

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Jennifer E. Ekleberry

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0142-LOD**

FINDINGS OF FACT

1. On or about April 24, 2002, Jennifer E. Ekleberry ("Respondent" herein) submitted an application and related materials (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A herein.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on April 5, 2004. At the Hearing, Respondent was represented by John G. Neal, Esq., and the Division was represented by Assistant Attorney General Daniel P. Jones, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and ther administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 14)
5. As of the date of the Application, Respondent was employed by Acc-U-Rate Mortgage Company, Ltd.

CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a Loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.031 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

DISCUSSION

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences a serious drug-related forgery conviction in 1998 which unfortunately reflects one of the very offenses which the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). Respondent was forthright in her response to question 5 of the Application in disclosing her criminal history, and providing further information concerning that matter and her life since the conviction. Respondent's record reflects conviction of a serious crime which, upon review, would indicate that Respondent is the very kind of individual which the legislature intended to bar from the mortgage broker practice. The legislature also recognized, however, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual which have occurred since the facts which gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

The statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the criminal record of Respondent as described in the Notice and Application (Tr. Page 14), and the Respondent presented her own testimony as well as that of a number of business and professional colleagues and contacts, all consistently in support of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and 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.

The verbal and written testimony presented by Respondent and others at the Hearing, together with materials submitted by Respondent in conjunction with the Application, evidence an individual who appears to have overcome the problems of her past and who has met the burden of proving, by a preponderance of the evidence, that he should be entrusted with the responsibilities of acting as a loan officer under Ohio law in the State of Ohio. The evidence presented by Respondent reflects an individual who has met the burden of overcoming her criminal history as provided by Ohio Revised Code Section 1322.041(A)(3), and whose character and general fitness will, and does now, command the confidence of the public and warrant the belief that the business will be operated honestly and fairly, consistent with Ohio Revised Code Section 1322.041(A)(5).

Subsequent to her criminal conviction and release from incarceration, Respondent has maintained a steady and successful work record in the mortgage industry and receives significant repeat and referral business (Tr. Pages 49, 62, 67, 149, 150); has married and has taken responsibility for a family (Tr. Pages 147, 148); is regarded as ethical, honest and trustworthy in the profession as well as in the community, including business colleagues and customers (Tr. Pages 25, 33, 36, 37, 53, 54, 66, 67, 84, 103, 106, 117, 130, 131); remains involved in Narcotics Anonymous in ongoing control of her previous drug habit (Tr. Page 147); and has generally exhibited the personal and professional qualifications which would appear to reflect the very kind of turn-around which the legislature envisioned in providing applicants the ability to overcome a criminal past.

The testimony and evidence elicited in the Hearing indicates that Respondent has conducted her personal and professional life in an honest and truthful manner since the conviction, with an apparently excellent community and professional reputation. And, based on the evidence presented, Respondent appears to have overcome the unfortunate facts and circumstances which led to her criminal behavior. It appears from the evidence and testimony presented that Respondent will not likely revert to her problems of the past and disappoint her family, her business and professional colleagues, members of her community, and others who have placed their confidence, faith, and trust in her and in her ability to overcome those problems.

RECOMMENDATIONS

For the reasons set forth herein, the referenced Application of the Respondent should be approved.

Respectfully submitted,

Jeffery E. Smith, ~~Hearing Examiner~~

21 May 04

Date