

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0216-LOD
: :
NICHOLAS C. GLASSBURN : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 14, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on April 28, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Nicholas C. Glassburn ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of cultivation of marijuana. Therefore, the Division asserted that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, because 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).

James M. Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Diane Wagenbrenner, an attorney with the Division, attended the hearing as the Division's representative and testified at the hearing. The Respondent did not appear and was not represented by counsel at the hearing. At the hearing, State's Exhibits 1 through 7 were admitted into the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 22, 2004, and served it upon him by certified mail. (State's Exhibit 4.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".) It is clear that the Respondent received the NOH because he sent the Division the hearing request form sent to him with the NOH. (State's Exhibit 5; TR at 11.)
2. Respondent's hearing request was received by the Division on February 19, 2004. (State's Exhibit 5; TR at 11.)
3. The Division scheduled the hearing for March 1, 2004, and continued it until April 28, 2004. On February 24, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location of the hearing. (State's Exhibit 6.) That letter was sent by regular mail to the Respondent at the address he provided to the Division in his Application and where he received the NOH. The letter was not returned to the Division as undeliverable. (State's Exhibits 1, 4 and 5; TR at 11-12.)
4. The Respondent telephoned Diane Wagenbrenner, an attorney at the Division, the day before the hearing and informed her that he would not be attending the hearing because he had found other employment and did not want to pursue obtaining a license. (TR at 12.) He has not made any request to continue the hearing.
5. The hearing was held on the date and at the location set forth in the Division's February 24, 2004 letter. The hearing started after the time set forth in that letter because another hearing in that same room ran late. (TR at 1, 5.)
6. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

C. Respondent's Loan Officer Application and Criminal Conviction.

7. Respondent is an individual who sought to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 13.)
8. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
9. The Division received Respondent's Loan Officer Application ("Application") on October 29, 2003. (State's Exhibit 1.)

10. Question 5 on the Application asked:

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. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit 1, emphasis and boldface type in original; TR at 13.)

11. Respondent answered "Yes" to Question 5 and disclosed a 2003 felony conviction for cultivation of marijuana. (State's Exhibit 1; TR at 13.)
12. He sent the Division a letter explaining that:

I was charged and convicted of growing marijuana for personal use. My parents found the marijuana and turned me in. I was put on probation for the charge.

(State's Exhibit 3.)

13. In response to the Division's inquiry, the Respondent submitted a certified copy of a Delaware County Court of Common Pleas record confirming the May 14, 2003 conviction. (State's Exhibits 2 and 3.)

II. CONCLUSIONS OF LAW

A. Jurisdiction 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 NOH properly notified the Respondent that he was entitled to request a hearing and was served upon him by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of his right to request a hearing.
2. Ohio Revised Code Section 119.07 also requires an agency to notify a party of the time, date, and place of the hearing once a date is set. The Division's February 24, 2004 letter including this information was sent to the Respondent by regular mail at the address he provided to the Division in his Application and at which he received certified mail service of the NOH.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78. The person who prepared and mailed the February 24,

2004 hearing notice letter identified the letter and testified that it was sent to the Respondent by regular mail and not returned to the Division as undeliverable.

4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the hearing in this matter.
5. The 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 124,125-26, 532 N.E.2d 189, 191.
6. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

7. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
8. Ohio Revised Code 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:

(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.

R.C. 1322.041(A)(5).

9. The "business of a loan officer shall be principally transacted at an office of an employing mortgage broker" registered with the Division pursuant to R.C. 1322.02(A). R.C. 1322.031(E)(1). After filing his Application, Respondent informed the Division that he found new employment and did not want to pursue obtaining a license. Respondent is not currently employed by or seeking employment with a registered mortgage broker, and therefore can not establish that a license issued to him would be used in compliance with R.C. 1322.031(E)(1).
10. On May 14, 2003, Respondent was convicted of felony cultivation of marijuana and placed on probation. This very recent conviction raises concerns about Respondent's ability to command the confidence of the public and comply with the law.

11. Respondent has merely provided a brief description of the basis for the conviction. There is no evidence in the record of remorse, good character, or intent to comply with the law in the future.
12. For the above reasons and due to the nature of the criminal offense involved, Respondent has not established that his character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions not issue a loan officer license to Respondent.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
May 14, 2004