

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS
2006 JUN 22 PM 2:44

IN RE: : CASE NO. 06-0011-LOD
: :
ALBERTINE MALLORY : JANE S. ARATA, HEARING OFFICER

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued June 22, 2006

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 May 16 and 17, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Albertine Mallory ("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"). Respondent's maiden name is Albertine Mangum.

The Division alleges that Respondent was convicted of passing bad checks, unauthorized use of property, attempted petit theft in 1996, and criminal mischief in 2000. The Division further alleges that she violated R.C. 1322.07(A), (B), and (C) by failing to disclose that conviction on her loan officer license application. 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 the convictions on her applications;
2. Respondent has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit such an offense involving theft, passing bad checks, money or securities again as required by R.C. 1322.041(A)(3); and
3. 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).

Ted Klecker, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Douglas J. Haynes represented the Respondent at the hearing. At the hearing, State's Exhibits A through G, and Respondent's Exhibits 1 through 4 were admitted into the record. State's Exhibit H is comprised of multiple documents. One was admitted into the record and the others were not. The portions of Exhibit H not admitted into the record were proffered and are included with the record.

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 13, 2006, and served it upon her by certified mail. (State's Exhibit B.)
2. The Division received Respondent's request for a hearing within thirty days of the date the NOH was sent to her by certified mail. (State's Exhibit C.)
3. The Division initially scheduled the hearing for a date more than seven and within fifteen days after it received the hearing request. The hearing continued twice and was set for May 16, 2006. It was concluded on May 17, 2006. The Respondent and her counsel were notified of the date, time, and place for all scheduled hearing dates. (State's Exhibit C.)

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

4. 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).
5. Respondent applied for an Ohio mortgage loan officer license in May of 2002. (State's Exhibit A; May 16, 2006 Hearing Transcript ("TR1") at 35.)
6. Respondent answered "No" to Question 5 on the 2005 Application, which 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 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.

(Application, State's Exhibit A; TR1 at 41.)

7. Respondent's signature in the Attestation on the Application is notarized. Directly above that signature, 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." (Application, State's Exhibit A.)
8. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
9. Respondent was convicted of passing bad checks, unauthorized use of property, attempted petit theft in 1996, and criminal mischief in 2000. All of these convictions were misdemeanors. (State's Exhibits D, E, F, and G.)
10. The 1996 unauthorized use of property and passing bad check charges were brought against Respondent after her sister Leatrice Magnum stole checks from her and used them in 1994 without her permission or knowledge. Leatrice Magnum had already had criminal problems due to forgery and passing bad checks when those incidents occurred. Respondent appeared in court and pleaded guilty to those charges despite the fact that she did not commit the crimes so her sister would not return to jail. Consequently, Respondent lied to the court during at least one proceeding in front of a judge in 1996. Respondent was under great pressure from her family to take responsibility for those crimes so her sister could stay out of jail and raise her children. Respondent's sister was not held responsible for those crimes. She committed other similar crimes and returned to prison. (State's Exhibits D and E; TR1 at 46-60, 79-82, 92-93; May 17, 2006 Hearing Transcript ("TR2") at 12-28, 149, 152-154.)
11. Respondent was convicted of attempted petit theft based upon a 1996 incident at a department store. Respondent testified that the charges were filed after a friend improperly permitted Respondent to use her store discount and failed to charge her for items that were in her shopping bag. (State's Exhibit F; TR1 at 60-64, 77-79.)
12. Respondent's 2000 criminal mischief conviction was the result of an altercation with a former coworker after provocation. She now realizes that hitting him with her coffee mug and her coffee was not the solution. (State's Exhibit G; TR1 at 54, 64-76, 86-87.)
13. There is no dispute that Respondent engaged in the activities that led to the attempted petit theft and criminal mischief convictions.

D. Respondent's Failure to Disclose Convictions on Application.

14. Respondent did not disclose the passing bad checks, unauthorized use of property, attempted petit theft, and criminal mischief convictions on the Application. (State's Exhibit A; TR1 at 18-19.)
15. Respondent initially stated that she did not disclose the criminal convictions because they were not felonies and because others told her they did not need to be disclosed for that reason. Respondent signed her application on May 1, 2002, one day before the law requiring loan officers to be licensed went into effect. She was employed as a branch manager at Victory Mortgage where she supervised about 15 employees at that time. She obtained the loan office license applications and set up the fingerprinting for her office. She recalled that Vicki Cumberlander, one of the owners, was not even aware that that it needed to be done. When the applications arrived, Respondent set up a general meeting at the office to go over the application. According to Respondent, during that meeting Ms. Cumberlander explained that felony offenses were what would stop someone from becoming a licensed loan officer. (State's Exhibit A; TR1 at 38-45, 82-85, 103-110.)
16. Although Respondent claimed that she answered "No" to Question 5 based upon information from Ms. Cumberlander and Jim Anthony, her response to a direct question about whether they told her to mark "No" indicates otherwise. When asked if Jim Anthony and Vicki Cumberlander told her that she should mark "No" to Question 5, she responded that, "They said they were looking for felons and that that does not – this question would not apply to {her} or something of that nature. I can't tell you verbatim what they said." (TR1 at 44-45.) She testified consistently that she questioned others about whether she would have trouble obtaining a license but not on how she should respond to Question 5. Later she testified that Ms. Cumberlander reviewed an earlier application on which Respondent had marked "Yes" and told her that she thought the answer should be "No." (TR1 at 38-45, 106-110.)
17. Respondent also testified that: "And to be perfectly honest, based upon the circumstances of the things that had happened to me, I never thought in my head I was someone who passed bad checks; so I marked the answer 'No'." Later in the hearing she reiterated that: "So when I'm filling out this licensing, it's so important, whether you give me this license or not, that you know never in my head did I ever think, until now, that I'm a criminal passing-bad-check type of person; I just did not think that." (TR1 at 41 and 59.) This testimony is inconsistent with her earlier testimony that she was aware of her convictions, consulted others, and received incorrect information about what to disclose. It also is inconsistent with her claim that she marked "Yes" in response to Question 5 on an earlier application she filled out.

18. Respondent's inconsistent testimony about her response to Question 5 evidences that she knew about her convictions at the time she filled out the Application, knew that they should be disclosed on that application, and failed to do so. Her false and inaccurate response to Question 5 reflects negatively on her ability to be a loan officer.

E. Respondent's Reputation and Character.

19. Respondent has worked as a loan officer since at least 1998 and spent many of those years as a branch manager responsible for reviewing loan applications, payroll, and marketing. She testified that she is hardworking, trustworthy, and a good friend. She admitted that she has relied on bad advice, lied to a judge, is protective of her family, and "naïve to a fault sometimes." (TR1 at 102-104, 122-123.)
20. Her false plea to her sister's crimes prevented her sister from being apprehended and left her free to commit other crimes. Respondent continues to be quite influenced by her family perhaps even to the point that she may again make unwise decisions. Despite the negative impact that covering for her sister has had upon Respondent, she now has her sister residing with her. While both she and her husband testified that they have secured the financial papers in their home to protect them from her sister, Respondent stated that she "feels bad" about doing this since her sister has served her time. (TR1 at 156-157; TR2 at 147-148.)
21. Respondent does many things to help others, but her judgment when doing so also raises some concerns. (TR2 at 28, 145-146.) When questioned about a complaint raised by a former loan customer, Respondent explained that she lent the customer over four thousand dollars and received a check to be cashed after the customer received her loan. The Division did not call the customer involved as a witness in this matter. Even so, Respondent's description of her behavior raises concerns. (TR1 at 126-156.)
22. Respondent also submitted a letter from Ms. Cumberlander and affidavits from two friends who formerly worked with her in the mortgage loan industry. While these documents very positively described Respondent's abilities in the mortgage loan industry and her character, they were not the subject of testimony by their respective authors at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits 1, 2, and 3 were considered but afforded less weight than they would have been if their authors had testified and been available for cross examination. (Respondent's Exhibits 1, 2, and 3.)
23. Freddie Everett, Junior, the owner of Abundant Life Mortgage & Financial Services, Inc. ("Abundant Life Mortgage"), testified about Respondent's abilities in the mortgage industry. He has known Respondent since April of 2006 and she

has worked for him since May 2, 2006. He brought her in as a loan officer and made her the branch manager on May 12, 2006. Therefore, he had worked with her for a little over two weeks and known her for less than two months when he testified at the hearing. He testified that he finds her to be trustworthy, honest, and forthright in her business dealings and trusts her to run Abundant Life Mortgage. She is known to be a high producer and he admitted that he has a financial interest in her obtaining a license. (TR2 at 48-138.)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been 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 the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. 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:

(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 of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the 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.

R.C. 1322.041(A)(2), (3), and (5).

3. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she 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. A conviction for the unauthorized use of property constitutes being convicted of a "criminal offense involving theft" for the purposes of R.C. 1322.031(A)(2).
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
6. Respondent's response to Question 5 on the Application indicating that she did not have any criminal convictions when in fact she had been convicted of passing bad checks, unauthorized use of property, attempted petit theft in 1996, and criminal mischief in 2000, was a substantial misrepresentation in that application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that she did not have any criminal convictions when in fact she had been convicted of unauthorized use of property, passing bad checks, attempted petit theft in 1996, and criminal mischief in 2000, in violation of R.C. 1322.07(B).
7. Respondent violated R.C. 1322.07(B) by omitting the statement regarding her passing bad checks, unauthorized use of property, and attempted petit theft convictions required to be in an application by R.C. 1322.031(A)(2).
8. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings."
9. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating on the Application that she did not have any criminal convictions when in fact she had been convicted of passing bad checks, unauthorized use of property, attempted petit theft in 1996, and criminal mischief in 2000.
10. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).

11. Once the passing bad checks conviction was proven by the Division, the burden of proof shifted to Respondent to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
12. The evidence established that she had additional criminal convictions and failed to disclose them on her Application. Respondent's false plea to her sister's crimes prevented her sister from being apprehended and left her free to commit other crimes. In doing this, Respondent lied to a judge under while under oath. Respondent continues to be quite influenced by her family perhaps even to the point that she may again make unwise decisions. Respondent's activities after the first conviction preclude her from establishing that it is unlikely that she will commit any similar offense in the future. The Respondent likewise did not prove that she is honest, truthful, and of good reputation.
13. For the reasons described above, the evidence in the record does not establish that Respondent's character and general fitness command the confidence of the public and warrant the belief that her 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).
14. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,



Jane Stempel Arata
Administrative Hearing Officer
June 22, 2006