

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

2004 APR 29 PM 2:32

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Charlie L. Gardner

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0251-LOD**

FINDINGS OF FACT

1. On or about May 3, 2002, Charlie L. Gardner, ("Respondent" herein) submitted an application and related materials (together with materials subsequently submitted by Respondent and accepted by the Ohio Department of Commerce, Division of Financial Institutions, collectively the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a Loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the offices of the Ohio Division of Financial Institutions on March 3, 2004. At the Hearing, Respondent failed to appear and the Division was represented by Assistant Attorney General John A. Izzo, Esq. Mark Rhea, Esq., appeared as a witness for the Division.
4. As of the date of the Application, Respondent was employed as a loan officer by 1st Centennial Banc.

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

DISCUSSION

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent of the Division (the "Superintendent") shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

At the Hearing, the Division presented its evidence and the testimony of Division staff attorney Mark Rhea. Included in the evidence was the Application, the Notice, the Request for Hearing, and evidence that the Notice was provided to Respondent via certified mail. (Tr. pages 6, 7) Evidence was also presented that Respondent did in fact sign the Application, which included Respondent's failure to disclose his criminal history pursuant to question 5 of the Application. (Tr. Page 9) Additional evidence concerning Respondent's criminal record was also introduced at the Hearing, as was correspondence from the Respondent. (Tr. Pages 9, 10, 11)

Respondent failed to indicate that he would not appear at the Hearing, and in fact did not appear at the Hearing. Respondent therefore presented no evidence of his character and fitness to contradict the Superintendent's finding under Ohio Revised Code section 1322.041(A)(5), and no explanation of his failure to disclose his criminal history under question 5 of the Application.

Therefore, there is nothing of record to contradict the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations. Further, Respondent failed to present evidence to contradict the Division's assertion that Respondent's character and 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 Act under Ohio Revised Code Section 1322.041(A)(5).

In light of the lack of appearance by the Respondent, and Respondent's failure to disclose the conviction as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.041(A)(5), 1322.07, and 1322.10.

RECOMMENDATIONS

For the reasons set forth herein, the referenced Application of the Respondent should be denied.

Respectfully submitted,


Jeffery E. Smith, Hearing Examiner


Date