

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0060-LOD
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:
Steven Callahan : James J. Lawrence, Hearing Officer

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
May 19, 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 1:00 p.m. on April 1, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Steven Callahan (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 failed to disclose a criminal conviction for assault on his loan officer application filed in August 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'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).
2. By failing to disclose his criminal conviction on his loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

Emily A. Smith, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent did not appear at the hearing without explanation for his absence. At the hearing, State's Exhibits A through G were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on February 16, 2005 by certified mail, return receipt requested. (Exhibit D.) Respondent's hearing request was received by the Division on February 22, 2005. (Exhibit E.) The Division scheduled the hearing for March 4, 2005 but, on its own motion, continued the hearing to March 29, 2005. (Exhibit F.) Thereafter, the Division once again continued the hearing to April 1, 2005. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH. (Exhibit F & G.)

C. Respondent's 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. The Respondent filed a loan officer application on August 13, 2004. (Exhibit A.)
3. 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 any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
4. In response to Question 5, the Respondent answered "No." (Exhibit A.)
5. 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 burglary. (Exhibit B.) By letter dated September 20, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge and a certified copy of judgment entry evidencing his plea and the court's finding. (Exhibit B.)
6. The Respondent provided an entry from the Common Pleas Court of Montgomery County. The Entry for Case No. 2002-CR-01792 showed that on July 2, 2003 the Court convicted the Respondent of assault in violation of R.C. 2903.13, a first degree misdemeanor. The Court sentenced the Respondent to six months in jail and placed the Respondent on probation for three years. The Court suspended all six months of the jail sentence with conditions that the Respondent pay restitution for all medical bills, undergo random alcohol & drug monitoring and under go a crisis care assessment. The Court also ordered the Respondent to pay costs and a supervision fee. (Exhibit C.)
7. In a letter to the Division dated September 30, 2004, Respondent explained that the violation occurred when he gave a ride to a woman who had not paid her motel bill. He was charged with burglary which was reduced to assault. (Exhibit C.)

8. The Respondent did not appear at the hearing and did not explain why he failed to disclose the conviction on his loan officer application. No witnesses appeared, either personally or in writing, 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. 1322.041(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:

* * *

(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.

2. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's conviction for assault shows 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). R.C. 1322.031(B) lists offenses which place a burden on an applicant for a loan officer license to prove that he is honest, truthful and of good reputation¹. Assault is not such an offense. The record in this case has insufficient information for the assault conviction alone to 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 Mortgage Broker Act.

¹ R.C. 1322.031(A) (2) lists the following offenses: theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking or any criminal offense involving money or securities.c

3. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
4. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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.

(B) Make any false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations.

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

* * *

5. R.C. 1322.031(A)(4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense, other than minor misdemeanor traffic and parking offenses, in question 5 of the application.
6. The Respondent failed to disclose his criminal conviction on his loan officer application as required by the Superintendent pursuant to R.C. 1322.031(A)(4). The Respondent has not offered any explanation for his failure to comply with the requirement. Accordingly, his failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07(A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
7. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the conviction shows 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.
8. The Respondent has not offered any explanation for his failure to disclose the conviction. There is no information in the record suggesting that the Respondent's failure to disclose the conviction was an inadvertent omission done without any intent to conceal the conviction from the Division or the


Superintendent. Moreover, the Respondent presented no information to support his character and fitness. In the absence of any such evidence, the Respondent's failure to disclose the conviction establishes 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).

9. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2) 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 record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and 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 J. Lawrence
Hearing Officer
May 19, 2005