

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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DIVISION OF FINANCIAL
INSTITUTIONS
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IN THE MATTER OF:

PRECIOUS G. SMITH

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DIVISION OF FINANCIAL
INSTITUTIONS
CASE NO. 05-0031-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued August 16, 2005

I. FINDINGS OF FACT

A. BACKGROUND

This matter came before Terrence O'Donnell, an attorney licensed to practice law in Ohio and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). The hearing in this matter was held at 9:00 AM on May 11, 2005, at 77 South High Street, Room 1924, Columbus, Ohio. Subsequent to the hearing, the undersigned was appointed as hearing officer and prepared this Report and Recommendation based upon the hearing transcript and all exhibits.

The hearing was held at the request of Respondent Ms. Precious G. Smith of Columbus, Ohio, (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (herein "NOH"). Said NOH was based upon an allegation that Respondent failed to disclose on the Application that she was convicted of a past criminal offense, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney

General's Office, Deputy Attorney General Timothy C. Loughry. Respondent appeared pro se.

At the hearing, State's Exhibits A through E were introduced into the record as discussed in the transcript (herein "Tr."). Respondent did not offer documentary evidence but did testify on her own behalf and was the only witness for either party.

B. JURISDICTION

The Division issued the NOH against Respondent on April 5, 2005. The Respondent requested a hearing, which was received by the Division on April 20, 2005. By letter dated April 21, 2004, the Division scheduled the hearing for April 29, 2005, but continued the hearing on its own motion to May 11, 2005, at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit C.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit C.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. On September 16, 2004, the Division received from Respondent a Loan Officer Application (herein the "Application"). (Exhibit A.)
5. Respondent signed and attested to the information in the Application on, or about, May 7, 2004. (Exhibit A.)
6. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense ..." (Exhibit A; Tr. p. 11.)
7. On, or about, March 19, 1996, at age 20, 8 years prior to the submission of the Application, Respondent pleaded No Contest to a charge of Obstructing Official Business. (Exhibit B; Tr. p. 11.)

8. Respondent's explanation of the Obstructing Official Business conviction was that she had been in a car with another person, the police stopped them and the other person ran. The police charged her with yelling "run" to her companion, although Respondent states she said "don't run." (Exhibit B; Tr. p. 12.)
9. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or to those offenses for which there is a record, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit A.)
10. Respondent's explanation of why she answered Question 5 on the Application as "No" when she knew she had a conviction on her record was that she misread the question. (Tr. pp. 15-17.)
11. The Loan Officer Application contained inaccurate information at the time that Respondent signed it, to wit: In responding "No" to Question number 5 when Respondent had been convicted of a criminal offense.
12. Respondent knew the Division would obtain a criminal background check because part of the Application was to submit fingerprints for the stated purpose of conducting the background check. (Exhibit A; Tr. p. 16.)
13. Respondent has worked in a bank position which required her to be attentive to language in documents. (Tr. pp. 26-27.)
14. Respondent has worked in a bank position which required her to be trustworthy with customer social securities numbers and other personal data. (Tr. pp. 26-27.)
15. The conviction cited is eight years removed in time and is non-financial in nature.
16. Respondent's own explanation of her submission of the Application with incorrect information could not overcome evidence presented by the Division because her testimony was not corroborated by other evidence.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 1995, Respondent was convicted of Obstructing Official Business, a type of offense not specifically cited in section 1322.041(A), O.R.C., but inquired about on Question 5 of the Application.
3. To issue a license, the Division must make a finding that, inter alia, Respondent'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. Section 1322.041(A)(5), O.R.C.
4. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's inaccurate response to Question 5.
5. Even though Respondent's explanation of her response to Question 5 is accepted for lack of contrary evidence, it demonstrates an inability to carefully read an important document prior to her own attestation of the document's truthfulness, which shows Respondent's general fitness would not command the confidence of the public due to a concern that the loan documents might not be accurately completed. If Respondent treats the Application, with which she is seeking to gain employment, cavalierly, how would the repetitive nature of the loan documents she would be reviewing cause her to be inattentive to detail.
6. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness as related to the lack of attention to detail.

7. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning her character and general fitness to command the confidence of the public.
8. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the Application "No."
9. The only evidence in the record going to the question of violations of sections 1322.07(A), (B) and (C) was Exhibit A and opposing testamentary evidence by Respondent.
10. The court in Webb v. State Med. Bd., 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001) noted that intent is required for a finding of fraud, misrepresentation, or deception when it observed "The trial court properly concluded that the Ohio medical board committed error when it adopted a conclusion of law that indicated that appellant's intent was irrelevant." See also Powell v. Administrator, 1984 Ohio App. LEXIS 10467 (Ohio Ct. App. 6th District, 1984), wherein the court stated that

A careful examination of the record fails to disclose substantial, credible evidence going to the specific intent to improperly secure unemployment benefits required to be proven under the definitions of false misrepresentation provided by the appellees. Rather, the evidence adduced below suggests that the appellant honestly believed that an individual was not self-employed unless he was receiving remuneration from such self-employment. *** Both of the definitions adopted by the appellees, *supra*, require "knowledge" of the falsity on the part of the claimant. Once again, appellant's actions subsequent to receiving a profit from his arcade business negate any knowledge on his part that he was in fact self-employed.

11. Intent is required for a finding of any of the three provisions and the burden is on the Division to prove the violation of section 1322.07, O.R.C. The Division has not proven such intent. Consequently, it cannot be found that Respondent has not violated sections 1322.07(A), (B) or (C), O.R.C.

C. DISCUSSION

Because Respondent incorrectly answered Question 5 on the Application, she cannot show that her character and general fitness command the confidence of the public. The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees, not just from dishonest conduct but also from errors committed from lack of attention to detail of material issues.

III. RECOMMENDATION

The Division has proven Respondent did not disclose the prior criminal conviction on the Application. Respondent did not present sufficient evidence to prove that Respondent'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, and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO PRECIOUS G. SMITH.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
August 16, 2005
Docket No. 05-DFI-119