

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Dale M. Shiffman**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0250-LOD**

**FINDINGS OF FACT**

1. On or about November 5, 2003, Dale M. Shiffman ("Respondent" herein) submitted an application and related materials (together with materials relating thereto and submitted by Respondent or it's agent subsequent thereto, accepted by the Ohio Department of Commerce, Division of Financial Institutions, collectively the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a Loan officer as defined in Chapter 1322 of the Ohio Revised Code (a copy of which is attached and incorporated as Exhibit A herein).
2. On or about January 23, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on March 8, 2004. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorneys General Anthony D. Sicilliano, Esq. and Monica L. Rausch. Dianne Wagenbrenner, Esq., staff attorney for the Division, was also present on behalf of the Division.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 12)
5. As of the date of the Application, Respondent was employed by Great American Mortgage Banc, Inc.

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## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a Loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.031 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a Loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the Loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences a serious drug-related conviction in 1985 which unfortunately reflects one of the very criminal offenses which the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). Respondent was forthright in his response to question 5 of the Application in disclosing his criminal history, and providing further information concerning that matter and his life since the conviction. Respondent's record reflects conviction of a serious crime which, upon review, would indicate that Respondent is the very kind of individual which the legislature intended to bar from the mortgage broker practice. The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual which have occurred since the facts which gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the criminal record of Respondent as described in the Notice and Application (Tr. Page 12), and the Respondent presented his own testimony as well as that of his employer and his pastor, together with a number of unsubstantiated written testimonials, all in support of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and that Respondent's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly.

The verbal and written testimony presented by Respondent and others at the Hearing, together with materials submitted by Respondent in conjunction with the Application, evidence an individual who appears to have truly overcome the problems of his past and who has met the burden of proving, by a preponderance of the evidence, that he should be entrusted with the responsibilities of acting as a loan officer under Ohio law in the State of Ohio. The evidence presented by Respondent reflects an individual who has met the burden of overcoming his criminal history as provided by Ohio Revised Code Section 1322.041(A)(3), and whose character and general fitness will, and does now, command the confidence of the public and warrant the belief that the business will be operated honestly and fairly, consistent with Ohio Revised Code Section 1322.041(A)(5).

Subsequent to his single criminal conviction nearly 20 years ago and release from incarceration, Respondent has maintained a steady and unblemished work record in the financial services industry with access to cash and personal financial information (Tr. Pages 14, 17, 18, 22, 35); has taken responsibility for three teenage sons (Tr. Pages 14, 33); has engaged actively in church and community affairs including coaching activities (Tr. Pages 14, 22, 23, 32, 33, 36, 37); is regarded as honest and trustworthy in the community (Tr. Pages 23, 35); and has generally exhibited the personal and professional qualifications which would appear to be the very kind of turn-around which the legislature envisioned in providing applicants the ability to overcome a criminal past. His change, and the concomitant lack of need for ongoing court oversight, was also reflected by his early release from prison and early termination of parole requirements. (Tr. Pages 16) From his family activities to his church activities, community service activities, and business relationships with a number of financial services organizations, the testimony and evidence indicates that Respondent has conducted his personal and professional life in an honest and truthful manner since the events of his past, with an apparently excellent community and professional reputation. And, based on the evidence presented, Respondent appears to have overcome the unfortunate facts and circumstances which led to his criminal behavior, to become a trusted and respected businessman and participant in church and community matters. It appears from the evidence and testimony presented that Respondent is a contrite and conscientious individual who takes his responsibilities and obligations seriously, and will not likely revert to his problems of the past and disappoint his children, his business colleagues, fellow church parishioners, members of his community, and others who have placed their confidence, faith, and trust in him and in his ability to overcome those problems.

### RECOMMENDATIONS

For the reasons set forth herein, the referenced Application of the Respondent should be approved.

Respectfully submitted,

Jeffery E. Smith, Hearing Examiner

30 April 04

Date