

IN THE MATTER OF: : CASE NO. 04-0506-LOD  
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**Paul N. White** : James J. Lawrence, Hearing Officer

## I. FINDINGS OF FACT

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 3:00 p.m. on February 28, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Paul N. White (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of driving under the influence in 2003 and that he failed to disclose that conviction on his loan officer application filed in June of 2004. Therefore, the Division asserts 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:

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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);

2. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose a criminal conviction on his loan officer application.

Emily Smith, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent did not appear at the hearing without explanation for his absence. At the hearing, State's Exhibits 1 through 7 were admitted into the record.

#### **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on December 20, 2004 by certified mail, return receipt requested. (Exhibit 4.) Respondent's hearing request was received by the Division on January 13, 2005. (Exhibit 5.) The Division scheduled the hearing for January 25, 2005 but, on its own motion, continued the hearing to February 28, 2005. The Division sent notices of the hearings by ordinary mail to the same address at which the Respondent received the NOH. (Exhibits 6 & 7.)

#### **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on June 21, 2004. (Exhibit 1.)
2. Question 5 of that application asked the following question:
  5. 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 (sic) are criminal offenses.) (Emphasis in original.)
3. In response to Question 5, the Respondent answered "No." (Exhibit 1.)
4. Respondent signed the application on June 10, 2004 before a notary public. Directly above the applicant signature line, the application states:  
"Being first duly cautioned, I hereby swear or affirm that I have completed

the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge.” (Exhibit 1.)

5. As part of the application process and pursuant to R.C. 1322.031 (B), the Division conducted a criminal background check which apparently revealed that the Respondent had been charged with burglary in 2002 and driving under the influence in 2002. By letter dated July 15, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and certified copies of the journal entries evidencing the disposition of the cases. (Exhibit 2.)
6. The Respondent submitted a certified copy of a Judgment Entry from the Hamilton County Municipal Court in case number 02 CRA 10188 showing that the Grand Jury chose to ignore the charge of burglary on April 29, 2002. The Respondent also submitted a certified copy of a Judgment Entry from the Hamilton County Municipal Court in case number 02 TRC 09577 A showing that he was convicted of driving under the influence in violation of R.C. 4511.19 (A) (1) on January 14, 2003. (Exhibit 3.)
7. In an affidavit sworn and subscribed to on July 26, 2004 and filed with the Division on July 27, 2004, the Respondent explained that he did not disclose the conviction on his loan officer application because he failed to completely read Question 5. He said that he did not have any intention to deceive the Division by failing to report the incident. (Exhibit 3.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdictional and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer Application.**

1. R.C. 1322.041 (A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met. The NOH states the Division intends to deny the Respondent’s loan officer application because the Respondent has not met two of these conditions.

2. R.C. 1322.041 (A) (5) provides that the Superintendent shall issue a loan officer license if the Superintendent finds 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 the Ohio Mortgage Broker Act. The NOH states that the 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). The Division bases this finding on the fact that the Respondent failed to disclose the conviction on his loan officer application.
3. When asked about his criminal record in Question 5 of the application, the Respondent answered "no" even though he had been convicted of driving under the influence. The Respondent contends that he answered this question incorrectly because he failed to completely read the question. This explanation is not credible. Question 5 itself is not long, only twenty-seven words and just over one and a half lines on the application. It asks if the applicant has ever been convicted of a criminal offense. The two sentences of instructions that follow the question are also short. The first instructs the applicant to exclude minor misdemeanor traffic and parking offenses. The second specifically reminds the applicant that DUIs and DWIs are criminal offenses. Even if, as the Respondent asserts, he failed to read the second instruction reminding him that a DUI is a criminal offense, he does not offer any explanation as to why he thought that a DUI was not a criminal offense. The Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that the 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).
4. R.C. 1322.041 (A) (3) provides that the Superintendent shall issue a loan officer license if the Superintendent finds the applicant complies with R.C. 1322.01 to 1322.12. The NOH states that the Division intends to deny the Respondent's loan officer application because the Respondent's failure to correctly answer Question 5 of the application violated R.C. 1322.07 (A), (B) and (C). R.C. 1322.07 provides:

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:

(A) Obtain a certificate of registration or license through any 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.

(B) Make any 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.

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

5. R.C. 1322.031 (A) (4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense, other than minor misdemeanor traffic and parking offenses, in question 5 of the application. The Respondent's conviction was both a material fact and a statement required by state law.
6. When the Respondent incorrectly answered Question 5 of the loan officer application by failing to disclose the conviction, he misrepresented a material fact, he omitted a statement required by state law and engaged in improper dealings with the Superintendent in violation of R.C. 1322.07(A), (B) and (C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with the requirement of R.C. 1322.041 (A) (3).
7. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may refuse to issue a loan officer license if he finds either a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

### **III. RECOMMENDATION**

The Respondent's failure to disclose his conviction on his loan officer application demonstrates that his character and general fitness do not command the confidence of the public and warrant the belief that the business will be

operated fairly and in compliance with the purposes of the Ohio Mortgage Broker Act. Additionally, the Respondent's failure to disclose the conviction constituted a violation of R.C. 1322.01 to 1322.12, specifically R.C. 1322.07 (A), (B) and (C). Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and R.C. 1322.10.

Respectfully Submitted,

James J. Lawrence  
Hearing Officer  
April 13, 2005