

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

2004 SEP 15 AM 9:55

In re: Kristina L. Castle

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Case No. 04-0376-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Kristina L. Castle not be granted. The Division conducted an investigation and found that in or around 2002, in the Court of Common Pleas of Delaware County, Ohio, Ms. Castle was convicted of operating a pyramid sales plan or program, a felony of the fifth degree.

2. As a result, the Division determined:

- a. Ms. Castle has not proven that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3); and
- b. Ms. Castle'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 set forth in Revised Code Section 1322.041(A)(5).

3. Ms. Castle's address for service is 2890 County Road 170, Marengo, Ohio 44334. She is hereinafter referred to as the "Respondent." The Respondent is employed by Mortgatopia, LLC, dba Amerifirst Mortgage, 555 Metro Place North, Suite 200, Dublin, Ohio, 43017.

4. This matter was initiated by the Superintendent of the Division by the issuance on May 14, 2004, of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing. (Exhibit E).

5. A certified mail receipt was signed by Zachary A. Morgan on May 15, 2004. (Exhibit E). There is no evidence in the record to indicate that the Respondent disputes the receipt of the document.

6. On June 8, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit F).

7. On June 9, 2004, the Division wrote to John G. Neal, counsel to the Respondent, scheduling a hearing for 9:00 a.m. on June 18, 2004, but continuing that hearing on the motion of the Division until Friday, July 9, 2004, at 3:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit G).

8. On June 21, 2004, Attorney Neal wrote to the Division and filed a Motion for Continuance. (Exhibit G).

9. On June 23, 2004, the Division wrote to Attorney Neal rescheduling the Hearing in this matter for August 11, 2004, at 1:30 p.m. in Room 1914 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit G).

10. The Hearing was held beginning at 1:30 p.m. on Wednesday, August 11, 2004, in Room 1924 of the Vern Riffe Center. Due to a scheduling overlap, the Hearing was held in Room 1924 rather than Room 1914. The Respondent had no objection to the change of rooms. (Tr. 7).

11. Attending the Hearing were Monica L. Rausch, Assistant Attorney General of Ohio in the Executive Agencies Section, John G. Neal, Esq. attorney for the Respondent, and the Respondent. Appearing as witnesses were Lynn Pruitt, Teresa Weber, Angela Nicole Steele, and Chad Ballard.

12. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On February 12, 2004, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit A).

2. Question 5 of the Application provides:

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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "Yes" and wrote "pyramid scheme".

4. As part of the background check the Division consulted a database collected by National Background Check, Inc. That background check disclosed a March, 2002 conviction of conducting a pyramid scheme. (Exhibit A).

5. The Respondent submitted the following written materials as part of the Application:

Felony Explanation

When I was 20 I was approached to sell advertising to small business and to find people to invest in the company. His name was Brian Klinger. I spoke with a Lawyer about Brian's idea (which was Brian's lawyer) and he explained to me that everything that Brian was wanted to do was legal and that we would be setting up a company as well, but that for the moment we could do the business under a 30 day trail. At that point after speaking with a lawyer of course I thought everything was legit so at that point I approached people and got them to make a investment in the company, after a certain point they was supposed to receive a payout from the investment. Some time passed, then I started to receive phone calls that people was not receiving their payouts that had been promised to them. I immediately tried to get into contact with Brian about this; he would not return any of my phone calls. (All the money received from investments went straight to Brian, I also invested money in the company, and I also lost money.) After some time I finally got in contact with his wife who explained that he was in Talbot Hal for drug use. (I was not aware of this either.) I continued to receive calls at the point from people wanted there money, I told them at that point that I could not get a-hold of Brian and that they needed to contact the authorities. Once they were contacted they interviewed me and I gave all the information that I could to help them bet Brian, I was told by the investigators that point that they did not think that I was guilty and that they would let the prosecuting attorneys know this information. I then received an indictment from Delaware County Court. At that point I hired a lawyer to fight the charges and pled not guilty. When this went to trial the prosecuting attorney threatened jail time if I fought the case and lost, during that time I was also going through divorce. My husband told me that if I received any jail time at all that he was going to take my son from me. So at that point I talked to my lawyer, he was very confident that he could win the case but he was not 100% sure. So at that point I decided to plead guilty so that I did not have to take the chance of losing my son. I received probation when I pled guilty. My son is very important to me so that is why I decided to do what I did.

(Exhibit A)

6. The Respondent also submitted a copy of the Judgment Entry On Sentence from the Delaware County Court of Common Pleas showing that the Respondent was convicted of a fifth degree felony. (Exhibit A). The Respondent also submitted a copy of her Judgment Entry: Decree of Divorce showing her divorce decree in the Morrow County Court of Common Pleas entered in May, 2002. (Exhibit A).

7. On March 4, 2004, the Division wrote to Mortgatopia, LLC seeking information on the background check. (Exhibit B). On April 5, 2004, the Division wrote to the Respondent seeking certified copies of the Judgment Entry. (Exhibit C).

8. The record contains a copy of various documents from the Delaware County Court of Common Pleas regarding the conviction. (Exhibit D).

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant has been convicted 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.

2. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Because the Respondent has been convicted of a criminal offense involving money or securities, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing she will commit such an offense again. The Division has the burden to show that the Respondent's character and 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.

DISCUSSION

1. The Respondent works as a processor/assistant to loan officers at Amerifirst Mortgage. (Tr. 49). She has lived at her current address for approximately 3 years. She has a fifteen month old daughter. (Tr. 49).

2. The Respondent became involved with a man named Brian D. Klinger who was running a network marketing company. (Tr. 50-51).

3. The Respondent understood that she would be selling bulk advertising to small businesses and individuals. (Tr. 51). The Respondent had questions about the network marketing program and even consulted an attorney. (Tr. 51-52). However, this was an attorney selected by Mr. Klinger. (Tr. 52). Apparently, the entire program was a sham and no bulk advertising was ever sold. (Tr. 53).

4. The Respondent sold these investment opportunities to friends, family, neighbors and others in her community. (Tr. 53). Most of the purchasers were Morrow County residents. (Tr. 53). These activities occurred during the early part of 2000 and lasted through October, 2000. (Tr. 53).

5. The Respondent's suspicions were aroused when someone called her and indicated that Mr. Klinger had a substantial drug problem. (Tr. 54). The Respondent stopped selling the program at that point. (Tr. 54). During the period of the operations, the Respondent estimates that Mr. Klinger received \$50,000 and that the Respondent received between \$5,000 and \$7,000. (Tr. 55).

6. The Respondent then began assisting law enforcement in identifying the victims. (Tr. 56).

7. During the time of her involvement in this matter, the Respondent had just turned 20 years of age. (Tr. 57). She was a high school graduate and had taken some real estate schooling. (Tr. 57). She had employment experience with Excel and ITI, both long-distance sales companies. (Tr. 57).

8. The Respondent ultimately pled guilty to the felony in this matter. (Tr. 58). Simultaneously, the Respondent was going through a divorce and she was concerned about custody of her son. (Tr. 59).

9. The Respondent feels that she is an honest person and enjoys helping people. (Tr. 59-60). The Respondent acknowledges that, in hindsight, there were many things that should have caused her concern. Those items included Mr. Klinger's failure to answer the telephone, Mr. Klinger's lies, and Mr. Klinger's assurances that the "investment" was guaranteed. (Tr. 60-61).

10. At the time of the Hearing in this matter, the Respondent was still on probation in Delaware County. (Tr. 61). There is still two and one-half years of probation ahead of the Respondent unless she completes her required restitution payments. She has paid back to date approximately \$18,000. (Tr. 61). The Respondent stated that several people to whom she had

paid restitution had offered to return that money to her but she has declined that generosity. (Tr. 62).

11. Testifying in support of the Respondent was Lynn Pruitt. Ms. Pruitt works in the Accounting Department of Allied Interstate, a collections agency. (Tr. 14). She has known the Respondent for fifteen years. (Tr. 15). They met in grade school. (Tr. 15). Ms. Pruitt had, on at least one occasion, observed the Respondent interact with Mr. Klinger and noticed that the Respondent had delivered an envelope of cash to Mr. Klinger. (Tr. 16).

12. Ms. Pruitt remembers that the Respondent has worked at a number of different jobs including a gas station and other positions. (Tr. 16-17). Ms. Pruitt knows at least thirty people who are familiar with the Respondent. Ms. Pruitt believes that the Respondent's reputation for truthfulness and honesty is very good. (Tr. 17). Ms. Pruitt father purchased one of the sham investments. (Tr. 18). He invested \$2,000 and has not received his money back. (Tr. 18). According to Ms. Pruitt, her father believed that the Respondent was at a vulnerable age and she was a follower rather than a leader. (Tr. 19).

13. Teresa Weber also testified in support of the Respondent. (Tr. 23, *et seq.*) Ms. Weber is a neighbor and friend of the Respondent. (Tr. 24). She works as a customer service representative for residential customers of SBC. (Tr. 24). She invested in the investment scheme. (Tr. 24-25). She did not, however, press charges against the Respondent. (Tr. 25). Ms. Weber graduated from high school with the Respondent's ex-husband. (Tr. 25). They have been friends for nearly fifteen years. (*Id.*). Ms. Weber believes that the Respondent's reputation for truthfulness and honesty in the community is very good. (Tr. 25-26). She would feel comfortable having the Respondent review confidential personal financial information. (Tr. 26). The Respondent has repaid Ms. Weber for her investment in the scheme. (Tr. 32). She offered to return that money to the Respondent but the Respondent declined. (Tr. 33).

14. Angela Nicole Steele testified in support of the Respondent. She has known the Respondent for twelve years and has been good friends with her for seven or eight years. (Tr. 35). She is currently employed by Nations Lending Service, a title company. (Tr. 35-36). She participates in approximately 100 loan closings every month and is a processor of loan packages for those closings. (Tr. 36). Ms. Steele believes that the Respondent has a good reputation in the community for truthfulness and honesty. (Tr. 38). Ms. Steele acknowledged that a small number of people would have the belief that the Respondent has a bad reputation in the community. (Tr. 38-39).

15. The final witness to testify for the Respondent was Chad Ballard. (Tr. 42, *et seq.*). At the time of the hearing in this matter, Mr. Ballard was 33 years of age and is the former husband of the Respondent. (Tr. 42-43). The Respondent acknowledged the problems with the divorce and the Respondent's criminal matters. (Tr. 42-44). He has no problem with the way the Respondent has been raising their son. (Tr. 44).

16. Mr. Ballard's brother and sister-in-law invested in the pyramid scheme. (Tr. 49). His brother no longer speaks to the Respondent. (Tr. 45-46). He believes that she has a good reputation in the community for truthfulness and honesty. (Tr. 46).

17. The record before the Hearing Officer shows unequivocally that the Respondent has been convicted of a felony offense of operating a pyramid scheme. This kind of conviction goes to the heart of the financial services and securities industries. Moreover, the conviction occurred in 2002 and involves activities that occurred in 2000, both only a few short years before the hearing in this matter. While the Respondent was young at the time of her criminal activity and involvement in the pyramid scheme operation, youthfulness and naiveté do not combine to make a perfect defense to that activity. The Respondent remains on probation with the Delaware County Court of Common Pleas and has not yet completed payment of restitution to all victims of her activities.

18. This Hearing Officer is not comfortable recommending that the Respondent be allowed to be licensed as a loan officer in Ohio. The residential loan industry thrives because it is both based on openness and honesty while at the same time based on the strictly-held idea that sensitive financial information is held in utmost confidence. The fact that the conviction occurred in the recent past, the fact that the conviction is in the direct financial-related industry combine to convince this Hearing Officer that the Division has met its burden of proof to show that the Respondent's character and 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.

19. Further, the Hearing Officer concludes that the Respondent has not met her burden of proof to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing that she will commit such an offense again. While the Respondent has presented witnesses with long-standing friendships to her, there is also evidence in the record that the Respondent's reputation in the community is not unanimously high.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,



Kenneth R. Cookson
Hearing Officer
September 13, 2004