

STATE OF OHIO
DEPARTMENT OF COMMRCE
DIVISION OF FINANCE INSTITUTIONS
CONSUMER FINANCE

CONFIDENTIAL

In re: Korre Branden Gaines :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License of Korre Branden Gaines be denied because Mr. Gaines has been convicted of a criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking, or a criminal offense involving money or securities in violation of Ohio Revised Code Section 1322.031(A)(2) and 1322.041(A)(3) and (5). Mr. Gaines' address for service is 435 North Main Street, Oberlin, Ohio 44074. He is hereinafter referred to as the "Respondent". The Respondent is employed by Magellan Mortgage Corp. (Exhibit 1(A)).

This matter was initiated by the Superintendent of the Division by the issuance on October 2, 2002 of a Notice of Intent to deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter (Exhibit 1(A)).

On October 16, 2002, the Respondent wrote to the Division requesting a hearing. (Exhibit 1(B)). On October 21, 2002, the Division wrote to the Respondent acknowledging receipt of the request for the hearing and scheduling the hearing for October 30, 2002 at 10:00 a.m. on the 21st floor of the Vern Riffe Center, 77 South High Street, Columbus, Ohio and immediately on its own motion continued that hearing to a later date. (Exhibit 1(C)). On December 3, 2002, the Division wrote to the Respondent setting a hearing for Friday, December 13, 2002 at the offices of the Division on the 21st floor of the Vern Riffe Center in Columbus, Ohio. (Exhibit 1(D)). A hearing was held beginning at 9:00 a.m. on December 13 attended by the Respondent as well as representatives of the Division. The Respondent was not represented by counsel at the hearing. Mr. John Izzo, an Assistant Attorney General for the State of Ohio, appeared on behalf of the Division. Also in attendance were Amanda Axtell, an attorney with the Division and Mr. Rob Grieser, Deputy Superintendent for the Consumer Finance area of the Division.

The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceeding.

FINDINGS OF FACT

1. On March 15, 2002, the Respondent filed a Loan Officer Application pursuant to the provisions of Ohio Revised Code Section 1322. (Exhibit 3).

2. At the time of the submission of the Application by the Respondent, he had received the Loan Officer Application Explanation and Instructions. (Exhibit 2, Tr.p. 29).

3. On the application, question 5 provides:

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?

Exhibit 3.

4. In response to question 5, the Respondent answered "No". (Exhibit 3).

5. The Respondent was charged on May 23, 1996 with the theft of a calculus textbook taken from the bookstore at the University of Cincinnati. (Exhibit 4).

6. At the time of his arrest, the Respondent was a freshman at the University of Cincinnati and had begun a week of final examinations. (Tr.p. 14). His calculus book had either been lost or stolen. Id. The Respondent admitted to having stolen the calculus book. (Tr.p. 15; Exhibit 5). The calculus book had a value of \$91. (Exhibit 4).

7. At the time of the arrest, the Respondent had a two year baseball scholarship that was subsequently revoked by the University of Cincinnati and he was released from that school for one full academic year. (Tr.p. 14, 15).

8. On June 13, 1996, the Respondent entered a plea of no contest and was found guilty of theft in violation of Ohio Revised Code Section 2913.02, a first degree misdemeanor. (Exhibit 4). The Respondent was assessed a fine of \$50 plus court costs. (Tr.p. 40).

9. The Respondent was not represented by counsel in connection with the criminal proceeding. (Tr.p. 39).

10. Respondent has had no other criminal offenses other than traffic matters. (Tr.p. 33, 41).

CONCLUSIONS OF LAW

1. The Respondent was convicted of a first degree misdemeanor criminal offense of theft in violation of Ohio Revised Code Section 2913.02, namely a calculus textbook with a value of \$91.

2. The conviction has not been expunged, vacated, modified, appealed or any way disturbed. (Tr.p. 31, 33).

3. The Respondent answered question 5 of the Loan Officer Application, (Exhibit 3), incorrectly, knowing that he had an obligation to answer all questions fully and truthfully. (Exhibit 2).

DISCUSSION

1. Ohio Revised Code Section 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. Ohio Revised Code Section 1322.041 provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted 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 offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment records 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.

3. Following his conviction in 1996, the Respondent left Cincinnati and has been living continuously in Oberlin, Ohio. (Tr.p. 40, 41). Respondent has had no other kinds of arrests since 1996. (Tr.p. 33, 41). He has not been sued. (Tr.p. 41). No complaints have been filed about his work with respect to the subject license application. Id. He worked in an internship program in Miami, Florida for an investment banking firm, Douglas James Securities. Id. The Respondent has lived at the same address, other than his year in Cincinnati since he was a sophomore. (Tr.p. 45). The Respondent submitted a letter of recommendation from Magellan Mortgage Corporation dated December 12, 2002 stating that since the beginning of his employment on September 10, 2001, no disciplinary action has been taken against the Respondent and that there had been no consumer complaints. (Respondent Exhibit 1).

4. In analyzing this situation, this Hearing Officer is asked to determine whether by a preponderance of the evidence the applicant's activities and employment record since his 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 offense again. In analyzing this situation, this Hearing Officer referred to, but was not controlled by, a similar regulatory system. Under Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1789, no person, without the prior consent of the FDIC, is permitted to participate in banking who has been convicted of a crime of dishonesty or breach of trust or money laundering or who has entered a pretrial diversion program in connection with such offense. Section 19 was significantly expanded by the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Crime Control Act). The FDIC has established through a Statement of Policy printed in the Federal Register on December 1, 1998 (Volume 63, No. 230) a mechanism for granting either a blanket exception to the statutory requirement for certain *de minimis* crimes or allowing for a waiver of the filing requirement where an individual can demonstrate substantial good cause for such a waiver. The FDIC proposes in its Statement of Policy to grant approval for a license to someone convicted of a *de minimis* offense where:


- a. there is only one conviction or program entry of record for a covered offense;
- b. the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000 and the individual did not serve time in jail;
- c. the conviction or program was entered at least five years prior to the date and application would otherwise be required; and,
- d. the offense did not involve an insured bank or credit union.

5. This hearing officer finds the four criteria to be helpful in analyzing the instant situation. The record is clear that the Respondent has been convicted of a single offense for the theft of a textbook with a value of \$91. Second, the offense, as a first degree misdemeanor, had a maximum punishment of not more than six months in jail and a fine of not more than \$1,000. The Respondent did not serve jail time. Third, the conviction here occurred in June, 1996 and the Respondent's application was dated April 11, 2002, nearly six years subsequent to the conviction. At the time of the offense, the Respondent was 18 years of age. (Exhibit 5). The offense clearly did not involve the process by which mortgage loans are originated, financed, documented or applied for. The act committed by the Respondent was clearly a youthful indiscretion. The actions of the Respondent should be viewed as a single, isolated, life-altering event. It is unlikely, in the opinion of this Hearing Officer, that the Respondent will commit such an offense again. The Hearing Officer finds that the Respondent has met by a preponderance of the evidence, his honesty, truthfulness and he is of good reputation and there is no basis in fact for believing that the applicant will commit such an offense again.

RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division not deny a Loan Officer Application to the Respondent.

Respectfully submitted,



Kenneth R. Cookson
Hearing Officer
January 13, 2003

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