

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0035-LOD
: :
: :
Ricky Feacher : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
June 30, 2005

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on May 17, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Ricky Feacher (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of criminal usury in 1999 and failed to disclose the conviction on his loan officer application filed in February of 2005. Therefore, the Division asserts 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. The 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 commit such an offense again as required by R.C. 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 as required by R.C. 1322.041(A)(5).
3. By failing to disclose his criminal conviction on his loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits 1 through 11 and Respondent's Exhibits A - E were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on April 11, 2005 by certified mail, return receipt requested. (Exhibit 5.) Respondent's hearing request was received by the Division on April 19, 2005. (Exhibit 6.) The Division scheduled the hearing for April 29, 2005 and, on its own motion, continued the hearing to May 17, 2005. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit 7.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on February 4, 2005. (Exhibit 1.)
2. Question five of that application asked the following question:

5. 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**? (Emphasis in original.)
3. In response to Question 5, the Respondent answered "Yes." He explained that he had been convicted of driving under the influence. (Exhibit 1; TR at 30.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031(B) which revealed that the Respondent had been charged in 1999 with criminal usury. (Exhibit 2.) By letter dated March 2, 2005, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of the judgment entry evidencing his plea and the court's finding. (Exhibit 3.)
5. The Respondent provided a certified copy of a Journal Entry of the Cuyahoga County Court of Common Pleas for Case No. CR 375076. The Entry shows that on June 1, 1999 the Court found the Respondent guilty of criminal usury in violation of R.C. 2905.22(A)(3)¹, a first degree misdemeanor. The Court fined the Respondent \$100.00 plus costs. (Exhibit 4.)
6. In a letter to the Division and in his testimony, the Respondent explained that the violation occurred when he arranged a loan "outside of the conventional mortgage practices" for a customer who had a poor credit history. (Exhibit 4.)

¹ R.C. 2905.22(A)(3) prohibits the possession of any writing, paper, instrument, or article used to record criminally usurious transactions, knowing that the contents record a criminally usurious transaction.

7. The Respondent testified that he did not disclose the conviction on his loan officer application because he did not realize that he had been convicted of a criminal offense. (Exhibit 4; TR at 18, 20, 21, 22, 30, 31, 32, 33.) He testified that when his attorney told him that they had dropped the charges from a felony to a misdemeanor and that he would pay only a \$100.00 fine he thought that it was not a criminal offense. (TR at 33.) He testified that if he had realized that he had been convicted of a criminal offense he would have applied to have the record sealed. (TR at 33.) The Respondent disclosed his conviction for driving under the influence because Question 5 specifically mentioned that DUIs were criminal offenses. (TR at 30, 33, 37.)
8. The Respondent testified that he has been employed as a loan officer by American Midwest Mortgage Corporation since 1992. (TR at 62 - 63.) He believes that he has done well and that he is one of the biggest producers in his company. (TR at 64.) His employer would like to reassign him to a sister company, where he would need a loan officer license, in order to build up that office and get it back to where it used to be. (TR at 63.) He testified that he has always been honest and does not try to gouge people. He treats people the way he wants to be treated and tries to help people the best way he can. (TR at 64 - 65.) He cited specific examples of situations where he placed his clients' interests above his own. (TR at 65 - 66.) To the Respondent's knowledge, there have been no complaints about his work with American Midwest Mortgage Company. (TR at 64.)
9. The Respondent testified that he has been heavily involved in the Cleveland, Ohio community for over twenty years. (TR at 20.) Most of his service has been through the Cleveland Browns organization and the Mt. Sinai Baptist Church where he is now serves on the Council of Elders. He sponsors a golf tournament every year to raise money for the programs of the church. (TR 67 - 69.) In the past he has served as the church's youth director and coached its basketball team. (TR at 41.) Through the Cleveland Browns Alumni organization he recently supported the Our Lady on the Way Side function at Cleveland Stadium. (TR at 71.) Together with a few friends, he started the Eddie Johnson Foundation in memory of a Cleveland Browns player who died of cancer. The Foundation recently made donations to families in Cleveland who were in financial need due to spouses being deployed overseas in Iraq. (TR at 72.)
10. The Respondent testified that he is well known in the community and has a reputation for honesty. (TR at 72.)
11. No witnesses appeared to testify on the Respondent's behalf. However, five individuals wrote letters on the Respondent's behalf.
12. Exhibit A is a letter from Larry A. Jones, Presiding and Administrative Judge of the Cleveland Municipal Court. Judge Jones stated that he has known the Respondent for several years and that they both serve on the Council of Elders at Mt. Sinai Baptist Church. He believes that the Respondent is honest, truthful and a good person who has demonstrated a commitment to citizens through his volunteer services and support of organizations within the community.

13. Exhibit B is a letter Jimmie Mack, Jr., an attorney with an office in Cleveland, Ohio. Mr. Mack states that he has known the Respondent for approximately five years through their work at the Mt. Sinai Baptist Church. He has seen the Respondent work to raise funds for children in the church. He states that the Respondent is well respected by the members of the congregation who look to him for assistance with personal matters.
14. Exhibit C is a letter from Jeff Paul, Vice President of American Midwest Mortgage Corporation. Mr. Paul states that the Respondent has been employed by American Midwest Mortgage Corporation since 1992 and has always handled himself and his customers in a kind and professional manner.
15. Exhibit D is a letter from Dino Lucarelli, Director of Alumni Relations for the Cleveland Browns. Mr. Lucarelli states that the Respondent was a major factor in the success of his organization's cooperation with fundraisers that helped to raise millions of dollars for worthy causes. He says that there is no doubt of the Respondent's moral character and ethical approach to his responsibilities in the mortgage business.
16. Exhibit E is a letter from Carmen Fowler, a realtor with RE/MAX Synergy of Lyndhurst, Ohio. Ms. Fowler states that she has worked with the Respondent for seven years and that the Respondent has always handled transactions with the utmost honesty and integrity. She will continue to have the Respondent assist her clients.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.
2. The Attorney General objected to the admission of the Respondent's Exhibits A and E because they are hearsay. The Hearing Officer admitted these letters into the record with the caveat that the weight given the letters would be determined after considering the lack of ability to observe the witnesses as they gave testimony, to judge the credibility of their testimony and to benefit from their responses to cross examination by the Attorney General.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds

that certain conditions are met, including, among other requirements not relevant here:

* * *

(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 R.C. 1322.031(A)(2), 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.

The NOH states that the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown 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, as required by R.C. 1322.041(A)(3). Since the Respondent was convicted of criminal usury which is a crime involving money, one of the categories of offenses listed in R.C. 1322.031(A)(2), the burden is on the Respondent to prove by the preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again.
4. The Respondent has satisfied this burden. Since his conviction, the Respondent has been continuously employed as a loan officer at American Midwest Mortgage Corporation and in the words of its Vice President, Jeff Paul, has always handled himself in a professional manner. The Respondent's many activities with his church and the Cleveland Browns organization support his community in many ways. The Respondent's service on the Council of Elders of his church establishes that those who know him find him to be honest, truthful and of good reputation. Moreover, there is no likelihood that the Respondent will commit such an offense again. Accordingly, the Respondent has proven by the preponderance of the evidence 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 as required by R.C. 1322.041(A)(3).

5. The NOH asserts that the Respondent's loan officer application should be denied because the 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). The Division bases this finding upon the Respondent's conviction for criminal usury and his failure to disclose the conviction on his loan officer application.
6. The Respondent's conviction may be some evidence that he does not possess the character and general fitness to be loan officer. While the offense was a serious misdemeanor, the court chose to impose a minimum fine of only \$100.00 in lieu of the maximum sentence of up to 180 days in jail and a fine of up to \$1,000.00. The Court's lenient sentence means that the offense was of such a nature that the Court believed that the minimum penalty was sufficient to protect the public from future crime by the Respondent and to punish the Respondent.² Thus, the fact of this conviction alone, against the substantial evidence in support of the Respondent's character, does not support the Division's finding that the Respondent does not have the character and general fitness to be a loan officer.
7. The Respondent failed to disclose his usury conviction on his loan officer application as required by R.C. 1322.031(A)(2). When asked about his criminal record in Question 5 of the application, the Respondent answered "yes" but failed to disclose the usury conviction. It is apparent from the Respondent's testimony that he honestly did not know that the offense that he pleaded guilty to and paid a fine for was a criminal offense. The Division's finding that the Respondent's failure to disclose the usury conviction shows that he does not have the character and general fitness to be a loan officer is apparently based upon its inference that the Respondent failed to disclose the usury conviction to conceal the fact of the conviction from the Division. The Respondent's testimony, his twelve plus years of employment as a loan officer, apparently without complaint, and his record of substantial activities in support of his community defeat this inference. In light of the substantial evidence of the Respondent's employment as a loan officer and activities in support of his community, his failure to disclose the usury conviction on his loan officer application does not support the Division's finding that his 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).
8. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).

² R.C. 2929.31(A) provides that the overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender.

9. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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 any 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.

* * *

10. The Respondent's failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A) and an omission of a statement required by state law in violation of R.C. 1322.07(B). In light of the finding herein that the failure was due to an honest mistake, it did not constitute engaging in improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). However, by violating R.C. 1322.07 (A) and (B), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
11. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license. However, the statute's use of the permissive word "may" means that the Superintendent is not required to take either action and may decide to take no formal disciplinary action. In deciding which action to take, the Superintendent should consider the facts and circumstances of the particular case and take the action that best serves the purposes of the Ohio Mortgage Broker Act. In this case, the facts show that the Respondent's violation of R.C. 1322.07 was an unintentional act caused by an honest misunderstanding of the criminal process and was not done with any attempt to deceive or mislead the Division. Moreover, the Respondent's twelve years of employment as a loan officer and his substantial involvement in activities that support his community, particularly the kids in his community, establish that the purposes of the Ohio Mortgage Broker Act will be best served by issuing a loan officer license to the Respondent.

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A) and R.C. 1322.10(A).

Respectfully Submitted,

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James J. Lawrence
Hearing Officer
June 30, 2005