

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. 04-0265-LOD
ERIC A. GUY : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 15, 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 April 22, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Eric A. Guy ("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 disorderly conduct and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction 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 conviction on his application, and
2. 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).

Anthony Siciliano, 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. Nicole Anderla testified on behalf of the Respondent. At the hearing, State's Exhibits 1 through 6 and Respondent's Exhibit A were admitted into the record. The Division is to redact any

Social Security Numbers from those exhibits. Social Security Numbers are not relevant to any issues in this proceeding and the protection of them is key to the prevention of identity theft.

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on February 12, 2004. Respondent's hearing request was received by the Division on February 23, 2004. The Division scheduled the hearing for March 4, 2004, and continued it until April 22, 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 Conviction.

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1.) (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 November 21, 2003, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on December 1, 2003. (State's Exhibit 1.)
4. Respondent's signature on the Application is notarized. 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 1.)
5. Respondent answered "No" to Question 5 on the Application, which 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 1, emphasis and boldface type in original; TR at 15.)

6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
7. Respondent's background check revealed a possible conviction for disorderly conduct in 2002. In response to the Division's inquiry, the Respondent submitted

Ravenna Municipal Court records confirming the conviction. (State's Exhibits 2 and 3.)

8. Respondent admitted that he had been convicted of disorderly conduct in 2002. (State's Exhibit 3; TR at 15-16.)
9. The disorderly conduct conviction was based upon an argument that he had with his then girlfriend, Jamie Kinter. They were having an argument while she was on the phone with her mother and her mother called the police. Respondent was charged with domestic violence and that charge was reduced to disorderly conduct. Ms. Kinter provided a letter clarifying that "no fighting or violence was involved." (Respondent's Exhibit A; TR at 15-16.)
10. Ms. Kinter's letter was not the subject of testimony or authenticated by her at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibit A was considered but afforded less weight than it would have been if she had testified and been available for cross examination.

D. Respondent's Failure to Disclose Conviction on Application.

11. The 2002 disorderly conduct conviction was not disclosed by the Respondent on his Application. (State's Exhibit 1; TR at 18-19.)
12. The Respondent admitted that he knew the conviction should have been disclosed and apologized for lying on his Application. He failed to disclose the conviction because the job meant a lot to him and he was worried that he would not be given a chance if he disclosed it. (State's Exhibit 3; TR at 15, 28-29.)

E. Respondent's Reputation and Character.

13. Respondent is twenty-three years old and has experience at First Centennial Banc assisting with telemarketing, paperwork and scheduling appraisals pertaining to mortgage loans. He liked the work but is not working there currently because he does not have a loan officer license. He has also worked in telemarketing, food plan sales, and internet sales. (TR at 20-26.) He described himself as honest, good hearted and fair to customers. (TR at 21, 23-25.) He was headed in the wrong direction but changed course after becoming involved in organized religion. (TR at 18-19, 33-34.)
14. Nicole Anderla, Respondent's sister, also testified on his behalf. She stated that he always tries to be honest and confirmed that is he more responsible than he used to be. Ms. Anderla also described Respondent as being very excited about a career as a loan officer. (TR at 30-32.)

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 1322.041(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.

(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) and (5).

3. Respondent was convicted of disorderly conduct in July of 2002.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact.
6. The Respondent knew the conviction should have been disclosed and lied on his Application. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions when in fact he knew he had a 2002 conviction for disorderly conduct that should have been disclosed, was a substantial misrepresentation on his application that violated R.C. 1322.07(A). That conduct also constitutes making a false statement of a material fact in violation of R.C. 1322.07(B).

7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
8. Respondent answered Question 5 on the Application with an answer he knew was false and did so to enhance his chances of getting a loan officer license. This conduct constitutes improper, fraudulent and dishonest dealings in violation of R.C. 1322.07(C).
9. 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).
10. Despite knowing that he should disclose the conviction 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

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

Respectfully submitted,

Jañe Stempel Arata
Administrative Hearing Officer
June 15, 2004