

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE NO. M2005-999722  
: :  
THOMAS P. ELIAS : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued October 30, 2006

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I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio who was 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 September 20, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Thomas P. Elias ("Respondent" or "Mr. Elias") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of misdemeanor theft in 2000, driving while under the influence of alcohol or drugs ("DUI") in 2000 and in 2003, and sale of liquor to minors in 2005. Therefore, the Division alleges that Respondent is not eligible for a loan officer license because he 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 not commit any criminal offense involving theft again as required by R.C. 1322.041(A)(3). The Division also alleged that 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).

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Tom Rocco represented Mr. Elias at the hearing. State's Exhibits A through P, R, and S, and Respondent's Exhibits 1 through 11 were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on May 2, 2006, and served it upon him by certified mail. Respondent's hearing request was received by the Division on May 22, 2006. The Division scheduled the hearing for June 1, 2006, and continued it until September 20, 2006. The Respondent received the NOH by certified mail and received written notice of the date, time, and location for all hearing dates set in this case. Respondent's attorney also received appropriate notification of the hearing.

**C. Respondent's Loan Officer Application and Criminal Convictions.**

1. Respondent is an individual seeking to be licensed in Ohio as a mortgage loan officer. (State's Exhibit D.)
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. The Division received Respondent's Loan Officer Application ("Application") on July 7, 2005. (State's Exhibit D.)
4. Respondent disclosed his convictions for misdemeanor theft in 2000, DUI in 2000, and DUI in 2003 on his Application. He was convicted of sale of liquor to minors in August of 2005, after his Application was filed with the Division. (State's Exhibits D and S.)
5. Respondent is an alcoholic who had his last drink January 31, 2003, at the age of 23. His last DUI arrest in January of 2003 was a turning point in his life. He successfully completed a treatment program for alcoholism in December of 2003. Respondent accepted the fact that he is an alcoholic and obtained effective treatment for this problem. More than three years have passed since his last drink and almost three years have passed since he completed the treatment program. He would seek help, if ever at risk, from his counselor. His DUI convictions reflect who he was over three years ago, not who he is today. (State's Exhibits F, G, P, and R; Respondent's Exhibits 2 and 3; TR at 25-26, 30-31, 37-38, 40-42, 51-53.)

6. Respondent's misdemeanor theft conviction arose from a minor incident that occurred after he had been drinking at a golf outing. He put a 15% off sticker on a \$90 golf putter and purchased it. As a result, he paid roughly \$14 less than he should have for the item. This incident reflects who he was over six years ago, not who he is today. The evidence in the record establishes that it is not likely that Respondent will commit any crime involving theft in the future. (State's Exhibits F, G, and O; TR at 23-25, 39-40, 51-52.)
7. The events underlying Respondent's 2005 conviction for sale of liquor to minors occurred when he filled in as a bartender at his brother's bar one night. He served one drink to a minor who had a wristband indicating that she was over 21 years old. She had talked the bouncer into giving her a wristband at the door despite not having the proper identification. Mr. Elias relied on the fact that she had the wristband as evidence that she was at least 21 years old. He has not worked as a bartender since that incident and will not do so in the future. (State's Exhibits F and S; TR at 26-27, 31-33, 35-37.)
8. Respondent freely disclosed his convictions to the Division and cooperated with all requests for information. He candidly discussed his alcohol problem and treatment. Alcohol has played a role in every conviction at issue in this case. He regrets the incidents and has made numerous changes in his life since his January 2003 DUI. Before that, he was clearly on a bad path. After that conviction and the resulting treatment, he turned his life around. Respondent is committed to avoiding alcohol and avoiding working with alcohol.

**D. Respondent's Reputation and Character.**

9. Respondent graduated from the University of Cincinnati with a degree in Business Administration in June of 2005. His transcript evidences that he was on the Dean's List almost every quarter after completing the treatment program. Before that, he was a mediocre student. He has worked in the mortgage industry since May of 2004. He was working for a licensed Ohio mortgage broker when he applied to be a loan officer. Respondent currently works as a loan officer for Community National Bank, a national bank. He does not need to be licensed in Ohio as a loan officer in that position. He has been a loan officer for Community National Bank since April of 2006. (Respondent's Exhibits 4, 5, 6, 7, 8, and 9; State's Exhibit D; TR at 42-50, 54-57, 68.)

10. Respondent submitted reference letters from three individuals who have worked with him in the mortgage lending industry. All are favorably impressed with Respondent's character and abilities in that industry. They describe Respondent as honest, hardworking, trustworthy, reliable, knowledgeable, and someone works well with others. (Respondent's Exhibits 7, 8, and 9; TR at 47-50.)
11. Respondent identified the reference letters but the authors of those letters were not available for cross-examination by the Division at the hearing. Therefore, the reference letters were admitted into the record but were given less weight than they might have been given if the authors had testified regarding the bases for their opinions as well as been available for cross-examination. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits 7, 8, and 9 were reviewed and given some weight but not the weight they might have been given if their authors had testified at the hearing.
12. Mr. Elias was a very credible and compelling witness. He did not down play his past problems and took full responsibility for them. His testimony was consistent and confirmed his successful rehabilitation.
13. The Hearing Officer found Respondent to be honest and truthful at the hearing. He has learned from his mistakes and improved his life greatly since 2003. He candidly discussed the issues he dealt with in his past and readily provided information about them to the Division during all parts of this licensing process. The events underlying his convictions reflect the low point in his life and not the person he is today. His reputation is good and he is well regarded by others. He is not likely to commit any criminal offense again.
14. Respondent has established that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit any criminal offense again. Respondent also established that his character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act.

## **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 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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.
3. 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:

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, 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.

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(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)(3) and (5).

4. Once the theft conviction was proven by the Division, the burden of proof shifted to Respondent to prove, by a 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 {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
5. The evidence established that the Respondent has no other theft convictions. Respondent was honest about his conviction and his troubled past on his Application and at the hearing. Respondent has made numerous changes and has turned his life around. Alcohol played a major role in every conviction at issue in this case. Respondent is committed to avoiding alcohol and avoiding working with alcohol. His testimony and the letters submitted establish that he is now a different person and not likely to repeat his past mistakes. The record evidences a person who has worked hard to earn the trust of others and establish himself as a good person. Six years without any theft conviction and over three years of sobriety indicate the changes he has made are permanent and support the conclusion that there is no basis in fact for believing that he will commit any criminal offense again.
6. Respondent has established that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit any criminal offense involving theft again as required by R.C. 1322.041(A)(3).
7. Respondent has also established that his character and general fitness command the confidence of the public and warrant the belief that his 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).

**C. Records, Information, and Data Pertaining to Sealed Criminal Records.**

8. During the hearing, the Division introduced Exhibit Q, a record pertaining to a dropped criminal charge that was not a basis for the proposed license denial. Later in the hearing, Exhibit Q was withdrawn after Mr. Elias revealed that the records in that matter were sealed. The order sealing those records is not part of the record in this case but there is no reason to doubt his representation.

9. Therefore, the Division's official records, the transcript, this Report and Recommendation, and the exhibits in the record, as well as copies in the hands of counsel and others must be maintained and handled in a manner consistent with R.C. 2953.35(A), which, in relevant part, provides:

(A) Except as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code or by Chapter 2950. of the Revised Code, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, or were expunged by an order issued pursuant to section 2953.42 of the Revised Code as it existed prior to the effective date of this amendment, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

R.C. 2953.35(A).

10. Pursuant to R.C. 2953.35(A), the Division should obtain and carefully evaluate the relevant order sealing the official records pertaining to the dismissed charges to see if it specifically orders the sealing of any pertinent official records of that administrative agency. If it encompasses the Division's records specifically, the Division must seal its official records and the portions of the record in this case, including this Report and Recommendation, pertaining to or including Respondent's sealed records and the dismissed charges, and only release, disseminate, or make available those records, and information or other data concerning the sealed records or the dismissed charges in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. If the order does not specifically order the sealing of the pertinent official records of Division, the Division may seal its official records and the portions of the record in this case, including this Report and Recommendation, pertaining to the sealed records and the dismissed charges. Even if sealing of those records is discretionary, R.C. 2953.35(A) requires the Division to only release, disseminate, or make available those records and information or other data concerning the sealed records and the dismissed charges in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. In either situation, the materials must be maintained separate from the Division's public files. Counsel representing the Division in this case and the Ohio Attorney General's Office now have knowledge

of the sealed records and the dismissed charges and fall within the purview of R.C. 2953.35(A). They should also evaluate the documents, data, information, and the materials in their possession, including this Report and Recommendation, pertaining to or including Respondent's sealed records and the dismissed charges and only release, disseminate, or make available those records and information or other data concerning the sealed records or the dismissed charges in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. 1993 Ohio Op. Att'y Gen. No. 93-38 [also cited as Opinion No. 1993-038] (Syllabus at Paragraphs 1, 2, 3, and 4.)

11. Regardless of whether the pertinent records are sealed by the Division, they should at a minimum be segregated from public files and only released, disseminated or made available in accordance with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. 1993 Ohio Op. Att'y Gen. No. 93-38 [also cited as Opinion No. 1993-038] (Syllabus at Paragraphs 1 and 4.) If the Division does not believe that the records can be sealed without a separate court order, it should obtain such a court order to avoid violating R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. *In re T.F.K.*, 136 Ohio Misc. 2d 9, 2005-Ohio-7143.

### III. RECOMMENDATION

Initially, I recommend that the Division only release, disseminate, or make available the Division's official records, the transcript, this Report and Recommendation, and the exhibits in the record, and information or other data concerning the sealed records and the dismissed charges in a manner consistent with R.C. 2953.35(A) and Ohio Revised Code Chapter 2953. The Respondent has established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
October 30, 2006