

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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In the Matter of:

Bryan A. Slomovitz
3356 Lander Road
Pepper Pike, OH 44124

:
: Case No. 04-0301-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on May 4, 2004. Appearing were Respondent Mr. Bryan Slomovitz, his attorneys Ms. Lynda Schiff and Mr. Steve Mathless, and Assistant Attorney General James M. Evans, representing the Department of Commerce's Division of Financial Institutions. Mr. Adam Rubin appeared as a character witness for the Respondent.

After due consideration of the evidence, the Hearing Examiner makes the following findings of fact, conclusions of law, and recommendation of the action to be taken.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C. 1322.01 to O.R.C. 1322.12, the Division of Financial Institutions ("the Division") is charged with the responsibility to accept applications for Loan Officer licenses and determine whether applicants meet the statutory requirements.
2. On April 24, 2002, Mr. Slomovitz, now employed by Third Community Mortgage, applied for a license to be a Loan Officer. See Loan Officer Application, State's Exhibit 1.

3. On April 30, 2003, the Division issued a Notice of Intent to Deny a Loan Officer's License to Mr. Slomovitz. See Notice, State's Exhibit 9.
4. The Division stated in its Notice of Intent to Deny Loan Officer's License that in or around 2003, Mr. Slomovitz pled guilty to theft and two counts of passing bad checks. See Notice, State's Exhibit 9.
5. The Division alleges that Mr. Slomovitz has not proven he is honest, truthful, and of good reputation; that he has not proven there is no basis in fact to believe he will commit such an offense again; nor 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 purpose of the Ohio Mortgage Broker Act. See Notice, State's Exhibit 9.
6. On February 2, 2004, Mr. Slomovitz requested a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 10.

b. Guilty Plea to Theft and Passing Bad Checks (2003)

7. At the hearing, the State offered into evidence documentation indicating Mr. Slomovitz pled guilty to theft and passing bad checks. See Journal Entry, State's Exhibit 8, and Case Docket, State's Exhibit 4. Mr. Slomovitz acknowledged the guilty plea at the hearing. See Transcript, p. 36.
8. Upon his guilty plea, the Court did not convict him. Rather, the Court stayed the proceedings and Mr. Slomovitz entered a drug and alcohol treatment intervention program in lieu of conviction. See Journal Entry, State's Exhibit 8, and Transcript, p. 37. See also Defendant's Exhibit C.
9. He successfully completed the intervention program. See Letter, Defendant's Exhibit B.

10. Mr. Slomovitz testified that at the time of the offenses, he was experiencing “personal and financial problems,” and was abusing alcohol and marijuana. See Transcript, p. 37.
11. As part of his treatment, he attended Alcoholics Anonymous meetings several times per week, which he continues to this day. See Transcript, p. 38. He also sees a counselor and a psychiatrist. See Transcript, p. 42, and Letter, Defendant’s Exhibit D.
12. Mr. Slomovitz and his wife are in the process of obtaining a divorce, and the Court has awarded custody of their three children to him. See Transcript, pp. 46-47.
13. Mr. Slomovitz indicated at the hearing that he is unlikely to commit the same or a similar offense because he “ha[s] realized [he] ha[s] way too much to lose if [he] ever commit[s] another crime.” He indicated that if he were convicted of a crime, he could lose his children, his sobriety, and his job. See Transcript, p. 48.

c. Character Witness and Letters of Reference

14. Mr. Adam Rubin, the President of Third Community Mortgage and Mr. Slomovitz’s supervisor, testified that he has worked with Mr. Slomovitz for approximately five years. He said Mr. Slomovitz was at one time his top-producing loan officer, and that his work is “excellent.” He also testified that Mr. Slomovitz has a strong reputation in the industry. See Transcript, pp. 18-27.
15. The founder of the company also wrote a letter supporting Mr. Slomovitz’s licensure, citing his strong ethics. See Letter, Defendant’s Exhibit E.
16. A past employer, at the Jewish Community Center of Cleveland, also wrote to recommend Mr. Slomovitz for a license. The letter describes Mr. Slomovitz’s customer service skills as “impeccable.” See Letter, Defendant’s Exhibit F.
17. While the letters would carry more weight if the State had an opportunity to cross examine

their authors, the Hearing Examiner nonetheless reviewed each and takes them into account.

d. Failure to Disclose Marijuana & Paraphernalia Conviction on Loan Officer

Application

18. On cross-examination, Mr. Slomovitz disclosed a past “criminal situation” in June of 2002 in which the authorities cited him for possession of marijuana and paraphernalia in the Metroparks in Moreland Hills, Ohio. See Transcript, pp. 53-54. He testified that he did not appear in Court, but that he paid a fine. See Transcript, p. 54.
19. He did not disclose this to the Division in the application process, or at any time prior to his cross-examination. Nor did he inquire as to whether the law required him to report it. See Transcript, p. 55.

III. Conclusions of Law

20. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license Loan Officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041(A)(3).

21. The criminal offenses incorporated by reference are:

“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.” O.R.C 1322.031 (A)(2). Emphasis added.

22. Based on the documentation offered by the State (State’s Exhibit 8), and Mr. Slomovitz’s admissions at the hearing, the Hearing Examiner finds that Mr. Slomovitz pled guilty to theft and passing bad checks in 2003.
23. Once the guilty plea is established, the statute allows for a burden-shift in which Mr.

Slomovitz assumes the burden of proving by a preponderance of the evidence that despite the guilty plea, he otherwise should receive a Loan Officer's license.

24. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part reads:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction¹ 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.” O.R.C. 1322.041 (A)(3).

25. His guilty plea occurred in 2003. The statute requires a determination of whether, since then, his activities and employment record show he is honest, truthful, and of good reputation, and that there is no basis in fact to believe he will commit such an offense again.
26. To meet that burden, Mr. Slomovitz offered personal testimony indicating that when he is sober, his character is strong and that his criminal behavior stemmed from a substance abuse problem that he is now actively managing. He emphasized the ongoing nature of his treatment, and the frequency with which he attends AA meetings in particular.
27. He also testified credibly that his incentive to remain sober is strong, as he wishes to retain custody of his three children.
28. The president of his company testified credibly that Mr. Slomovitz is honest and truthful in is business dealings, and that he has never observed him run into problems with customers.

¹ Mr. Slomovitz was not actually convicted of these charges, though he pled guilty before entering the intervention program. The Hearing Examiner finds that the term “conviction” in this instance, however, also incorporates “guilty plea.” This same section of the statute requires the superintendent of financial institutions to issue a loan officer's license to the applicant if the applicant has not been convicted of *or plead guilty to* any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code. (Emphasis added). Mr. Slomovitz indeed pled guilty to an enumerated offense. Thus, while counsel for Mr. Slomovitz argued this language is “vague” and perhaps did not apply

The letters of recommendation bolster this case.

29. However, any assessment of Mr. Slomovitz's honesty and truthfulness since the time of his plea must not ignore the fact that subsequent to making application to the Division, he failed to disclose his "criminal situation" involving possession of marijuana and paraphernalia.
30. He should have made such a disclosure to the Division, or at a minimum, made an effort to determine if the law required this disclosure. His failure to do so makes it more difficult to certify his honesty and truthfulness.
31. The second part of the statute states:

"The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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." O.R.C. 1322.041 (A)(5).

32. In assessing Mr. Slomovitz's character and general fitness to receive a license, the nature of his crimes must be considered. His passing bad checks/theft in 2003 harms his fitness to command the confidence of the public. In particular, the recency of his crime makes this burden more difficult for him to meet. He simply has not had much time to demonstrate a sustained period of good behavior, such that he earns the public's confidence.
33. Mr. Slomovitz (and his character witness) do make a compelling case that when his substance abuse issues are under control, he performs well as a Loan Officer. But the statute requires more than analysis of his work product.
34. And while the Hearing Examiner is sympathetic to Mr. Slomovitz's argument that his treatment for substance abuse is a safeguard against any future transgressions, again, his

to Mr. Slomovitz (See Transcript, p. 80), to read the statute otherwise would deny Mr. Slomovitz the opportunity to make an affirmative showing that he is entitled to a license. This interpretation avoids that absurd result.

failure to disclose his marijuana and paraphernalia conviction to the state agency responsible for licensing Loan Officers raises significant questions about his character and general fitness to serve as a Loan Officer, a position that requires the public trust. Mr. Slomovitz never answered these questions adequately.

35. Based on the foregoing, the Hearing Examiner finds that Mr. Slomovitz has not proven by a preponderance of the evidence that that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, nor has he proven there is no basis in fact for believing that he will commit such an offense again; and that Mr. Slomovitz's character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the intent of O.R.C. 1322.01 to 1322.12.

B. RECOMMENDATION

36. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent of the Division of Financial Institutions that Mr. Slomovitz be denied a Loan Officer's License pursuant to O.R.C. 1322.041.

8/4/04
Date

Terrence O'Donnell
Hearing Examiner