

NOTICE
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STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:	:	CASE NO. M2009-145
	:	
	:	
PAUL M. OBER,	:	
	:	
	:	DELORES EVANS
RESPONDENT	:	HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued October 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 the Hearing Officer for this hearing in accordance with the Ohio Administrative Code and Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on September 28, 2009 at 77 South High Street, Room 1936, in Columbus, Ohio.

The Division held the hearing to consider the August 12, 2009 Notice of Intent to Deny Loan Officer License Application & Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Paul M. Ober ("Respondent") is ineligible to receive a loan officer license pursuant to R.C. §1322.041(A)(6) and Ohio Administrative Code 1301:8-7-21 because in 1997 he was convicted of five felony counts of Sexual Battery.

Ted Klecker, 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., appeared at the hearing on behalf of the Division. Respondent waived his right to counsel and attended the hearing *pro se*. Lucia Ober and LeAnne Gompf testified on behalf of Respondent.

The parties stipulated to the authenticity and admissibility of State's Exhibits 1 through 5 and the Hearing Officer admitted those documents into the record. The Hearing Officer also admitted Respondent's Exhibits A, B, and C into the record over Mr. Klecker's hearsay objection. The record was closed at the conclusion of the hearing on September 28, 2009.

B. Jurisdiction and Procedural Matters

1. On August 12, 2009, the Division sent the NOH via certified mail, return receipt requested, to Respondent. The NOH indicated the Division's intent to deny Respondent's loan officer license application. Respondent had 30 days to request a hearing. Service was perfected on August 17, 2009. *State's Exhibit 1*
2. On September 3, 2009, the Division received Respondent's hearing request. *State's Exhibit 1*
3. On September 4, 2009, the Division sent a letter, via ordinary mail, to Respondent informing him of the September 28, 2009 hearing date, time, and location. *State's Exhibit 1*
4. On September 28, 2009, the hearing commenced with all parties in attendance.

C. Respondent's Loan Officer Application

5. In 1997, Respondent pled guilty to and was convicted of five felony counts of Sexual Battery under R.C. §2907.03. Respondent was represented in that matter by Attorney Ronald James. The Division introduced a copy of the 1997 Journal Entry of Judgment, Conviction and Sentence from the Court of Common Pleas, Champaign County, Ohio. Respondent was sentenced to eight years in prison. *State's Exhibit 4*
6. In 2001, Respondent was released from prison and placed on shock probation. In 2003, Respondent returned to prison to serve the remainder of his sentence, after the court determined that Respondent had violated the terms of his probation. On October 19, 2004, Respondent was released from prison. *Testimony of Respondent*
7. Respondent is classified as a Tier III sexual offender, which has a lifetime reporting registration requirement. *State's Exhibit 5; Testimony of Respondent*
8. On April 2, 2009, the Division received Respondent's loan officer license application. *State's Exhibit 2*
9. The Division contended that Respondent's criminal convictions indicate his lack of character and general fitness to hold a loan officer license. *State's Exhibit 1*
10. On August 6, 2009, the Division received a letter from Respondent explaining the events surrounding his convictions. In the letter, Respondent stated:

This letter is in regard to the felony convictions that happened in my life 12 years ago. This matter has so many variables that contributed to the severity of my charges being

elevated beyond the normal scope that I am sure one letter would not suffice to address all of them. First and foremost this situation arose by my own doing. I placed myself in a position that these charges could be brought forth. I in no way deflect any of this to anyone's fault but my own. There are times in ones life that we do regretful things and this was a period in my life where I let myself get away from the morals and teachings of my youth. Looking back I was in the mind set that I was "Ten feet tall and invisible". I should not have been wearing a cloak of invisibility but should have been wearing the coat of armor that was afforded me by the teachings of my parents and people of influence of my youth. I will say that one of my counts I have always denied, but to reach an acceptable plea agreement it had to be included. Shortly after my sentencing and several times since then, the person in question has come forward and admitted that they did make false accusations, non-the-less I should never had put myself in a position for this to have happened and as a result of my other actions in the other counts, this person would have not had a reason to make the false accusations. The other charges stemmed from improper touching of my victims and inappropriate conduct with an underage female while they were in my presence. I have never had my professional integrity questioned at any time in my career. I have been in the mortgage field since 1987 and have never been questioned or accused of any wrong doing whatsoever. Additionally I was granted a Real Estate License by the Ohio Department of Commerce, Division of Real Estate on 06/15/05 (that license is currently inactive per the requirements of my employer) American Mortgage Service Company. I was thoroughly vetted by the commissioners at that time. I appeared before the full commission and the vote was unanimous in my favor to be licensed. The vast majority of my life has been as normal as most. I was involved in community service from a young age. In my adult life I was a member of several civic organizations and was in a leadership capacity on many occasions. I served every day of my entire sentence and left incarceration a free man with no parole or probation. I was very fortunate to have been welcomed back into my community with open arms. I have remarried and have taken responsibility of helping my wife raise 4 boys. I am a very blessed individual and I thank God each day for the second chance in life that I have been afforded. I so regret and am ashamed that my actions brought harm to anyone and I have been forever humbled by the fact that I brought shame to my family and

my community. I hope that you will allow me the opportunity to continue in my profession as a licensed loan officer.

State's Exhibit 3

11. Respondent's testimony essentially mirrored his August 6, 2009 letter. Respondent is currently employed with American Mortgage Service Company, a registered mortgage broker (# 802615). Respondent has worked in the mortgage industry since 1987, when he opened a small mortgage branch office in Cleveland, Ohio. In 1991, Respondent opened Five Star Mortgage in Urbana, Ohio. *Testimony of Respondent*
12. While incarcerated, Respondent served as the president of the Jaycee's; led the choir; obtained an Associates degree in business and public relations; and served as a GED instructor. *Testimony of Respondent*
13. Since Respondent's release, he has volunteered at his church, with Habitat for Humanity, and for the Stephanie Spielman golf tournament. *Testimony of Respondent*
14. Since 2005, Respondent has held a real estate salesperson license.¹ *Testimony of Respondent*
15. Lucia Ober and Respondent have been married since December 2006. Mrs. Ober holds a real estate salesperson license in Ohio and is currently employed with Emerson Wagner Realty. According to Mrs. Ober, Respondent has been a dedicated husband and father to her sons. Her husband is nice, kind, and an honest person who is an amazing mortgage banker. He is a hard worker who gives to his family, job, and community. *Testimony Mrs. Ober*
16. LeAnne Gompf has been a long-time friend of Respondent. Ms. Gompf is licensed as an Ohio real estate salesperson. Respondent is a good man whom she trusts with her life. Respondent goes above and beyond to service his clients. *Testimony of Ms. Gompf*
17. Respondent produced letters of recommendation from Bart Hanselman, Vice President/Regional Manager of American Mortgage Service Company; Wendelyn M. Pinkerman, Closing Agent with Eris Title Agency, Inc.; and Floyd F. Lundy, Pastor of McKee's Creek Chapel attesting to Respondent's good character. *Respondent's Exhibit A; Respondent's Exhibit B; and Respondent's Exhibit C*
18. Respondent is remorseful concerning his prior misconduct.

¹ Respondent's real estate salesperson license is currently under suspension for failing to complete the required continuing education requirements. *Testimony of Respondent*

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters

19. The Division has procedurally complied with R.C. Chapter 119 and has established jurisdiction over this matter.
20. The Division is responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
21. The burden of proof lies with the Division and that burden is based on a preponderance of the evidence standard. *Sanders v. Fleckner* (1950), 59 Ohio L. Abs. 135, 98 N.E. 2d 60.
22. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm.* (1987), 39 Ohio App.3d 15
23. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether they are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St. 3d 83, 87.
24. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571

B. Loan Officer Application

25. R.C §1322.041(A) provides, in pertinent part, that a loan officer license shall be issued if the Superintendent of the Division 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)

26. Respondent's felony convictions demonstrate that his character and general fitness do not command the confidence of the public to warrant the belief that the

business would be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. R.C. §1322.04(A)(6)

27. R.C. §1322.10(A)(1)(a) authorizes the Division to deny a loan office license for lack of compliance with any provision of R.C. §§1322.01 through 1322.12.
28. The Division has established that Respondent's loan officer license application should be denied.

III. RECOMMENDATION

Based upon the evidence submitted into the record in this case, the Division has established that Respondent should be denied a loan officer license. Consequently, the Hearing Officer respectfully recommends that the Superintendent of the Division deny Respondent's loan officer license application.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Delores Evans".

Delores Evans
Administrative Hearing Officer
October 20, 2009