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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2008-600
: :
ELDRIDGE MORTGAGE COMPANY, INC., : DELORES EVANS
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued February 20, 2009

I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, 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 Code ("O.A.C.") and Ohio Revised Code ("O.R.C.") Chapter 119. The hearing was held on January 15, 2009, at 77 South High Street, Room 1936, in Columbus, Ohio. This matter was heard simultaneously with In re Edward J. Eldridge, Case No. M2008-599. However, two separate decisions will be issued.

The Division held the hearing to consider the allegation that Eldridge Mortgage Company, Inc. ("Respondent") failed to disclose to the Division on its 2008 Mortgage Broker Certificate of Registration Renewal Application ("2008 Renewal Application") that Edward Eldridge ("Mr. Eldridge"), owner and operations manager of Respondent, had been convicted of Attempted Drug Possession in August 2007. The Division intends to deny Respondent's 2008 Renewal Application.

Jason Boyd, Esq., Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori Massey, Esq., an attorney examiner with the Division, testified at the hearing. Jameel S. Turner, Esq., represented Respondent. State's Exhibits A, B, C, D, F, G, H, I, and J were stipulated to by the parties for authenticity and were admitted into the record. State's Exhibits K and L were also introduced and admitted into evidence. Respondent's Exhibit 1 was introduced and admitted into evidence. The parties also stipulated to the existence of *Hockenberry v. Ohio Dept. of Commerce*, 10th Dist. No. 06AP-1058, 2007-Ohio-5555. The record was closed at the end of the day on January 15, 2009.

B. Jurisdiction and Procedural Matters

1. On November 18, 2008, the Division issued a Notice of Intent to Deny Mortgage Broker Certificate of Registration Renewal Application & Notice of Opportunity for a Hearing ("NOH"). The Division intends to deny Respondent's 2008 Renewal Application pursuant to O.R.C. 1322.10(A)(1)(a). Respondent had 30 days to request a hearing. The Division sent the NOH to Respondent via certified mail, return receipt requested. Service was perfected on November 20, 2008. *State's Exhibit H*
2. The Division received Respondent's hearing request. *State's Exhibit G*
3. On December 3, 2008, the Division sent a hearing notice to Respondent. The Division scheduled the hearing for January 15, 2009. *State's Exhibit G*
4. Mr. Eldridge acknowledged receipt of the NOH and hearing notice on behalf of Respondent. *Testimony of Mr. Eldridge*

C. Respondent's Activities

5. Respondent is a domestic corporation that has held a mortgage broker certificate of registration (# 3221) since May 22, 2001. *State's Exhibit L*
6. Mr. Eldridge is the owner and president of Respondent. Mr. Eldridge has held a loan officer license (#3654) issued by the Division since June 1, 2002. *State's Exhibit L*. Mr. Eldridge serves as Respondent's operations manager. *State's Exhibit H; State's Exhibit I*
7. On August 16, 2007, Mr. Eldridge was convicted of Attempted Drug Possession, a first degree misdemeanor, in the Court of Common Pleas in Cuyahoga County, Ohio. The Journal Entry reflects that Mr. Eldridge was in open court with counsel that day and was fully advised of his constitutional rights and penalties. Mr. Eldridge was sentenced to time served and costs were waived. *State's Exhibit J*
8. Mr. Eldridge explained the events surrounding his conviction. On or around December 20, 2006, he met a friend for a social gathering in a high crime neighborhood. After their meeting, Mr. Eldridge and his friend entered his vehicle. Mr. Eldridge intended to give his friend a ride home. While en route, Mr. Eldridge observed a police cruiser following them. Shortly after his friend's arrival home, Mr. Eldridge was stopped by the police for a traffic infraction. During questioning, the police officer observed a package containing drugs in plain sight in Mr. Eldridge's vehicle. He was arrested and charged with felony drug possession. Mr. Eldridge explained to the prosecutor that the drugs belonged to his friend. The charge was reduced to Attempted Drug Possession, a first degree misdemeanor. Mr. Eldridge pled guilty to the crime based upon

counsel's advice. Mr. Eldridge would not have pled guilty had he known that the conviction would pose problems for him in the future. *Testimony of Mr. Eldridge*

9. Lori Massey, an attorney examiner with the Division, testified at the hearing. Ms. Massey reviews the files of loan officers and mortgage brokers to verify their compliance with O.R.C. Chapter 1322. Ms. Massey reviewed Respondent's mortgage broker file. *Testimony of Ms. Massey*
10. On or around March 22, 2008, Mr. Eldridge completed, signed, and submitted a 2008 Renewal Application on behalf of Respondent. *State's Exhibit I; Testimony of Mr. Eldridge*
11. In response to question # 2 on the 2008 Renewal Application, Respondent answered "No." Question # 2 reads "Has a registrant or any owner, partner, 5% or more shareholder, member, officer, director or operations manager of the registrant been charged with, convicted of or pleaded guilty to any state or federal criminal offense including but not limited to theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities (excluding minor traffic violations)?" *State's Exhibit I*
12. No evidence was introduced concerning whether the Division requested additional information about the conviction from Respondent.
13. On November 18, 2008, the Division issued the NOH. *State's Exhibit H*
14. The Division contended that Respondent violated of O.R.C. 1322.07(A), (B), and (C) when it failed to disclose that Mr. Eldridge had been convicted of Attempted Drug Possession in August 2007. The Division asserted that Respondent's non-disclosure of Mr. Eldridge's conviction indicated Respondent's lack of good character to command the confidence of the public that warrants the belief that the company would be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
15. Mr. Eldridge is a 64 year-old male who owns and operates Eldridge Mortgage Company, Inc. ("Eldridge Mortgage"). *State's Exhibit C; Testimony of Respondent*. At the time Mr. Eldridge submitted the 2008 Renewal Application, he owned 65% in the company, but now holds a 100% interest in the company. *Testimony of Respondent*
16. Respondent also owns and operated Eldridge Tax Service, a tax consulting and preparation business, which has been in existence for over 35 years. He also serves as Assistant Treasurer of a Masonic Lodge and is an alternate trustee at his church. *Testimony of Respondent*

17. Mr. Eldridge indicated that he did not consult anyone prior to submitting the 2008 Renewal Application. However, Mr. Eldridge noted that he performed an internet search on the definition of the term "crime." *Respondent's Exhibit 1.* Mr. Eldridge believed that the term "crime" referred only to felonies and not to misdemeanor offenses. *Testimony of Mr. Eldridge*
18. Mr. Eldridge misunderstood question # 2 on the 2008 Renewal Application to indicate a misdemeanor Attempted Drug Possession conviction. Mr. Eldridge indicated that he now understands that he should have disclosed his 2007 conviction on the 2008 Renewal Application. *Testimony of Mr. Eldridge*
19. Mr. Eldridge did not intend to lie or mislead the Division concerning his 2007 conviction. He explained that since the conviction he is more careful about his associations. There have been no other complaints or blemishes against Mr. Eldridge's or Respondent's record. *Testimony of Mr. Eldridge*

II. CONCLUSIONS OF LAW

20. The Division has procedurally complied with O.R.C. Chapter 119 and jurisdiction over this matter has been established.
21. The Division is responsible for the licensing, regulation, and enforcement of the Ohio Mortgage Broker Act, O.R.C. Chapter 1322.
22. Respondent holds an Ohio mortgage broker certificate of registration and is subject to the laws in O.R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
23. O.R.C. 1322.07(A), (B), and (C) state:

No mortgage broker, registrant, licensee, or applicant for a certificate of 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 misrepresentation 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.

24. According to O.A.C. 1301:8-7-10(G), each question on the license application is material to the licensing process. If an applicant submits false, incomplete information, or omits information in connection with a license application, such is grounds for denying or revoking the license.
25. Ohio's Mortgage Broker Act charges the Division with the protection of the public from harm by denying, suspending, or revoking a mortgage broker certificate of registration if the evidence establishes that licensing standards have not been met. O.R.C. 1322.041(A) and 1322.10(A). A home is generally the most valuable asset owned by an individual. Mortgage lenders have access to an individual's confidential personal and financial information and they play a critical role in the financing process. Thus, the Division is charged with protecting the integrity of the licensing process and preserving the public interest and confidence in the mortgage industry. It is for this reason that only the Division has the authority to issue a mortgage broker certificate of registration in Ohio.
26. Respondent failed to disclose on its 2008 Renewal Application that Mr. Eldridge had been convicted of misdemeanor Attempted Drug Possession in August 2007.
27. Respondent's failure to disclose on its 2008 Renewal Application that Mr. Eldridge had been convicted of Attempted Drug Possession in August 2007 constitutes an omission of a material fact required by state law in violation of O.R.C. 1322.07(A).
28. Respondent's failure to disclose on its 2008 Renewal Application that Mr. Eldridge had been convicted of Attempted Drug Possession in August 2007 constitutes an omission of a statement required by law in violation of O.R.C. 1322.07(B).
29. Respondent's failure to disclose on its 2008 Renewal Application that Mr. Eldridge had been convicted of Attempted Drug Possession in August 2007 constitutes improper conduct in violation of O.R.C. 1322.07(C).
30. O.R.C. 1322.10(A)(1)(a) authorizes the Division to refuse to renew an applicant's mortgage loan certificate of registration if the Division finds that the applicant has violated or failed to comply with any provision of O.R.C. Sections 1322.01 through 1322.12.
31. The Division has met its burden of proof for denying Respondent's 2008 Renewal Application.

32. However, this Hearing Officer finds the Division should grant Respondent leniency in this case. Respondent's non-disclosure should not constitute a bar to it holding a mortgage broker certificate of registration.
33. There is no provision that prohibits the Division from granting Respondent a certificate of registration simply because of an incorrect response to a question on an application. The Division has the authority to weigh the evidence and to grant a certificate of registration if it determines that the applicant has sufficient character, credibility, and honesty to hold a certificate of registration. *Hockenberry v. Ohio Dept. of Commerce*, 10th Dist. No. 06AP-1058, 2007-Ohio-5555.
34. Even though the law may not require the Division to consider an applicant's intent with respect to violations of O.R.C. 1322.07(A),(B), and (C), this Hearing Officer finds "intent" to be an inherent element in the decision-making process, especially with respect to violations, character, and fitness.
35. The Division's assertion, that an untrue response automatically disqualifies an applicant, belies the protocol that requires the Division to review each application on its own merits. The Division relies upon its determination of character and fitness, discretionary standards in its own right, to determine whether to grant an application: Such discretion is better exercised when balanced in favor of an effective reconciliation of the competing issues.
36. In this case, I find Mr. Eldridge was credible in his testimony concerning the circumstances of his conviction. I also find no evidence that Mr. Eldridge or Respondent intended to lie, mislead, misrepresent, or defraud the Division concerning the conviction. Mr. Eldridge misunderstood the question and answered the question incorrectly. I do not find a sufficient basis to warrant a denial of Respondent's 2008 Renewal Application because of an incorrect answer to a question.
37. Moreover, Ms. Massey testified that the Division's NOH is based solely upon Respondent's non-disclosure of the conviction and not Mr. Eldridge's conviction itself. It appears that the Division does not consider the conviction to be so egregious as to warrant denying Respondent's 2008 Renewal Application on that basis alone. Mr. Eldridge provided a reasonable explanation of the circumstances surrounding his non-compliance and made no demonstrable attempts to avoid disclosure.
38. Based on the above, I further find that Respondent's character still commands the confidence of the public to warrant the belief that the business will be conducted honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. O.R.C. 1322.041(A)(10)

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established a sufficient evidentiary basis for denying Respondent's 2008 Renewal Application pursuant to O.R.C. 1322.10(A)(1)(a). However, based upon the circumstance of this case, this Hearing Officer respectfully recommends that the Division grant Respondent leniency and approve Respondent's 2008 Renewal Application.

Respectfully submitted,

Delores Evans
Hearing Officer
February 20, 2009