

STATE OF OHIO
DEPARTMENT OF COMMERCE

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CASE NO. 04-0144-LOD

IN THE MATTER OF: ROBERT FRASIER CHAPMAN

REPORT AND RECOMMENDATION OF THE HEARING OFFICER

William R. Damschroder

I. Findings of Fact

A. Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on May 24, 2004, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division regarding Robert Frasier Chapman, an individual, because Robert Frasier Chapman has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities, and that Mr. Chapman's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Martine Jean. Witness for the Division was Staff Attorney Diane Wagenbrenner. Robert Frasier Chapman ("Respondent") did not appear, in person or through legal counsel at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Opportunity for Hearing to Respondent on January 22, 2004, and served it upon Respondent by certified mail. Respondent clearly received the Notice because he sent the Division the hearing request form sent to him along with the Notice. (State's Exhibit #1)
2. Respondent's hearing request was received by the Division on February 20, 2004. (State's Exhibit #1)
3. By letter of March 2, 2004, the Division notified Respondent that the requested hearing was to be held on March 5, 2004, but in the same letter continued the hearing to a later date. By subsequent letter of April 22, 2004, the Division

notified Respondent that the hearing was to be held on May 24, 2004. (State's Exhibit #1)

4. Respondent did not contact the Division indicating that he would be unable to attend the hearing. (Tr. pp. 22-23)
5. The hearing was commenced approximately 35 minutes after the scheduled start time, to allow for the late arrival of Respondent. (Tr. pp. 5-6)

C. Respondent's Loan Officer Application and Criminal Convictions

1. On or about May 2, 2002, the Division received the loan officer license application of Respondent. (State's Exhibit #2)
2. Respondent admitted on his application that he had criminal convictions, in three different courts. (State's Exhibit #2)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. The Division obtained documentation proving that Respondent had been found guilty of Aggravated Assault in January of 1989. The conviction was a fourth degree felony, and the prison term of one and one half year was suspended, with Respondent being placed on two years of probation. (State's Exhibit #4B)
5. The Division obtained documentation proving that Respondent had been found guilty of attempt to commit passing bad checks, a misdemeanor of the second degree, in December of 1989. A fine of \$250.00 was imposed. (State's Exhibit # 4C)
6. The Division obtained documentation proving that Respondent had been found guilty of income tax evasion and conspiracy to obstruct the Internal Revenue Service, in August of 1999. Respondent was sentenced to twenty one (21) months of detention in a federal penal facility, and ordered to pay restitution in the amount of \$1, 037,495.00. (State's Exhibit #4D)
7. The Division requested, by letter dated June 27, 2002, that Respondent offer some explanation for the criminal convictions discovered, to allow the Division to make an informed decision on the Loan Officer License Application. (State's Exhibit #3)
8. A letter was submitted on Respondent's behalf, claiming that the aggravated assault charge arose from a physical confrontation involving a handgun with a disgruntled employee of a business owned by Respondent. The attempt to commit passing a bad check charge arose from a supplier of advertising for

Respondent's business attempted to cash a check, after being asked to hold the check for cashing at a later date. No explanation was provided concerning the federal income tax convictions. (State's Exhibit #4A)

II. Conclusions of Law

A. Jurisdictional and Procedural Matters

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. *Reed v. State Med. Bd.* (1988) 40 Ohio App. 3d 124, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

B. Loan Officer License Application

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show he is entitled to a license.

4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
- (3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of evidence, that the applicant's activities and employment record since the conviction 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.

- (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.
6. R.C. Section 1322.031(A)(2) requires that an applicant provide to the Superintendent, among other things, "[a] statement as to whether the applicant has been convicted of or pleaded guilty to 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[.]”

7. The Division has proved that Respondent has been convicted of three significant criminal offenses. The first conviction was for a felony involving a crime of violence with a weapon. The second conviction was an attempt to pass a bad check, the type of activity of specific concern to the Division in the licensing process, as noted by R.C. Section 1322.031 (A)(2). The third conviction was in federal court, for evading income taxes and conspiring to defraud the United States Government. Each and every one of these offenses reflect negatively on the character and fitness of the Respondent and demand an explanation to overcome the negative perception they create.
8. In response to the Division's request for explanation, the Respondent offers a limited reply, attempting to explain the reasons for the aggravated assault conviction and the attempt to pass a bad check and not even mentioning the federal conviction for income tax evasion and conspiracy. This response is inadequate and incomplete, and in no way provides assurance that Respondent's character and fitness command the confidence of the public, or justify any belief that the applicant would conduct business honestly, and in compliance with the Revised Code.
9. The Division has met its burden of proof to deny a license to Respondent.
10. Respondent did not present evidence of sufficient weight to meet his burden of proof that he is entitled to a license.

II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Robert Frasier Chapman be found to have not met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions deny Respondent's application for a Loan Officers License.

William R. Damschroder, Esq.
Hearing Officer

3/10/05
Date