

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: : CASE NO. 04-0220-LOD
: :
GARY R. STREILY : JANE S. ARATA, HEARING OFFICER

04 APR -6 PM 1:27

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued April 6, 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 March 9, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Gary Streily ("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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose deception to obtain dangerous drugs, menacing and negligent assault convictions 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 the convictions 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).

Paula Luna Paoletti, Deputy Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Diane Wagenbrenner, a Staff Attorney 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 8 were admitted into the record. The Division is to redact any Social Security Numbers from those exhibits. Social Security Numbers are not relevant to any issues in this proceeding and the protection of them is key to the prevention of identity theft.

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 6; TR at 11.) (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 7; TR at 12.)
2. Respondent's hearing request was received by the Division on February 4, 2004. (State's Exhibit 7.)
3. The Division scheduled the hearing for February 13, 2004, and continued it until March 9, 2004. On February 6, 2004, the Division sent a letter to Respondent notifying him of the date, time, and location of the hearing. (State's Exhibit 8.) That letter was sent by regular mail to the Respondent at the address he provided to the Division in his Application and where he received the NOH. The letter was not returned to the Division as undeliverable. (State's Exhibits 1, 7 and 8; TR at 12-13.)
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 13.)
5. The hearing was held on the date and at the location set forth in the Division's February 6, 2004 letter. The hearing started 20 minutes after the time set forth in that letter to make sure that the Respondent was not running late. (TR at 1, 4.)

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

6. Respondent is an employee of Peoples Community Mortgage Banc who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibits 1 and 2; TR at 7-9.)
7. 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).
8. On April 12, 2002, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on April 18, 2002. (State's Exhibit 1; TR at 7-8.)

9. Respondent's signature on the Application is notarized. (State's Exhibit 1.) 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." (State's Exhibit 1.)

10. 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 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 1; TR at 8.)

11. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).

12. Respondent's background check revealed possible convictions for deception to obtain dangerous drugs in 1994, menacing in 1994, and negligent assault in 1998. Certified copies of Franklin County Court of Common Pleas and Municipal Court records confirming the convictions were submitted at the hearing. (State's Exhibits 3, 4, and 5; TR at 8-10.)

13. Respondent sent a letter to the Division explaining the convictions as follows:

In regards to my 3 charges, the one in 1993, was probably the most foolish decision I have ever made, in trying to obtain pain medication from a dentist. The incident in 1994 was caused by someone, who I did work for, decided not pay his bill, which resulted in a verbal confrontation, and no physical confrontation was ever applied. The incident from 1998 was the one which awakened me to the fact I might need counseling, is when me and my current wife, got into an argument and I pushed her over. She always told me that she would not tolerate this kind of behavior and she did not.

(State's Exhibit 2; TR at 8-9.)

14. After the 1998 conviction, Respondent gave up alcohol, took anger management classes, and improved his relationship with his wife. (State's Exhibit 2.)

15. The Respondent did not disclose the convictions for deception to obtain dangerous drugs, menacing and negligent assault on his Application. (State's Exhibit 1; TR at 8.)

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 6, 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 less than one month before.
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 author of the February 6, 2004 hearing notice letter identified the letter and testified that it was sent to the Respondent by regular mail.
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 and 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 1322.041(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.

(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).

9. Respondent was convicted of deception to obtain dangerous drugs, menacing and negligent assault.
10. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
11. 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.
12. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions, was a substantial misrepresentation in his application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions, in violation of R.C. 1322.07(B).
13. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
14. Respondent has engaged in improper and dishonest dealings in violation of R.C. 1322.07(C) by engaging in the activities resulting in his criminal convictions and also by falsely indicating that he did not have any criminal convictions on his loan officer license application.
15. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).

16. Respondent's criminal convictions and his failure to disclose them on his Application, establish that his 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 Ohio's Mortgage Broker Act. Therefore, Respondent has not established the licensing prerequisites set forth in 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)(2) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041.

Respectfully submitted,



Jane Stempel Arata
Administrative Hearing Officer
April 6, 2004