

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:

Timothy J. Lewis
1102 Windmill Way
Avon, OH 44011

:
: Case No. 04-0215-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on April 26, 2004. Appearing were Respondent Mr. Timothy J. Lewis, represented by Mr. Sean P. Allan. The Department of Commerce's Division of Financial Institutions ("the Division") was represented by Assistant Attorney General Anthony D. Siciliano. The Division's staff attorney, Ms. Diane Wagenbrenner was also present.

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 is charged with the responsibility to accept applications for Loan Officer licenses and determine whether applicants meet the statutory requirements.
2. On May 15, 2003, Mr. Lewis applied for a license to be a Loan Officer. See Loan Officer Application, State's Exhibit 1.
3. On January 22, 2004, the Division issued a Notice of Intent to Deny a Loan Officer's

License to Mr. Lewis. See Notice, State's Exhibit 6.

4. The Division stated in its Notice of Intent to Deny Loan Officer's License that in or around 1998, the United States District Court convicted Mr. Lewis of conspiracy to commit an offense against the United States. See Notice, State's Exhibit 2.
5. The Division thus alleges that Mr. Lewis'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 purpose of the Ohio Mortgage Broker Act. See Notice, State's Exhibit 6.
6. Mr. Lewis requested a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 3.

b. Conviction for Conspiracy to Commit an Offense Against the United States (1998)

7. At the hearing, the State offered into evidence documentation indicating Mr. Lewis plead guilty to and was convicted of conspiracy to commit an offense against the United States. See Judgment Entry, State's Exhibit 1. Mr. Lewis acknowledged the conviction in a letter to the Division. See Letter, State's Exhibit 1. He also acknowledged the conviction at the hearing. See Transcript, p. 19.
8. The circumstances surrounding his crime involve his past employment as a prison guard. While on duty, another guard approached him about performing some "side work," providing personal security. He testified that the guard recruiting him for the side work "didn't want to go into what it was all about." He agreed to follow-up, and attended a meeting with the potential employer, whom he then understood to be connected to the "Mafia." He said that at his initial meeting with this employer, the purported Mafia boss told him that some other people who had performed work for him in the past were now

“swimming with the fishes in Lake Erie.” See Transcript, p. 17, 28.

9. Unbeknownst to Mr. Lewis, the Mafia was not involved at all. Rather, Mr. Lewis was being set up as part of an FBI sting operation along with 50 other law enforcement officials who also believed they were participating in a criminal enterprise. See Transcript, pp. 27-28, 32.
10. Mr. Lewis indicated that at his initial meeting with the “Mafia boss,” he felt compelled to accept the employment offer, or else “get a bullet in the back of [his] head.” See Transcript, pp. 32-33.
11. He ultimately provided security for the supposed Mafia boss, whom he believed to be a “drug kingpin,” at the airport in Cleveland. See Transcript, p. 35.
12. A second time, he rode in a car to provide security for the supposed drug kingpin, who was in a nearby vehicle, and whom Mr. Lewis believed was carrying large amounts of money. Mr. Lewis received approximately \$2,000.00 for his work. See Transcript, pp. 36-37.
13. For his crime, the Court sentenced him to prison for forty-one months, thirty of which he served. See Judgment Entry, State’s Exhibit 1, and Transcript, p. 19. The Court also sentenced him to two years probation upon his release, but reduced this to one year as a result of his compliance. See Transcript, p. 20.
14. He disclosed the conviction to the Division on his loan officer application. See Application, State’s Exhibit 1.
15. Mr. Lewis testified that he regrets this behavior, and is “trying to put this behind [him] and move forward.” He stated that he wants to build a positive career for himself. See Transcript, p. 42. In addition, he testified that while in prison, he pursued his education vigorously. See Transcript, p. 20.

d. Letters of Reference

16. Mr. Lewis provided thirteen (13) letters of reference from a variety of sources, each accompanied with an affidavit attesting to the letter's authenticity. The letters are from friends and business associates, as well as a police chief and elected municipal official.
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.

III. Conclusions of Law

18. 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 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).

19. In assessing Mr. Lewis's character and general fitness to receive a license, the nature of his crime must be considered. His conviction for conspiracy is quite serious and carried a significant prison sentence. For his part in the conspiracy, he agreed to participate in what he believed to be a criminal enterprise involving drugs and large amounts of money. Further, he believed he was working for some sort of Mafia boss, who had previously committed or directed others to commit murder (“sleeping with the fishes.”) That he would associate with individuals whom he believed were involved in violent crime is disturbing.
20. Mr. Lewis argues that his crime is mitigated by the fact that he himself felt that if he did not participate in the commission of certain crimes, his personal safety would have been in jeopardy.

21. This argument is not persuasive. The Hearing Officer concludes that Mr. Lewis knew before his initial meeting with the "Mafia" that he was cooperating with criminal elements. That he did not reflexively decline to participate is by itself damaging to Mr. Lewis's character.
22. Further, while he perhaps felt pressure to participate upon his initial meeting, he could have and should have alerted the authorities to the criminal situation, perhaps anonymously. He did not do so, and instead furthered the aims of the enterprise.
23. When Mr. Lewis agreed to participate, he also compromised the integrity of his law enforcement position. While the lending business is not easily compared to law enforcement, both positions require a degree of public trust, and Mr. Lewis's past willingness to violate this trust makes it very difficult for him to now argue persuasively that he would act as a mortgage broker in such a way as to protect it.
24. Mr. Lewis's letters of reference do provide some basis for finding his character commands the confidence of the public. The great number of people willing to recommend him for a license is indeed impressive.
25. At the hearing, Mr. Lewis's personal testimony concerning his desire to "move forward" appeared sincere.
26. But as his crime was fairly recent (1998), and he was only released from community control a few years ago. This made his burden at the hearing quite significant, and he did not demonstrate that he possesses the requisite character and general fitness to command the confidence of the public.
27. Based on the foregoing, the Hearing Examiner finds that Mr. Lewis'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

28. 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. Lewis be denied a Loan Officer's License pursuant to O.R.C. 1322.041.

10/1/04
Date

Terrence O'Donnell
Hearing Examiner