

STATE OF OHIO
2010 FEB -4 PM 1:34 DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. M2009-644
:
DIANN DILLINGHAM, : DEBORAH K. TONGREN
RESPONDENT : HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued February 4, 2010

I. FINDINGS OF FACT

A. Background.

1. 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.
2. The Division held the hearing on January 8, 2010 to consider the Division's October 30, 2009 Notice of Intent to Deny Loan Officer License and Notice of Hearing ("*NOH*"). The Division alleged that Diann Dillingham's ("*Respondent*") character and fitness does not command the confidence of the public and warrant the belief that her business will be operated honestly and in compliance with the Ohio Mortgage Broker Act and therefore, she does not meet the requirements in R.C. 13322.041(A)(6) to hold a loan officer license.
3. 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. Anthony Siciliano, Esq. testified on behalf of the Division. Neither Respondent nor anyone on her behalf appeared at the hearing.

4. The Division introduced, and the Hearing Officer admitted, State's Exhibits 1 through 5, and State's Exhibit 11 into the record at the hearing.
5. The Division also introduced State's Exhibits 6 7, 8, 9 and 10. State's Exhibits 6, 7, 8 and 9 were printouts from the offices of the Secretaries of State for Ohio, Indiana and Georgia. Each exhibit concerned an entity known as "Mortgages Unlimited Inc.". State's Exhibit 10 is a printout from the Ohio Department of Commerce showing that Respondent had been licensed in Ohio as a registered barber, a managing cosmetologist, and a real estate salesperson. The Hearing Officer found that State's Exhibits 6, 7, 8, 9, and 10 were not relevant to the charges against Respondent in the Division's NOH, and therefore, did not admit the exhibits into the record. The Division proffered State's Exhibits 6, 7, 8, 9, and 10.
7. On January 5, 2010, Respondent sent a notarized statement with exhibits to the Division as a written statement of her position, arguments and contentions. The Division submitted Respondent's notarized statement to the Hearing Officer and marked it as Respondent's Exhibit A. The Hearing Officer admitted the document into the record.

B. Division's NOH.

8. On October 30, 2009, the Division sent the NOH to Respondent at her address of record with the Division, notifying her that it intended to deny her application for a loan officer license and that she had the opportunity to request a hearing on the matter. The Division sent the NOH by certified mail, return receipt requested, and perfected service on November 18, 2009. *State's Exhibits 1; Testimony of Mr. Siciliano, Tr. at pg. 15.*
9. On November 20, 2009, the Division received Respondent's request for a hearing. *State's Exhibit 2.*
10. On November 23, 2009, the Division sent a letter to Respondent by regular mail informing her that it would hold a hearing on January 8, 2009. *State's Exhibit 3; Testimony of Mr. Siciliano, Tr. at pg. 18.*

11. The Division held the hearing on the date, time, and at the address as specified in the November 23, 2009 letter sent to Respondent. The Hearing Officer closed the record at the conclusion of the hearing.

C. Respondent's Loan Officer License

12. Anthony Siciliano, Esq., is the Consumer Finance General Counsel for the Division. Mr. Siciliano reviews applications for loan officer licenses to ascertain that applicants possess the required character and fitness to be issued loan officer licenses. He reviewed Respondent's application for a loan officer license. *Testimony of Mr. Siciliano, Tr. at pgs. 10, 22.*
13. On or about April 9, 2009, Respondent filed an application with the Division for a loan officer license. *State's Exhibit 4; Testimony of Mr. Siciliano, Tr. at pg. 22.*
14. Question 2 on the Division's loan officer license application asked if Respondent had ever been known by any other name. She answered, "yes", that her married name was Diann Ham. *State's Exhibit 4, pg. 8.*
15. Question number 9 on the Division's loan officer license application asked if Respondent had ever filed for personal bankruptcy, and if so to provide details. Respondent answered, "yes," and stated "discharge 1998." *State's Exhibit 4, pg. 9.*
16. Respondent did not provide the Division with a copy of the discharge order for her 1998 bankruptcy or copies of any schedules for secured or unsecured creditors. *State's Exhibit 4; Testimony of Mr. Siciliano, Tr. at pg. 26.*
17. Respondent did not include information regarding any other bankruptcy filings in response to question number 9 on the Division's loan officer license application. *Testimony of Mr. Siciliano, Tr. at pg. 23..*
18. The Division's loan officer license application required in the section entitled "Explanation and Instructions" that:

You must answer each question on this application fully and truthfully. Any omission, untruthful answer or incomplete answer may result in your being denied the privilege of

obtaining a Mortgage Loan Officer License and acting as a loan officer in the State of Ohio, or in subsequent legal action. Questions 2 through 13 must be fully answered regardless of dismissals or similar terminations, and must include all actions or legal proceedings occurring in any court in any jurisdiction. This includes any matter dismissed favorably to you, filed by you or in which you were involved in any manner other than as a witness.

State's Exhibit 4, at pg. 14.

19. Respondent signed the Division's loan officer license application and attested that her answers were complete, truthful, and correct. *State's Exhibit 4, at pg. 10.*
20. The Division conducted a routine civil background investigation on Respondent that revealed certificates of judgment filed against Respondent in the Butler County Court of Common Pleas. *Testimony of Mr. Siciliano, Tr. at pgs. 16, 27.*
21. On July 24, 2009, the Division sent a letter to Respondent asking her to provide certified copies of the following documents to the Division:
 - a) A Certificate of Judgment issued June 29, 2009 in *Kemba Credit Union Inc. v. Diann Dillingham*, Fairfield Municipal Court case no. 2008 CVF 00833;
 - b) A Certificate of Judgment for Lien Upon Lands and Tenements issued October 14, 2008 against Respondent and in favor of Finney, Stagnaro, Saba & Patterson Co. LPA., Butler County Court of Common Pleas case no. 08CV08510;
 - c) A State Lien with a judgment date of July 14, 2009 against Respondent in favor of the Ohio Department of Taxation issued in the Butler County Court of Common Pleas case no. ST 2009 07 2756;
 - d) A Certificate of Judgment issued November 5, 1998 in *Fifth Third Bank v. Diann Dillingham fka Diann Ham*, Butler County Court of Common Pleas case no. CV 97 06 1408;

e) An Amended Complaint for Foreclosure filed November 24, 2008 in *Wachovia Mortgage, FSB f.k.a. World Savings Bank v. Diann Dillingham fka Diann Ham et.al.*, Butler County Court of Common Pleas case no. CV2008104686; and

f) A certified copy of the answer and cross claim filed by defendant Finney, Stagnaro, Saba & Patterson Co, LPA on January 5, 2009 against Respondent in the case referenced in paragraph (e) above. *Respondent's Exhibit A; Testimony of Mr. Siciliano, Tr. at pg. 45.*

22. Respondent provided copies to the Division of some of the requested documents, but none of Respondent's copies were certified, and all of the copies were marked-up and illegible. *Testimony of Mr. Siciliano, Tr. at pg. 45.*
23. On September 24, 2009, the Division requested the Butler County Court of Common Pleas to provide certified copies of certificates of judgments against Respondent. *State's Exhibit 5, at pg. 18; Testimony of Mr. Siciliano, Tr. at pg. 27.*
24. On October 1, 2009, the Division received certified copies of the certificates of judgments against Respondent filed in the Butler County Court of Common Pleas. According to the judgment entries, Respondent owed:
 - a) Kemba Credit Union Inc \$2,906.08 plus post judgment interest at a rate 18% and costs;
 - b) Finney, Stagnaro, Saba & Patterson Co. LPA. \$9,712.78 plus post judgment interest at a rate of 8% per annum and \$228.00 in costs;
 - c) Ohio Department of Taxation \$835.42; and
 - d) Fifth Third Bank \$11,694.00, plus interest at a rate of 10% per annum from April 22, 1997.

State's Exhibit 5, pgs. 19-23; Testimony of Mr. Siciliano, Tr. at pg. 28-29.

25. The Division did not find any evidence to show that the Fifth Third Bank debt had ever been satisfied or discharged in the 1997 bankruptcy. *Testimony of Mr. Siciliano, Tr. at pgs. 41-43.*

26. On January 5, 2010, Respondent sent a notarized letter to the Division as a written statement of her position, arguments and contentions. The letter stated, in part:

* * * The collections and judgements [sic] were all a result of lost [sic] of income. * * * I am a victum [sic] of circumstances from the economy as well as the fall of the mortgage industry. I really feel that I deserve a fair chance to restore my career.

Respondent's Exhibit A; Testimony of Mr. Siciliano, Tr. at pg. 11.

27. In her January 5, 2010 letter, Respondent informed the Division that she had filed a Notice of Chapter 7 Bankruptcy, Case 1:09-bk-15868, on September 11, 2009. *Respondent's Exhibit A; Testimony of Mr. Siciliano, Tr. at pg. 30.*
28. The Division had been previously unaware that Respondent had filed for bankruptcy protection in 2009. *Testimony of Mr. Siciliano, Tr. at pg. 31.*
29. Respondent did not notify the Division of her 2009 bankruptcy filing until nearly four months after she had filed bankruptcy. *Testimony of Mr. Siciliano, Tr. at pg. 34.*
30. The Division concluded that Respondent's 1998 and 2009 bankruptcy filings showed that Respondent had engaged in a pattern of accumulating debt, without a corresponding ability to pay. The Division maintained that Respondent's outstanding judgments and liens reflected negatively on Respondent's character and fitness to hold a loan officer license. *Testimony of Mr. Siciliano, Tr. at pgs. 15, 32-33.*

II. CONCLUSIONS OF LAW

31. The Division has procedurally complied with R.C. Chapter 119, and has established jurisdiction over this matter.
32. The Division is responsible for the licensing and regulation of loan officers and mortgage brokers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

33. R.C. 1322.041(A)(6) provides:

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

(6) The applicant's financial responsibility, 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 superintendent shall not use a credit score as the sole basis for a license denial.

34. This Hearing Officer finds that the Division has demonstrated a sufficient evidentiary basis on which to conclude that Respondent's character and fitness fails to 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 because of Respondent's multiple unpaid judgments and liens.

III. RECOMMENDATION

Based upon the evidence submitted into the record for this case, the Division has established that Respondent lacks the character and fitness to be licensed as a loan officer under R.C. 1322.041(A)(6). Therefore, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's loan officer application.

Respectfully submitted,


Deborah K. Tongren
Hearing Officer