

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

DIVISION OF FINANCIAL INSTITUTIONS
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IN THE MATTER OF: : CASE NO. 04-0170-LOD
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Samuel L. Brimmer : James J. Lawrence, Hearing Officer

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OVERSEER OF FINANCIAL INSTITUTIONS

ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
July 29, 2004

I. FINDINGS OF FACT

A. Background

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 July 1, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Samuel L. Brimmer (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 theft in 1996. 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:

1. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041 (A) (3);
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).

Martine Jean, 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 either personally or in writing. At the hearing, State's Exhibits 1 through 10 were admitted into the record. The Respondent presented no Exhibits for admission into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on January 22, 2004. (Exhibit 4A.) The U.S. Postal Service delivered the NOH by certified mail to the Respondent on March 25, 2004. (Exhibit 7.) The Division received the Respondent's hearing request on March 30, 2004. (Exhibits 8A & 8B.) The Division scheduled the hearing for April 12, 2004 and, on its own motion continued it to July 1, 2004. The Division sent notices of the hearings by ordinary mail to the address reflected on the Respondent's request for hearing. (Exhibits 9 & 10.)

C. Respondent's Loan Officer Application

1. The Respondent filed a Loan Officer Application on May 3, 2002. (Exhibit 1.)
2. The Loan Officer Application states that Respondent was employed at Westchester Mortgage.
3. Question five 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 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?

4. In response to Question 5, the Respondent answered "Yes." The Respondent provided the following details in his application:

"On my future sister in law back in 95 I pranked her by hiding her ring. She took it the wrong way. It was a misdemeanor theft done as a joke. I plead guilty. There was no jail time, only court cost. She was given the ring back the day after the joke, but it still went to court." (Exhibit 1; TR at 9.)

5. A certified copy of a docket sheet in case no. 96CRB00131, Western District Court of Allen County, Ohio shows that the Court found Respondent guilty of theft in violation of R.C. 2913.02(A)(1). The Court fined

~~Respondent \$100.00, sentenced him to two days in jail, sentence suspended on conditions that he commit no similar offense for 2 years and that he make restitution. (Exhibit 3B; TR at 12.)~~

D. Respondent's Reputation and Character.

1. The Division mailed the NOH on January 22, 2004 to the Respondent at the address reflected on his Loan Officer Application. (Exhibit 4A.) The U.S. Postal Service returned that mail on February 17, 2004 to the Division marked "Returned to Sender ATTEMPTED, NOT KNOWN."¹ (Exhibit 4B; TR at 13,14.)
2. On February 20, 2004, the Division received a letter by facsimile under the letterhead of Westchester Mortgage Services of Toledo, Ohio. The letter states that the Respondent has not been an employee of Westchester Mortgage Services, Inc. since October 12, 2002. (Exhibit 5; TR at 14-15.)
3. Public records available from the Ohio Department of Rehabilitation and Correction indicate that the Respondent was admitted to the Allen Correctional Institution on July 29, 2003 for a term of four years and that the committing county was Fulton. (Exhibit 6A; TR at 16-17.)
4. The Fulton County Prosecutor faxed the Division a copy of a Judgment Entry from the Court of Common Pleas of Fulton County, Case No. 03CR43, journalized on July 24, 2003. The Judgment Entry indicates that the Respondent had been convicted of Complicity to Commit Aggravated Arson in violation of R.C. 2923.03 and R.C. 2902.02(A)(2), a felony of the second degree, Complicity to Commit Arson in violation of R.C. 2923.03 and R.C. 2909.03(A)(2), a felony of the fourth degree, and Insurance Fraud in violation of R.C. 2913.47(B)(1), a felony of the third degree. The Judgment Entry further indicates that the Court sentenced the Respondent to a definite term of four years at the Ohio Department of Rehabilitation and Correction. (Exhibit 6B; TR at 17-18.)
5. The Respondent submitted no information that suggests his activities and employment record since the conviction show that he 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.

¹ The Division subsequently served the NOH by certified mail addressed to P.O. Box 45701, Lima, Ohio 45802, the address of the Allen Correctional Institution. (Exhibit 7; TR at 19-20.)

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 License Application.

1. R.C. 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 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.
2. 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 of the Division of Financial Institutions (Superintendent) requires.
3. R.C. 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent finds that certain conditions are met, including:

* * *

(3) The applicant has not been convicted of or pleaded 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 an offense, the applicant has proven 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 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 sections 1322.01 to 1322.12 of the Revised Code.

4. R.C. 1322.10 provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119., the Superintendent may, among other things, refuse to issue a loan officer license if he finds a conviction of or guilty plea 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.

DISCUSSION

1. The Respondent was convicted in the Western District Court of Fulton County of the offense of theft in violation of R.C. 2913.02 (A) (1). R.C. 1322.041 provides, among other things, that since Respondent was convicted of a criminal offense involving theft, the Superintendent cannot issue a loan officer license unless the Respondent proves by a preponderance of the evidence, that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again.
2. The Respondent has not submitted any evidence to show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again. The Respondent's convictions for further criminal offenses while his loan officer application was pending establish that he is not honest, truthful and of good reputation and that there is a basis in fact for believing that he will commit such an offense again.
3. The Respondent has not proven to the Superintendent by a preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A) (3).
4. The Respondent's conviction for theft in 1996, as well as his subsequent convictions in 2003, 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 R.C. 1322.041(A) (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

James J. Lawrence
Hearing Officer
July 29, 2004