

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0414-LOD
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Vincent L. Fruge : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
August 23, 2004

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 1:00 p.m. on July 19, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Vincent L. Fruge (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 disorderly conduct in 2001, driving a motor vehicle under the influence under 21 years of age in 2001 and 2002 and violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction for disorderly conduct on his loan officer application filed in February of 2004. 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. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose a criminal conviction on his loan officer application filed in February of 2004;
2. Respondent's criminal convictions and failure to disclose the disorderly conduct conviction on his loan officer application show that his

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).

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. At the hearing, State's Exhibits 1 through 7 were admitted into the record. The Respondent did not appear at the hearing and presented no explanation for his absence.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on May 13, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on June 4, 2004. The Division scheduled the hearing for June 16, 2004 but, on its own motion, continued the hearing to July 19, 2004. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to the same address as the NOH.

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on February 6, 2004. (Exhibit 1.)
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 included an explanation that stated that he had been convicted of driving under the influence under age 21. (Exhibit 1; TR at 8.) He attached to his application a certified journal entry from the City of Mason Municipal Court, Case No. 02TRC00903, showing that on April 23, 2002 the court found him guilty of driving under the influence in violation of R.C. 4511.19(B)(2) and imposed a fine of \$250.00 and a sentence of 30 days in jail with 27 days suspended. (Exhibit 1; TR at 8.)

4. Respondent signed the application on December 31, 2003 before a notary public. Directly above the applicant signature line, the application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (Exhibit 1; TR at 8.)
5. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).
6. The background check on Respondent's application revealed that the Sharonville, Ohio Police Department arrested the Respondent on December 12, 2000 and charged him with assault. It further shows that as a result of this charge he was convicted of disorderly conduct in violation of R.C. 2917.11. (Exhibit 2; TR at 8.)
7. By letter dated February 26, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge of assault and a certified copy of the journal entry evidencing the disposition and sentence. (Exhibit 3; TR at 9.)
8. The Respondent replied with a written statement and certified copies of three journal entries. In addition to the journal entry from the City of Mason Municipal Court Case No. 02TRC00903, which the Respondent had included with his loan officer license, the Respondent submitted another journal entry from the City of Mason Municipal Court reflecting an earlier conviction for driving under the influence under age 21, Case No. 01TRC00902. The third journal entry from the Hamilton County Municipal Court reflects a conviction in 2001 for disorderly conduct in violation of R.C. 2917.11, a minor misdemeanor. The Respondent's statement in his reply addresses the two driving under the influence convictions, but fails to address the disorderly conduct conviction. (Exhibit 4; TR at 10.)

D. Respondent's Failure to Disclose Conviction for Disorderly Conduct

1. The Respondent did not disclose the conviction for disorderly conduct or the earlier of the two convictions for driving under the influence on his loan officer application.
2. The Respondent did not submit any explanation of the facts and circumstances which gave rise to the assault charge and subsequent conviction for disorderly conduct as required by the loan officer application and the Division's February 26, 2004 letter.

E. Respondent's Reputation and Character.

1. The Respondent did not offer any evidence or testimony to rebut the Division's determination that his 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.
2. No witnesses appeared to testify on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119, and jurisdiction over this matter has been established.

B. Loan Officer Application.

1. R.C. 1322.031 (A) (4) requires that in an application for a loan officer license, an applicant must furnish, in addition to other information required by law, any further information that the Superintendent of Financial Institutions (Superintendent) requires. In question 5 of the loan officer application, the Superintendent requires that an applicant indicate whether or not he or she has ever been convicted of a criminal offense, excluding minor misdemeanor traffic and parking offenses, and if the applicant answers yes, submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.
2. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(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.

4. R.C. 1322.07 provides:

No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.

5. R.C. 1322.10 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 if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

C. DISCUSSION


1. The Respondent was twice convicted by the City of Mason Municipal Court of the offense of driving under the influence under age 21 in violation of R.C. 4511.19(B)(2) and was convicted in the Hamilton County Municipal Court of the offense of disorderly conduct in violation of R.C. 2917.11.
2. When Respondent failed to disclose one of his convictions for driving under the influence and his conviction for disorderly conduct on his loan officer application, he violated R. C. 1322.07(A), in that he omitted a material fact required by state law from a license application.
3. Respondent's violations of R. C. 1322.07 (A) preclude him from being in compliance with R. C. 1322.01 through 1322.12, a condition required in order for the Superintendent to be required to approve his loan officer license application. R.C. 1322.041 (A) (2).
4. The Respondent's criminal convictions do not, by themselves, establish that 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. However, the convictions together with his failure to disclose the conviction for disorderly conduct and one of the convictions for driving under the influence on his loan officer application and his failure to submit any statement of the facts and circumstances which gave rise the assault charge and subsequent disorderly conduct conviction do 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 Ohio's Mortgage Broker Act.

III. RECOMMENDATION

The Respondent's actions in applying for a loan officer license did not comply with the provisions of R.C. 1322.01 to 1322.12 and show that his 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 G. Lawrence
Hearing Officer
August 23, 2004