

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0004-LOD
: :
: :
Harshaun L. Rice : James J. Lawrence, Hearing Officer

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION**
June 21, 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 10:00 a.m. on April 28, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Harshaun L. Rice (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 theft in 2000, attempted assault in 2002 and trafficking in drugs 2003. 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).

Timothy C. Loughry, 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 A through H and Respondent's Exhibits 1 through 3 were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on January 28, 2005 by certified mail, return receipt requested. (Exhibit D.) Respondent's hearing request was received by the Division on February 10, 2005. (Exhibit E.) The Division scheduled the hearing for February 22, 2005 but, on its own motion, continued the hearing to March 15, 2005. The hearing was continued to April 28, 2005 at the Respondent's request. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH. (Exhibits F & H.)

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on September 8, 2004. (Exhibit A.)
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 or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?
3. In response to Question 5, the Respondent answered "Yes." He indicated the Cleveland Municipal Court convicted him of drug trafficking in 2003. (Exhibit A.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which apparently revealed that the Respondent had been charged in 2002 with theft and domestic violence, and in 2003 with trafficking in drugs. By letter dated October 6, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and certified copies of the judgment entries evidencing his pleas and the court's findings. (Exhibit B.)
5. The Respondent provided a certified Docket Sheet from the Lyndhurst Municipal Court. The Entry for Case No. 00CRB00996 shows that on December 5, 2000 the Court found the Respondent guilty of theft in violation of city ordinance 545.05. The Court fined the Respondent \$225.00 and placed him on probation. (Exhibit C.)
6. The Respondent provided a certified Journal Entry from the South Euclid Municipal Court. The Entry for Case No. CRB 020056 shows that on July 18, 2002 the Court found the Respondent guilty of attempted assault in violation of city ordinances 537.03 and 501.09(a). The Court sentenced the Respondent to ninety days in jail, all ninety days suspended, fined the Respondent \$750.00, \$550.00 suspended, and placed the Respondent on two years probation. (Exhibit C.)

7. The Respondent provided a certified Journal Entry from the Cuyahoga County Court of Common Pleas. The Entry for Case No. CR 437325 shows that on October 10, 2003 the Court found the Respondent guilty of two counts of trafficking in drugs in violation of R.C. 2925.03, a fifth degree felony. The Court sentenced the Respondent to twelve months of community control. (Exhibit C.)
8. The Respondent testified that since the 2003 conviction for trafficking in drugs, he has been enrolled part time at Cleveland State University. He lost his job with Home Depot after the conviction because of its policy of not employing people who have been convicted of a felony. Since then he has worked for different telemarketing companies who do not do background checks. (TR at 33 - 34.)
9. No witnesses appeared on the Respondent's behalf. However, the Respondent submitted letters from three individuals. Denise McCray, an instructor at Cleveland State University, wrote that the Respondent is an attentive and well prepared student. (Exhibit 1.) Beverly J. Gaffney, Executive Assistant to Pastor Otis Moss, Jr. of the Olivet Institutional Baptist church wrote that the Respondent is a hardworking, honest individual. (Exhibit 2.) Kevin Drake Branch Manager for 1st Metropolitan Mortgage wrote that the Respondent has shown exceptional potential as a processor through knowledge of the mortgage industry and has excellent communication skills. It is his intent to hire him as an employee for 1st Metropolitan Mortgage. (Exhibit 3.)

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 1 through 3 because they contain statements which are hearsay. The Hearing Officer admitted the 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:

* * *

(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 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 drug trafficking in 2003 and theft in 2000, both offenses described in R.C. 1322.031(A)(2), R.C. 1322.041(A)(3) places the burden on the Respondent to prove to the Superintendent, 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.
4. The Respondent has not met this burden. The Respondent has provided little information about his activities and employment record since his convictions. He testified only that he is enrolled at Cleveland State University and has worked at several telemarketing jobs. The letters written on his behalf do not discuss his activities, other than his college enrollment, or employment record since the convictions. Unfortunately, the information provided by the Respondent is not sufficient to meet the Respondent's burden 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 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 criminal convictions.

6. The Respondent's convictions are evidence that he does not possess the character and general fitness to be loan officer. The only evidence that the Respondent presented to support his character and general fitness were the letters. However, the letters do not discuss in any detail the Respondent's character and general fitness. They do not provide specific examples of the Respondent's behavior, other than his college enrollment, that might support his character and general fitness. The absence or existence of such examples might have been ascertained upon cross examination had the authors of the letters testified at the hearing. The letters, by themselves, are not sufficient to outweigh the facts of the convictions. In the absence of any other information supporting the Respondent's character and general fitness, the convictions establish that 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).
7. As a result of the Respondent's failure to meet the requirements of R.C. 1322.041 (A)(3) and (A)(5), 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.

III. RECOMMENDATION

The Respondent has not proven 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. The record in this case establishes that 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

James J. Lawrence
Hearing Officer
June 21, 2005