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STATE OF OHIO  
DEPARTMENT OF COMMERCE

CASE NO. 05-0134-LOD

IN THE MATTER OF: RICHARD P. RISCH

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. Damschroder

I. Findings of Fact

A. Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on October 6, 2005, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division regarding Richard P. Risch, an individual, because Richard P. Risch has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense, and that Mr. Risch's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Mindy Worly. Richard P. Risch ("Respondent") appeared in person and represented himself *pro se*.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Opportunity for Hearing to Respondent on August 9, 2005, and served it upon Respondent by certified mail. Respondent's wife signed a certified mail receipt on August 10, 2005, and Respondent also sent the Division the hearing request form sent to him along with the Notice. (State's Exhibit #3, #4)
2. Respondent's hearing request was received by the Division on August 17, 2005. (State's Exhibit #4)
3. By letter of August 18, 2005, the Division notified Respondent that the requested hearing was to be held on August 29, 2005, but in the same letter rescheduled the hearing to October 6, 2005. (State's Exhibit #5)

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

1. On or about May 18, 2005, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. Respondent admitted on his application that he had a criminal conviction for drug possession with intent to sell. (State's Exhibit #1)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. The Division obtained documentation proving that Respondent had been convicted of Sale of Amphetamine on or about May 9, 1974. Respondent was sentenced to three years probation and ordered to make restitution of one hundred eighty dollars (\$180). The courts entry specifically stated that the character of the Respondent and circumstances of his criminal case were such that he was not likely to again engage in an offensive course of conduct, and the public good did not demand that he be immediately sentenced. (State's Exhibit #2)
5. Respondent acknowledged that he made a huge mistake with respect to his criminal record and that he was "scared straight" from this experience. He testified that his record is clean for over thirty years, since this one conviction. Respondent testified that he has paid his debt to society, and that he has shown to be of good character through his efforts at raising his family and being a good citizen. (Tr. pp. 42, 46-47)
6. Respondent submitted as exhibits letters from seven people, both professional and personal acquaintances, who all attest to Respondent's integrity. Respondent testified that that he explained his past legal difficulties to all of the persons who submitted letters on his behalf. (Tr. pp. 51-52, Respondent's Exhibits #A, #B, #C, #D, #E, #F, #G)

**II. Conclusions of Law**

**A. Jurisdictional 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 notice to respondent was sent by certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.

2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. 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, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

**B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show he is entitled to a license.
4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. 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.
- (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 or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of 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.

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- (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.

6. R.C. Section 1322.031(A)(2) requires that an applicant provide to the Superintendent, among other things, "[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[.]"
7. The Division has proved that Respondent has been convicted of a criminal offenses related to drug trafficking. This places a burden on Respondent to show that, since his conviction, he is honest, truthful and of good reputation, and that the Superintendent has no basis for believing that Respondent will commit another criminal offense.
8. Respondent does not deny his culpability for her criminal conduct, or try to excuse it in any way. He rightly points out, however, that his conviction was over thirty years ago, and points out that he has had no legal difficulties since.

Even the court that convicted him noted the Respondent was not likely to commit another criminal offense, a prediction that proved true for over thirty years.

9. Respondent does, through his testimony, exhibits, and life experiences since his conviction offer convincing proof that Respondent is honest, truthful and of good reputation. The Superintendent has absolutely no reason to believe that Respondent would ever commit another criminal offense, and the Superintendent has every reason to be confident that Respondent's character and fitness command the confidence of the general public and warrant the belief that he will conduct his business affairs honestly and fairly, and in compliance with the Ohio Mortgage Brokers Act. To find otherwise would be to ignore all evidence presented at hearing, and be contrary to common sense.
10. The Division has not met its burden of proof to deny a license to Respondent.
11. Respondent did present evidence of sufficient weight to meet his burden of proof that he is entitled to a license.

## II. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Richard P. Risch be found to have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions **grant** Respondent's application for a Loan Officers License.

William R. Damschroder, Esq.  
Hearing Officer

3/14/06  
Date