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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0270-LOD  
: :  
FRANK S. PREMURA : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued October 4, 2004

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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 June 16, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Frank S. Premura ("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 failed to disclose criminal background information on his loan officer license application. 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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose a criminal conviction on his application, 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).

Monica Rausch, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, the Respondent agreed to State's Exhibits A through H being admitted into the record and considered by the Hearing Officer in this case. Respondent's Exhibits 1 through 3 were admitted into the record. After the hearing, a telephone conference was held with Ms.

Rausch, Respondent and the Hearing Officer on October 4, 2004. During the call, the Division and the Respondent agreed to stipulate to the fact that Respondent's employer is now Nations Lending Corporation formerly known as Nationwide Financial Services Group, Inc. The name change took place after the hearing.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on February 27, 2004. Respondent's hearing request was received by the Division on March 18, 2004. The Division scheduled the hearing for March 29, 2004, and continued it indefinitely upon its own motion. The hearing was then set for June 16, 2004. 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.**

1. Respondent is an individual who seeks to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. 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).
3. On December 4, 2003, Respondent signed a Loan Officer Application ("Application") which was then submitted to the Division. The Division received the Application on December 8, 2003. (State's Exhibit A.)
4. Respondent answered "No" to Question 5 on the Application, which 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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

(Application, State's Exhibit A, emphasis and boldface type in original.)

5. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
6. Respondent's background check revealed possible criminal convictions in 2002. In response to the Division's inquiry, the Respondent submitted certified copies of Parma Municipal Court records confirming that he was convicted of disorderly conduct on two occasions in 2002 and attempted vandalism because of one of those incidents. He was 18 when the events underlying all of the convictions took place. (State's Exhibits A, B, and C.)

7. Respondent explained that one disorderly conduct conviction was for drinking while underage. (State's Exhibit E; TR at 21-22.)
8. His other convictions also resulted from underage drinking and involved one incident. Respondent was camping and drinking with friends when things got out of hand. They started throwing rocks at a nearby traffic light. As a result, Respondent was arrested and later convicted of disorderly conduct and attempted vandalism. Respondent no longer associates with the people he was with that night. (State's Exhibit E; TR at 21-22.)
9. Respondent, now almost 21, has had no other brushes with law except for a pending jaywalking ticket. (TR at 23, 34.)
10. Respondent testified quite earnestly about the steps he has taken to improve his life and to avoid any situations like the ones that led to the convictions. (Respondent's Exhibit 2; TR at 43-44.)

**D. Respondent's Failure to Disclose Convictions on Application.**

11. The Respondent did not disclose the disorderly conduct and attempted vandalism convictions on his Application. (State's Exhibit A.)
12. He consistently and credibly explained that he read, "[e]xclude minor misdemeanor traffic and parking offenses" in Question 5 as excluding minor misdemeanors from being disclosed. He read it as if there was a comma after the word "misdemeanors" and before the word "traffic." Therefore, he thought he had nothing to disclose on the Application. (State's Exhibit E; Respondent's Exhibit 2; TR at 12, 24-26)
13. The compliance officer at the mortgage broker where Respondent worked when he filled out the Application advised Respondent not to put down anything minor. (TR at 25-26.)
14. The Hearing Officer finds that the "[e]xclude minor misdemeanor traffic and parking offenses" language in Question 5 could be confusing. The Respondent read the language in Question 5 as he testified, and, based upon his understanding of the question, answered it truthfully. He made a mistake but he did not try to hide the convictions from the Division or make any statement that he thought or knew was false on the Application. The Respondent did not omit any information that he thought or knew he should disclose from his Application.
15. Respondent submitted a letter apologizing for misunderstanding the question and testified that he was sorry about the confusion. At just twenty, he has learned what some never do - to apologize for mistakes and do your best to correct the situation. (Respondent's Exhibit 2; TR at 43.)

**E. Respondent's Reputation and Character.**

16. Respondent currently works for Nations Lending Corporation, formerly known as Nationwide Financial Services Group, Inc., where he is in training to become a loan officer. He currently handles phone calls and schedules appointments. He is also taking course work at Cuyahoga Community College on real estate law and real estate finance. (TR at 30-32.)
17. Frank Cimperman, Respondent's supervisor, provided a letter on behalf of Respondent. Mr. Cimperman has known Respondent for four years and worked with him for over one year. He is training Respondent to become a loan officer. He states that Respondent is honest and trustworthy with clients. Respondent has a good work ethic and is efficient. Mr. Cimperman has received compliments from customers about Respondent's demeanor and his handling of phone calls. Mr. Cimperman's high opinion of the Respondent is evident from this closing to his letter: "In a business where credibility and integrity runs at a premium, Frank Premura would be an asset to the industry." (Respondent's Exhibit 1; TR at 36.)
18. Steven J. Weixel, Respondent's former employer, also provided a letter on behalf of Respondent. Mr. Weixel is a principal at ABC Mortgage Company where Respondent worked before moving to his current position. At ABC Mortgage Respondent did telemarketing and started training to become a loan officer. Mr. Weixel expressed that Respondent is responsible and "will be a reliable, responsible loan officer." Mr. Weixel is aware of the criminal offenses involved and believes that those problems are in Respondent's past. (Respondent's Exhibit 3; TR at 29, 38.)
19. The two letters were identified by the Respondent at the hearing. The authors of the letters were not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, Respondent's Exhibits 1 and 3 were considered but afforded less weight than they would have been if the respective authors had been available for cross-examination.
20. The Hearing Officer found Respondent to be honest and truthful at the hearing. Although it has not been long since the convictions, the events leading to them were merely youthful transgressions. None of the convictions involved circumstances that reflect on Respondent's honesty or ability to comply with the Mortgage Broker Act today. Proof of these convictions and Respondent's mistake on Question 5 do not prove that he is unfit to be a loan officer.

21. The Respondent's testimony and the letters provided by others establish that he is considered to be honest, trustworthy, and of good character. They establish that he now conducts himself in the community and in the workplace in a manner that commands the confidence of the public and warrants the belief that his business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been 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 the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. 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:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

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(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)(2) and (5).

3. Respondent was convicted of disorderly conduct and attempted vandalism, minor misdemeanors, in 2002.
4. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application. The Respondent did not make a substantial misrepresentation when he responded to Question 5 on the Application. He misread it and answered truthfully based upon his understanding of the question.

5. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law. The Respondent did not make a false or misleading statement of a material fact when he responded to Question 5 on the Application. He misread it and answered truthfully based upon his understanding of the question.
6. 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. That Section does not require a conviction for disorderly conduct or a conviction for attempted vandalism to be disclosed on an application for a loan officer license. Therefore, the Respondent did not violate Ohio Revised Code Section 1322.07(B) by omitting a statement required by state law from his Application.
7. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "improper, fraudulent, or dishonest dealings." Respondent misread a confusing question and answered truthfully based upon that misreading of the question. These activities alone do not amount to engaging in "improper, fraudulent, or dishonest dealings" for the purposes of R.C. 1322.07(C).
8. There is no basis for establishing any violations of R.C. 1322.07(A), (B) or (C) by the Respondent.
9. The Division, having failed to establish any violation of R.C. 1322.07(A), (B), or (C), has likewise not established any lack of compliance with R.C. 1322.01 through 1322.12 of the Revised Code. Therefore, the record only supports a conclusion that Respondent complies with R.C. 1322.01 through 1322.12 and meets that condition required for licensure by 1322.041(A)(2).
10. The Respondent admitted that he made a mistake while reading the application. The misdemeanor convictions involved and the fact that the Respondent misread a confusing question do not prove that the Respondent is not fit to be a loan officer. He made a mistake, admitted it, and apologized for it. The Respondent's testimony and the letters he submitted establish that he is considered to be honest, trustworthy, and of good character. They establish that he now conducts himself in a manner that commands the confidence of the public and warrants the belief that his business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

### III. RECOMMENDATION

The Respondent has met the conditions set forth in Ohio Revised Code Section 1322.041(A)(2) and (5). Therefore, I respectfully recommend that the Superintendent of the Division of Financial Institutions issue Respondent a loan officer license pursuant to R.C. 1322.041.

Respectfully submitted,

Janě Stempel Arata  
Administrative Hearing Officer  
October 4, 2004