

STATE OF OHIO
DEPARTMENT OF COMMERCE

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CASE NO. 04-0304-LOD

IN THE MATTER OF: YOHANCE A. LUCAS

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 July 20, 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 Yohance A. Lucas, an individual, because Mr. Lucas has made substantial misrepresentations on his license application, made false or misleading statements of material fact, and engaged in conduct that constitutes improper, fraudulent, or dishonest dealing, and that, because of the nature of three criminal convictions in Mr. Lucas' past, his 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. The Division did not present any witnesses. Yohance A. Lucas ("Respondent") did appear in person and was not represented by counsel at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Respondent on April 12, 2004, and served it upon Respondent by certified mail. Respondent signed the certified mail receipt form on April 15, 2004. (State's Exhibit #13)
2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny Respondent a license. This form was received by the Division on April 29, 2004 (State's Exhibit #15)

3. By letter of April 30, 2004, the Division notified Respondent that the requested hearing was to be held on May 10, 2004. At that time, however, the Division continued the hearing on its own motion. By subsequent letter of May 11, 2004, the Division notified Respondent that the hearing was to be held on June 23, 2004. Following a request for continuance from Respondent, the matter was scheduled for hearing on July 20, 2004 (State's Exhibit #16, #17, #18)
4. Respondent attended the hearing and represented herself *pro se*. (Tr. p. 4)

C. Respondent's Loan Officer Application and Criminal Convictions

1. On or about April 10, 2002, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. Respondent answered "No" to question #5 of the Loan Officer Application, which asked whether the applicant had any criminal convictions. The exact language of Question #5 states:

"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." (State's Exhibit #1)
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 on July 31, 2000, Respondent was convicted of Possession of Drugs, a felony of the fifth degree, Carrying a Concealed Weapon, a felony of the fourth degree, and Aggravated Assault, a felony of the fourth degree. Respondent was sentenced to serve ten (10) days in jail, complete 40 hours of community service, and spend three years on probation. Respondent testified that his probation was shortened for good behavior and ended in January of 2002. (State's Exhibit #4, Tr. p. 79)
5. Respondent testified at hearing that his legal difficulties arose during a confrontation over an allegedly stolen stereo while Respondent was a student at Ohio Northern University. The altercation occurred in March of 1999. Respondent testified, and court documents stated, that Respondent and a friend confronted four men in an apartment in Ada, Ohio, to try and determine what happened to Respondent's stereo. When a fight ensued, Respondent

testified that he pulled a loaded weapon which was concealed in Respondent's pocket. Court documents indicate that respondent pointed the weapon at the men in the apartment and made threats against them. When the police department was investigating the fight that occurred, Respondent consented to a search of his residence, during which the police found the weapon Respondent carried and pointed during the fight, and also found a quantity of both marijuana and cocaine. (State's Exhibit #4, Tr. pp. 33-40)

6. Respondent testified that he was subsequently suspended from Ohio Northern University for academic reasons and never returned to school. (Tr. pp. 38-39)
7. Respondent testified that, prior to this incident, he had never had any brushes with the law. (Tr. p. 39)
8. Respondent testified, with respect to Question #5, that he understood the question to only be asking about convictions for the specifically enumerated financial crimes listed in the question. Respondent testified that he had no intention of trying to lie to the Division and that he realizes now that his answer was mistaken. (Tr. pp. 20-23, 72-73)
9. Respondent testified and submitted documentation showing that, for each job he has held since his conviction, he disclosed his criminal background to his employer. (Tr. pp. 80-87)
10. Respondent testified that since his conviction he has worked for a number of companies as a mortgage loan officer in Ohio, and one in the state of Michigan. (Tr. pp. 80-87)

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. 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. Another of the Division's argument in seeking to deny Respondent a Loan Officer's License rests on R.C. Sections 1322.07, which states in pertinent part:

No mortgage broker, registrant, licensee or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

- i. Obtain a certificate of registration or licensure through 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;
- ii. Make 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;
- iii. Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;


7. Respondent demonstrated that his response of "No" to Question #5 was based upon his belief that the question pertained only to convictions for the specific, financially oriented crimes listed therein. This belief was obviously incorrect, but, just as obviously, resulted from a mistaken interpretation of the question, and not from any intentional deception. Had Respondent failed to inform an employer of his legal problems, for instance, the Division would have evidence of an intent to conceal. No such evidence exists, however, as Respondent testified that he

made all of his employers aware of his convictions, either in his job application or at initial interview. Absent proof of intent, there can and should be no finding that Respondent's behavior rose to the level of misrepresentation, false or misleading, or fraud. See *Webb v. State Med Bd.*, 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001). The incorrect answer by Respondent to the question was an unfortunate mistake on Respondent's part, but not enough to support denial of a Loan Officer's License.

8. The remaining question is whether, in light of Respondent's convictions, sufficient evidence has been presented to convince the Superintendent that Respondent's activities since his conviction show that he is honest, truthful and of good reputation, and that he is not a threat to commit another criminal offense. In addition, Respondent must show that his general character and fitness command the confidence of the public and warrant the belief that Respondent will conduct his business endeavors in compliance with Chapter 1322. of the Revised Code.
9. While acknowledging that it is a close call, the criminal conduct of Respondent is troubling. Leaving aside the conviction for Drug Possession, which is essentially immaterial since it is so completely unrelated to the license being sought, the convictions for Aggravated Assault and Carrying a Concealed Weapon are material to the question of character and fitness. Respondent made application for licensure a mere few months after being released early from his probation for significant crimes, the types of crimes that were fortunate not to have escalated to serious physical harm. Without some demonstrable, lengthy showing of rehabilitation, it is hard to make a finding that Respondent's character and fitness are such that the Division should all him to be licensed. Not enough time passed between his legal transgression and his license application to make such a showing of rehabilitation. While he is moving in that direction, he is not there yet.
10. Accordingly, I find that Respondent has not proved that he is honest, truthful, and of good reputation, and not a threat to offend again. In addition, I find that Respondent's character and fitness do not command the respect of the public and warrant a belief that Respondent will conduct his business in compliance with statutory requirements.
11. The Division has met its burden of proof to show that Respondent has been convicted of criminal offenses.
12. Respondent has not presented 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 Yohance A. Lucas 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

8/18/05

Date