking conviction, and as such meets a minimal “burden of production” to at least raise questions concerning Mr. Burhan’s character and general fitness for licensure. Indeed, attempted trafficking in marijuana is a serious offense, for which Mr. Burhan served time in jail. Recently. This does not speak well to Mr. Burhan’s character.
20. Mr. Burhan did not appear at the hearing to present any evidence that demonstrates a positive character. No personal testimony, no character witnesses, no letters of reference.
21. As such, the Hearing Examiner cannot make a finding that his character and general fitness command the confidence of the public, or warrant the belief that his business will be operated honestly and fairly in compliance with the law.

B. RECOMMENDATION

22. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent that Mr. Burhan be denied a loan officer’s license pursuant to O.R.C. 1322.041.

3/16/05
Date

Terrence O'Donnell
Hearing Examiner