

2009 MAY -5 PM 12:40

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2007-703
:
BRADFORD G. MORGAN, II, : DEBORAH K. TONGREN
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION

Issued May 5, 2009

I. FINDINGS OF FACT

A. Background.

This matter came before Deborah K. Tongren, 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 Division held the hearing on February 17, 2009 at the request of Respondent Bradford G. Morgan ("*Respondent*") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("*Notice*").

In its Notice, the Division alleged that Respondent had been convicted of two counts of aggravated trafficking in drugs in the State of Ohio in 1993. As a result, the Division concluded 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's actions show that Respondent has not proven that Respondent is honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense involving drug trafficking or any criminal offense

involving money or securities. See R.C. sections 1322.031(A)(2) and 1322.041(A)(3).

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. See R.C. 1322.041(A)(6).

State's Exhibit 1.

James M. Evans, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Jacqueline Mallett testified on behalf of the Division. James M. McHugh, Esq., appeared as counsel for Respondent. Respondent and Pete Houtz, Respondent's employer, testified on Respondent's behalf.

The parties stipulated to the admission of State's Exhibits 1 through 5 and Respondent's Exhibits A, C, and E. The Division objected to the admission of part of Respondent's Exhibits B, an uncertified copy of a judgment entry, and to Respondent's Exhibit D.

Respondent's Exhibit B was a three-page document, which consisted of a letter from Brian Fairclough, Assistant Probation Officer for the Carroll County Common Pleas Court, a printout from a computer screen, and an uncertified copy of a Judgment Entry in the Carroll County Common Pleas Court entitled *State of Ohio vs Bradford G. Morgan, I*. Counsel did not object to the letter from Mr. Fairclough or to the court printout, only to the admission of the uncertified Judgment Entry.

The Division objected to Respondent's Exhibit D, a letter from Dawn Marie Green, because Ms. Green was not present at the hearing and therefore not available for cross-examination. The Hearing Officer sustained the objection. Respondent's counsel then proffered the letter for the record. *Tr. at pgs. 53 and 54.*

Respondent objected to State's Exhibit 6, a one-page uncertified copy of a Judgment Entry from Canton Municipal Court, entitled in the matter of *State of Ohio vs. Morgan, II Bradford G, Case No. 96-TRC-10723*.

The Hearing Officer left the record open for the production of certified copies of State's Exhibit 6 and Respondent's Exhibit B. On February 25, 2009 the Division's counsel provided a certified copy of the Judgment Entry to the Hearing Officer to replace the uncertified copy of State's Exhibit 6 and on February 26, 2009, counsel for Respondent provided the Hearing Officer with a certified copy of the Judgment Entry to replace Respondent's uncertified copy of Exhibit B. On February 26, 2009, the Hearing Officer closed the record, with both replacement documents having been accepted into the record.

B. Jurisdiction and Procedural Matters.

1. On December 22, 2008, the Division issued the Notice to Respondent which informed him that it intended to deny his application for a loan officer license and offered him the opportunity to request a hearing. The Division sent the Notice by certified mail, return receipt requested. The Division perfected service on December 24, 2008. *State's Exhibit 1.*
2. On January 9, 2009, James M. McHugh, Esq. entered an appearance on behalf of Respondent and requested a hearing on the merits of the case. *State's Exhibit 2.*
3. On January 15, 2009, the Division sent notices, by regular mail, to Respondent and to his counsel, setting the hearing for January 23, 2009, but continuing the date of the hearing, on its own motion, to February 17, 2009. *State's Exhibit 3.*
4. The Division held the hearing on February 17, 2009.

C. Respondent's Loan Officer Application and Criminal Conviction.

5. Respondent is an individual who has applied to conduct business in Ohio as a mortgage loan officer. *Testimony of Respondent, State's Exhibit 4, Respondent's Exhibit E.*
6. On September 30, 2008, Respondent filed a Loan Officer Application ("*Application*") with the Division. The Application indicated that Respondent would be employed as a loan officer by Midwest Manufactured Homes ("*Midwest*"), should his Application be approved. Respondent attested that his answers to the questions in the Application

were "complete, truthful and correct." *Testimony of Respondent, Tr. at pg. 15. State's Exhibit 4, Respondent's Exhibit E.*

7. Question number 4 on the Application asked, "Have you ever been arrested for, 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?" Respondent answered, "Yes." *State's Exhibit 4, Respondent's Exhibit E.*
8. Respondent attached a one-page letter of explanation to his Application, which informed the Division that Respondent had "drug convictions that happened between the 28th day of April, 1993 and the 19th day of May, 1993." Respondent also included copies of the 1993 records from Carroll County Common Pleas Court. *State's Exhibit 4.*
9. The 1993 records from the Carroll County Court of Common Pleas included five documents: the April 28, 1993 Indictment filed against Respondent, the Bill of Particulars, the September 29, 1993 Judgment Entry, and the Plea Sheet and Waiver of Rights. *Testimony of Respondent, Tr. at pg. 51, Respondent's Exhibit E, State's Exhibit 5.*
10. The Carroll County records indicate that on September 29, 1993, Respondent pleaded guilty in the Carroll County Common Pleas Court to two counts of aggravated trafficking in drugs. The Court sentenced him to two years confinement for each count, to be served consecutively, and a mandatory fine of \$2,500 for each count. Respondent served 40-45 days in jail, and was then ordered to serve five years probation. The terms of Respondent's probation included attending Alcoholics Anonymous meetings and mental health counseling, completing drug/alcohol rehabilitation, submitting to random drug testing, and making full payment of all fines and assessments. *Testimony of Respondent, Tr. at pgs. 59-60, Respondent's Exhibits B and E, State's Exhibit 5.*
11. The Division based its decision to deny Respondent's application solely on the information provided by Respondent in his Application. *Testimony of Ms. Mallett, Tr. at pg. 37.*

D. Respondent's Reputation and Character.

12. Respondent maintains that he has rehabilitated his life and that he is now a respected part of his community. Since his 1993 drug convictions, Respondent asserted that he has not been charged with, convicted of or pleaded guilty to any other drug related offenses. Respondent contends he is now a changed person with strong work, faith and family values. *Testimony of Respondent, Tr. at pgs. 58-59.* The Division offered no evidence to contradict Respondent's assertions.
13. In 1993, when he was convicted for drug trafficking, Respondent attended Kent State University, lived in a dormitory, rarely attended classes, and began to drink and to use drugs. *Testimony of Respondent, Tr. at pgs. 57-58.* Respondent explained in an attachment to the Application, that he was with the wrong crowd, where he "got involved in using cocaine and became addicted very quickly." *Respondent's Exhibit E.*
14. Respondent left Kent State without telling his parents, but "finally had to get honest with my father, and may seem crazy, but having this conviction saved my life." *Respondent, Tr. at pg. 58.* Respondent returned to his parent's home and, in the fall of 1994, entered Walsh University to study finance and management. *Testimony of Respondent, Tr. at pgs. 17, 45, and 58.*
15. Respondent was honest and forthright in his admission that on December 8, 1995, due to a personal setback in his life, he became intoxicated, and was then arrested for his failure to control a motor vehicle and for driving under the influence. The Canton Municipal Court found Respondent guilty and sentenced him to 180 days in jail, a \$500.00 fine plus court costs, fifteen days in an alcohol treatment program and a three-year suspension of his driving privileges. One hundred and thirty-five days of his sentence was suspended. The court records reflected that on December 28, 1995 Respondent made "full payment." *State's Exhibit 6. Testimony of Respondent, Tr. at pg. 19.*
16. Since his 1995 arrest and conviction, Respondent maintains that he has not been charged with, convicted of or pleaded guilty to any other criminal offenses. *Testimony of Respondent, Tr. at pgs. 22 and 49.* The Division offered no evidence to contradict these assertions.

17. On March 7, 1997, Respondent completed all of the terms of his probation and the Carroll County Court of Common Pleas terminated his probation for the 1993 drug convictions. *Testimony of Respondent, Tr. at pgs. 43-44, Respondent's Exhibit B.*
18. In May 1998, Respondent graduated magna cum laude from Walsh University with a Bachelor of Arts degree in Management and Finance. *Respondent's Exhibit A.*
19. On June 16, 1998, the Canton Municipal court terminated Respondent's driver's license suspension from the 1995 conviction. *State's Exhibit 6.*
20. Respondent has been gainfully and steadily employed since his 1998 college graduation. Following graduation, Respondent began to sell manufactured houses at Martin Homes, where he remained through January 2001, first as a salesman, then as sales manager. *Testimony of Respondent, Tr. at pgs. 45-47.*
21. After leaving Martin Homes, Respondent joined Midwest Manufactured Homes ("Midwest") in February 2001, and continued to sell manufactured homes. At Midwest, he sells both new and repossessed manufactured homes and factory built homes. In addition to his sales duties, Respondent coordinates the home site preparation work for customers, by gathering estimates and proposals for the costs of sewer, wells, basements, and utilities when the customer wants to place the home onto real property. *Testimony of Respondent, Tr. at pg.47- 49.*
22. Respondent maintained that he has been "clean and sober" since March 14, 2003, when he voluntarily entered a 90-day outpatient alcohol treatment program. *Testimony of Respondent, Tr. at pgs. 61-62.* Respondent offered no documentation or evidence, other than his testimony, to support this conclusion.
23. Five letters of recommendation, from individuals familiar with Respondent, assert that he is of high character, honest, and holds a good reputation in the community. *Letters from Ron Rector, Renae Marriner, Bob Schoeneman, Bradford Morgan, Sr., and James M. McHugh, Respondent's Exhibit E.*

24. Respondent's former spouse, Renae Marriner, stated in her letter "the Brad I know now is a healthy, clean and sober man. He continues to work hard every day to maintain his sobriety." *Letter from Ms. Marriner, Respondent's Exhibit E.* Respondent indicated that he and his former wife had two daughters together, with whom he is currently very active and shares custody. *Testimony of Respondent, Tr. at pgs. 52-53.*
25. Respondent identified the Rector, Marriner, Schoeneman, Morgan, and McHugh letters at the hearing. Mr. Rector, Ms. Marriner, Mr. Schoeneman, and Mr. Morgan, Sr. were not present to testify. Mr. McHugh was present as Respondent's legal counsel.
26. Respondent further offered the testimony of Pete Houtz, who testified as both an employer and as a friend of Respondent. Mr. Houtz has maintained a friendship with Respondent since 1999. *Testimony of Mr. Houtz, Tr. at pgs. 71.*
27. Mr. Houtz is currently a partner and general manager at Midwest, and Respondent's employer. As general manager, Mr. Houtz is responsible for "every facet of the business from construction through completion, general business operations along with hiring, firing, and overall management of our business." Mr. Houtz reported that although he has "laid off and fired a good bit of the staff since I've been back. I've cleaned house.", he retained Respondent as a "trusted employee." *Testimony of Mr. Houtz, Tr. at pgs. 67-68, and 81.*
28. Mr. Houtz worked for Midwest in 2001, then left and returned in 2006. Mr. Houtz confirmed that Respondent had been employed by Midwest since 2001. *Testimony of Mr. Houtz, Tr. at pg. 71.*
29. Respondent has a good reputation with Midwest's customers, employees, and subcontractors. *Testimony of Mr. Houtz, Tr. at pg. 75.*
30. For the past two and one-half years, in addition to his sales duties, Respondent has prepared, collected and analyzed the necessary financial documentation from customers interested in a financing the purchase of a home from Midwest. Respondent's position involves direct sales and correspondence with banks and other lending institutions. "I find his communication and dealing to be beyond

reproach.” *Testimony of Mr. Houtz, Tr. at pgs. 68-70, pg. 74-77, Respondent’s Exhibit C.*

31. “Brad [Respondent] is my most trusted employee and is brought in to many discussions that are beyond his position, due to the fact that I respect his opinion and point of view.” *Letter from Mr. Houtz, Respondent’s Exhibit C.* Mr. Houtz believes that Respondent is a changed man would not repeat the drug use and the lifestyle of Respondent’s past. “To the best of my knowledge, he’s [Respondent] not had a drink in a long time.” *Testimony of Mr. Houtz, Tr. at pgs. 72 and 75.*
32. Midwest has never taken any disciplinary actions against Respondent. Mr. Houtz and Dawn Green, the mortgage broker operations manager at Midwest, would continue to supervise Respondent if the Division were to approve his Application. *Testimony of Mr. Houtz, Tr. at pgs. 79-81.*
33. Midwest holds a mortgage broker certificate of registration from the Division. *Testimony of Ms. Mallett, Tr. at pg. 39.* Respondent has applied for his mortgage loan officer’s license in order to advance his career at Midwest. Midwest supports him in this effort. *Testimony of Respondent, Tr. at pg. 49, Testimony of Mr. Houtz, Tr. at pg. 76-77.*
34. Respondent has already completed 24 hours of his educational requirements in mortgage lending and principles at Hondros College. *Testimony of Respondent, Tr. at pg. 48-50, Respondent’s Exhibit E.* He would honor the confidentiality and the integrity expected from a loan officer. *Testimony of Respondent, Tr. at pg. 64.*
35. Respondent was remorseful about his past drug use and convictions; he has “made mistakes and I’ve paid for them.” He takes the past criminal charges against him very seriously and has worked to change his life. *Testimony of Respondent, Tr. at pg. 58.*
36. Respondent maintains that he has been abstinent from drugs for over ten years, abstinent from alcohol for over five years, contacts his Alcoholics Anonymous sponsor weekly, attends Alcoholics Anonymous meetings, and is on 24 hour call for others members of Alcoholics Anonymous. *Testimony of Respondent, Tr. at pgs. 19, 53-57.* Mr. Houtz confirmed that Respondent does attend Alcoholics Anonymous

meetings, but could not attest to the frequency. *Testimony of Mr. Houtz, Tr. at pg. 73.*

37. The Hearing Officer found Respondent to be honest and truthful at the hearing. He now has a good reputation in his community and in his business.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

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

B. Loan Officer License Application.

39. The Division is responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
40. The Division charged that Respondent was convicted of an offense enumerated in R.C. §1322.031(A)(2), and therefore unfit to be licensed as a loan officer.
41. R.C. §1322.031(A)(2) provides:

(A) An application for a license as a loan officer shall be in writing, under oath, and in the form prescribed by the superintendent of financial institutions. The application shall be accompanied by a nonrefundable application fee of one hundred dollars and shall provide all of the following:

* * *

(2) A statement as to whether the applicant 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; * * *

42. Because Respondent's conviction was not for a theft offense, R.C. §1322.041 shifts the burden of proof of eligibility for licensure. Thus, Respondent has an opportunity to prove to the Division, by a preponderance of the evidence, that he is otherwise eligible to hold a license. Should the applicant sustain that burden of proof, the Division may grant a license. *R.C. Section 1322.041(A)(3)*.

43. R.C. §1322.041(A)(3) provides, in pertinent part:

(A) Upon the conclusion of the investigation required under division (B) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(3)* * *if the applicant has been convicted of or pleaded guilty to any such offense other than theft, the superintendent shall not consider the offense if 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.

44. Respondent was truthful about his drug convictions in his Application. Respondent was forthright about his drug and traffic convictions, and his troubled past at the hearing.

45. Respondent provided letters from his former spouse, his attorney and other individuals who were aware of his character and his reputation. While it is understood that the letters constitute hearsay pursuant to the Rules of Evidence, it is also clear that the Rules of Evidence serve as a guideline and are not to be strictly construed in administrative proceedings. "As the fact finder, a hearing officer may consider generally inadmissible hearsay evidence, along with the credibility of individuals giving testimony in reaching his or her decision." *Boos v.*

Admr., Ohio Bur. Of Unemployment Services, 11th Dist. No. 2003-T00174, 2004-Ohio-6693.

46. As the finder of fact, this Hearing Officer considered the totality of the evidence, including the character letters provided in Respondent's Exhibit E, and the testimony of Respondent and his employer.
47. The testimony and exhibits presented to this Hearing Officer demonstrate that a different conclusion should be reached than the Division's determination from the Application materials.
48. This Hearing Officer finds that Respondent has proved, by a preponderance of the evidence, that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again.
49. R.C. §1322.041(A)(6) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(6) 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)(6).

50. This Hearing Officer finds that Respondent has met the burden of proof required under R.C. §1322.041(A)(3), and that Respondent has shown that there is no basis in fact for believing that he will commit such an offense again.
51. Furthermore, this Hearing Officer finds that Respondent's character and 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)(6).*

III. RECOMMENDATION

Respondent has established the licensing prerequisites set forth in R.C. §§1322.041(A)(3) and 1322.041(A)(6). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue a loan officer license to Respondent.

Respectfully submitted,

Deborah K. Tongren
Hearing Officer