

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:

Linda D. Spear
221 Bodmann Street
Cincinnati, OH 45219

:
: Case No. 04-0231-LOD
:
: Terrence O'Donnell, Hearing Examiner
:

05 JAN 18 11:12:28

HEARING EXAMINER'S
REPORT AND RECOMMENDATION

A. REPORT

I. Introduction

This case came to be heard on June 10, 2004. Appearing was Respondent Ms. Linda D. Spear, represented by her attorney, Mr. Andrew W. Harmon, and accompanied by her character witness, Mr. Kirk Mudd.

Assistant Attorney General Martine Jean represented the Department of Commerce's Division of Financial Institutions ("the Division").

After due consideration of the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C 1322.01 to O.R.C. 1322.12, the Division is charged with the responsibility to accept applications for Loan Officer licenses and determine whether applicants meet the statutory requirements.
2. On March 26, 2002, Ms. Spear, employed by Motion Financial, applied for a license to be a Loan Officer. See Loan Officer Application, State's Exhibit 3.

3. On January 23, 2004, the Division issued a Notice of Intent to Deny a Loan Officer's License to Ms. Spear. See Notice, State's Exhibit 1.
4. The Division stated in its Notice of Intent to Deny Loan Officer's License that in or around 1985 and in or around 1989, Ms. Spear was convicted of "passing bad checks." See Notice, State's Exhibit 1.
5. Ms. Spear did not disclose these convictions on her loan officer application. As a result, the Division also alleges that she knowingly provided false information in a sworn statement and that she provided "untruthful" information to the State. See Notice, State's Exhibit 1.
6. As a result, the Division stated that in its Notice of Intent to Deny Loan Officer License that Ms. Spear has not proven she is honest, truthful, and of good reputation; that there is no basis in fact for believing she will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities; that her character and general fitness do not command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act; that she made a substantial misrepresentation in a license application in violation of law; that she made a false or misleading statement of a material fact required by state law; and that she engaged in conduct that constitutes improper, fraudulent, or dishonest dealings. See Notice, State's Exhibit 1.
7. On February 9, 2004, Ms. Spear requested a hearing to appeal the Division's determination. See Letter, State's Exhibit 1.

b. Conviction for Passing Bad Checks (1985)

8. At the hearing, the State offered into evidence documentation indicating Ms. Spear plead "no contest" to and was convicted of passing bad checks on September 20, 1985. See

Hamilton County Municipal Court Entry, State's Exhibit 5A. Ms. Spear acknowledged the conviction at the hearing. See Transcript, p. 32.

9. Ms. Spear described the circumstances surrounding her offense, which occurred when she was in her mid-twenties. "I was a newly-divorced mom with two small children, and I had a tight budget. I was not receiving child support, not on ADC and my budget was just tight. When I wrote the check, I thought there was money in the bank." See Transcript, p. 32. She also testified that she "paid the check off" before she went to Court, where she was assessed a fine and costs. See Transcript, p. 33.

c. Conviction for Passing Bad Checks (1989)

10. At the hearing, the State offered into evidence documentation indicating that Ms. Spear was convicted of passing bad checks on April 10, 1989. See City of Springdale Docket Sheet, State's Exhibit 5B. Ms. Spear acknowledged the conviction at the hearing. See Transcript, pp. 34-35.
11. Ms. Spear testified that the circumstances surrounding this conviction were similar to her previous one. She was working as a secretary, and her budget was "tight." She wrote a check for approximately \$57.00, and it bounced. She satisfied the debt before her mayor's court appearance, and plead "no contest" to the charges. See Transcript, pp. 34-35. The Court assessed a fine and costs. See Transcript, p. 35, and Docket Sheet, State's Exhibit 5B.

d. Failure to Disclose Convictions on Loan Officer Application

12. In response to Question 5 on the Loan Officer Application, asking:

"[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or plead 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,"

Ms. Spear checked the box indicating “no.” See Application, State’s Exhibit 3.

13. At the hearing, Ms. Spear testified that at the time she made her application with the Division, she did not believe her “no contest” pleas dating to the 1980’s actually led to criminal convictions on her record. See Transcript, p. 33, 36.
14. She also indicated that her supervisor had advised her that the Division was focused on felony convictions as opposed to misdemeanors. See Transcript, p. 17.
15. She acknowledged on cross-examination that the documentation from the court system indicated she indeed was convicted of passing bad checks twice. She also acknowledged during questioning that the process for resolving these matters suggested she was charged with a criminal offense:

Q: “My question was: If you had to turn yourself into the police department, get fingerprinted and photographed, would that not indicate to you that a criminal offense was involved?”

A: “I guess now that you reword it like that, yeah, but at the same time I paid the check before I got to court and pled “no contest” without an attorney and I thought that was it. That’s what, 25 year[s] old, 20 years ago.” See Transcript, p. 25.

e. Personal Testimony

16. Ms. Spear, now 44 years old, testified that she has not had a criminal conviction, including for passing bad checks, since these occurred in the 1980’s. See Transcript, p. 37.
17. She also testified to her significant career development since then, including the numerous ways in which she is involved in her community, and how she shares her professional knowledge and skills with others:

I’m also a Board member with Seize, which is a program in the underserved community to help people become employed and educated. I also mentor with 20 girls between the ages of 12 and 18, and that’s just on how to be an upstanding female and making good decisions in life. I’m a board member with the Christian Methodist Episcopal Second District Community

Development Corporation. I'm also a member of the New Friendship baptist Church... I've had write-ups in the Cincinnati Enquirer in reference to what I have done as far as a loan officer and providing loans to the African American community.... I have a campaign called Hood Ridge (*sic*) or Plane Ridge¹ (*sic*) which I go into the high schools and teach kids about credit before they go to college... I've been invited to Moore House (*sic*), Spelman, University of Arkansas, the University of California. I've been invited to Canaan Missionary Baptist Church in Missouri to speak to the children there as well in reference to credit... I'm getting invitations from all over the U.S." See Transcript, pp. 48-49.

f. Character Witness

18. Mr. Kirk Mudd, owner of Christian Business Services, testified that he met Ms. Spear through their church pastor and now provides accounting services to her business. See Transcript, p. 58. He stated that the church was starting a development corporation which required his services, and that Ms. Spear was "brought in because of her energy and expertise in working with young people in the community." See Transcript, pp. 59-60. He also testified that as her accountant, he finds all of her business practices to be honest and truthful. See Transcript, pp. 60-61.

g. Letters of Reference

19. Ms. Spear provided for the record, and the Hearing Examiner reviewed, an extraordinary number of reference letters from clergy, church personnel, colleagues, business associates, Chamber of Commerce staff, customers, and volunteer organizations. She also included information documenting various awards she has received and correspondence from participants in her financial seminars and media sources covering the same. See Respondent's Exhibit A.

¹ The Hearing Examiner understood the title of the seminar to be "Hood Rich, or Just Plain Rich?" See also

III. Conclusions of Law

a. Statutory Analysis

20. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial

Institutions shall license loan officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041.

21. The criminal offenses incorporated by reference are:

“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.” O.R.C 1322.031 (A)(2). Emphasis added.

22. Based on the documentation offered by the State (State’s Exhibits 5A and 5B), and Ms.

Spear’s admissions at the hearing, the Hearing Examiner finds that Ms. Spear was convicted of passing bad checks in 1985 and 1989.

23. Once the conviction is established, the statute allows for a burden-shift in which Ms. Spear assumes the burden of proving by a preponderance of the evidence that despite her convictions, she otherwise should receive a loan officer’s license.

24. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part reads:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...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.” O.R.C. 1322.041 (A)(3).

25. Though the statute appears to contemplate a single conviction, Ms. Spear has two convictions which each could theoretically be analyzed under the statutory framework. But as the convictions took place so long ago, were so close in time, and were for the exact same offense, for our purposes it is appropriate that they be grouped together. The analysis is substantially similar for each.
26. The convictions are sixteen and twenty years old. The statute requires a determination of whether, since then, her activities and employment record show she is honest, truthful, and of good reputation, and that there is no basis in fact to believe she will commit such an offense again.
27. In that regard, the record shows Ms. Spear has not acquired another conviction since 1989. This lengthy period of time free of recidivism is strong evidence that she will not engage in such conduct in the future.
28. As to her activities demonstrating honesty and truthfulness, Ms. Spear's representations on her loan officer application are relevant to this analysis. If Ms. Spear deliberately concealed her convictions from the Division in order to gain a license, this would harm her ability to demonstrate that her activities since her convictions have been honest.
29. But all things considered, she makes a persuasive case that she believed that her passing bad checks in the 1980's did not result in convictions that required disclosure. Her testimony concerning her memory of these aged offenses, in combination with her lack of understanding of the legal effect of a "no contest" plea, was credible.
30. The Hearing Examiner is mindful of Ms. Spear's testimony that she was given incorrect information concerning whether misdemeanors (along with felonies) should be disclosed. The State raised questions about whether this testimony is wholly consistent with Ms.

Spear's testimony concerning her mistaken understanding of the legal effect of her "no contest" pleas. The State in effect argues that, "Ms. Spear states that she did not disclose her two convictions because 1) she did not believe she was ever convicted, and 2) because she believed she was convicted, but that her convictions were misdemeanors, and that the application only required the disclosure of felonies. Which is it?" This is an understandable concern.

31. But the Hearing Examiner finds that Ms. Spear's testimony concerning the "felony versus misdemeanor" issue did not contradict her testimony concerning the disposition of her cases. It supplemented it. On balance, the testimony dovetailed such that she makes a persuasive case that her failure to disclose her offenses was an honest mistake, due to a reasonable misunderstanding about what was reflected on her record and what the application was asking of her.

32. Having resolved that critical question in Ms. Spear's favor, the Hearing Examiner finds that she has demonstrated through her activities and employment record since the time of her convictions that she is honest, truthful, and of good reputation. She has also proven there is no basis in fact to believe he would commit a similar offense in the future.

33. The second part of the statute states:

"The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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." O.R.C. 1322.041 (A)(5).

34. In assessing Ms. Spear's character and general fitness to receive a license, the nature of her offenses must be considered. Passing a bad check, while not altogether uncommon, is

nonetheless an irresponsible financial practice that can unjustly enrich the offender.

35. But Ms. Spear's convictions for passing bad checks, while not taken lightly, also must be viewed in context. Her testimony concerning her then-recent divorce, and ongoing challenge to feed her family, was credible. In addition, that she made her creditors whole before her court appearances bolsters her claim that these bad checks were the result of a tight budget and mathematical miscalculations, not an attempt to con business owners.
36. In addition, a significant amount of time has elapsed since these convictions, and the record shows she has spent the last sixteen years free of such conduct. This strengthens her case that she has regained the public trust and has the ability and the will to inspire the public confidence. Her clean record also speaks to her character.
37. In addition, her personal testimony was also very credible. The Hearing Examiner appreciated her ability to go beyond self-serving adjectives regarding her positive conduct since her convictions. She provided concrete, specific examples of how her character and general fitness for a license manifests itself through her efforts in the industry and community-at-large. Her testimony about educating young people about the importance of good credit was particularly powerful in this regard. It demonstrated that she has learned from her own past financial challenges.
38. Her letters of reference supported this testimony. A large volume of letters, by itself, does not prove one's fitness for licensure. However, in Ms. Spear's case, her references added considerable weight to her personal testimony concerning these community projects. That a great many of the authors allude to these outreach efforts gave Ms. Spear's personal testimony an added layer of credibility.
39. Mr. Mudd's testimony, which also appeared sincere, corroborated this view of Ms. Spear's

character and general fitness.

40. Further, her failure to disclose her passing bad checks convictions to the Division having been credibly attributed to reasonable mistake, it cannot be said to bear negatively on her character. See Paragraphs 28-31.
41. As to her “general fitness,” a legitimate argument can be raised that this by mistake, even if reasonable, the State could draw an inference that Ms. Spear is unsuitable for a profession in which properly filling out paperwork is a regular duty. However, in Ms. Spear’s case, her mistake was about a legal application, and involved incidents occurring sixteen and twenty years ago. Frankly, any analogy to her current work as a loan officer is a weak one.
42. Ms. Spear has shown her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the intent of O.R.C. 1322.01 to 1322.12.
43. Finally, O.R.C. 1322.07, also cited in the Division’s Notice of Intent to Deny Ms. Spear a license, states that:

“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 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...”

44. The Hearing Examiner finds nothing in this statute to bar Ms. Spear from licensure, as her failure to make a required disclosure was the result of a mistake that was both honest

and reasonable. See Paragraphs 28-31.

B. RECOMMENDATION

45. The Hearing Examiner finds that Ms. Spear has proven by a preponderance of the evidence that that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again; and that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the intent of O.R.C. 1322.01 to 1322.12.
46. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent of the Division of Financial Institutions that Ms. Spear be granted a loan officer's license pursuant to Ohio Revised Code 1322.041.

1/18/05
Date

Terrence O'Donnell
Hearing Examiner