

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0022-LOD
: :
LARICK D. CALHOUN : JANE S. ARATA, HEARING OFFICER

04 MAY 12 AM 11:30
DIVISION OF FINANCIAL INSTITUTIONS

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued May 12, 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 13, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent LaRick D. Calhoun ("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 escape, carrying a concealed weapon, resisting arrest, assault, and conspiracy to distribute and to possess with intent to distribute cocaine. 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, for the following reasons:

1. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
2. 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. Earlene Smitherman, an Executive Secretary 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 13 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 3; TR at 9.) (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 2; TR at 9-10.)
2. Respondent's hearing request was received by the Division on February 17, 2004. (State's Exhibit 2; TR at 9.)
3. The Division scheduled the hearing for March 1, 2004, and continued it until April 13, 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 1.) That letter was sent by regular mail to the Respondent at the address he provided to the Division in his Application (minus the apartment number) and where he received the NOH. The letter was returned to the Division as undeliverable and resent to his address, including the apartment number, on March 10, 2004. After that mailing, the letter was not returned to the Division as undeliverable. (State's Exhibits 1, 3 and 11; TR at 10-11.)
4. The Respondent did not contact anyone at the Division or the Hearing Officer to indicate that he could not be present at the hearing or to make a continuance request. (TR at 12.)
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 40 minutes after the time set forth in that letter to make sure that the Respondent was not running 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 the hearing.

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

7. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 11; TR at 16.)
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 April 26, 2002. (State's Exhibit 11.)

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 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 11; TR at 16.)

11. Respondent answered "Yes" to Question 5 and disclosed a 1993 federal conviction for conspiracy to distribute and possession with intent to distribute cocaine. (State's Exhibit 11; TR at 16.)
12. He attached a letter to his Application explaining that:

There is no excuse for any of the roads that I traveled while growing up. However, what I feel that is important is the lessons that I learned from these mistakes, as well as the ability to finally be able to utilize the energy, drive, education, and aggressiveness in a positive direction. Upon being released from the Federal Institution custody on March 16, 1998 I immediately enrolled in an Entrepreneur Training program in which I graduated at the top of my class, learning about marketing, sales, researching information, some book keeping, and money management. From there I worked for a telemarketing company and a limousine company while completing Barber College (in which I began while incarcerated). My completion of the final exam in Barber College was one of the highest scores/performances in the history of the Lake Erie Barber College (3 years operating prior to my getting there.) I tested in Columbus and obtained my barber license. I've mentioned the above only to support my dedication to advancement in the "real world."

(State's Exhibit 11.)

13. In response to the Division's inquiry, the Respondent submitted certified copies of records confirming that conviction and his jail sentence. (State's Exhibit 8; TR at 14-15.)
14. The Respondent was also convicted of escape, carrying a concealed weapon, assault, and resisting arrest in 1991. (Cuyahoga County Common Pleas Record provided to the Division by Respondent, State's Exhibit 6.)

15. He explained those convictions as follows:

December 12, 1990 I was pulled over while doing the speed limit through a suburb of Cleveland (Garfield Heights). A patrolman followed me for approximately 2.5 miles before finally pulling me over. Yes, I had a firearm in my car, unfortunately most kids my age did during that era. Knowing that I had an outstanding ticket/warrant that would lead to my car being searched once asked to step out of my car and take a seat in the patrol car, I chose to run (just being honest). To get straight to the points that matter, the officer had called for back up prior to my exiting the car, when I began running one or more of the officers began firing there (sic) guns at me. The officer(s) error was firing at me while I was unarmed and fleeing, when I did face the situation almost two weeks later the officer had an incredibly long list of violations ranging from speeding (75 mph in a 35 mph zone), to running several red lights, to punching him in the stomach and "escaping" his custody. I plead to probation and whichever charges they would reduce to fit that guideline, had I known the impact of some of the charges I surely would have stood a stronger ground. I was just happy to not be going to jail.

(Respondent's August 3, 2002 Letter to the Division, State's Exhibit 6.)

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 scheduling letter identified the letter and testified that it was sent to

the Respondent by regular mail, and after the second mailing, 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. 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 1322.031(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.
9. 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:

(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.

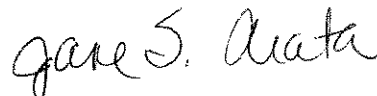
R.C. 1322.041(A)(3) and (5).

10. Respondent was convicted of escape, carrying a concealed weapon, resisting arrest and assault in 1991 and conspiracy to distribute and to possess with intent to distribute cocaine in 1993. The 1993 conviction is for drug trafficking, an offense specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
11. Once the drug trafficking conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the conviction show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
12. Instead, the evidence established other undisclosed convictions. Respondent provided no evidence regarding his reputation other than his own letters to the Division. Respondent's failure to disclose all criminal convictions and the lack of independent evidence of Respondent's good character, preclude him from meeting his burden of proof under R.C. 1322.041(A)(3).
13. For these reasons and due to the nature of the criminal offenses 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)(3) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041.

Respectfully submitted,



Jane Stempel Arata
Administrative Hearing Officer
May 12, 2004