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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL INSITUTIONS
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Patrick K. O'Malley	:	Case No. 04-0284-LOD
	:	
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**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued July 18, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 3:00 P.M. on May 21, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Patrick K. O'Malley (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1997, Respondent pleaded guilty to and was convicted of Theft, a misdemeanor of the first degree, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Anthony D. Siciliano. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 8 were admitted into the record. Respondent's Exhibit A was admitted into the record, the Division did not object because the Exhibit was a statement by Respondent and Respondent was present for cross examination.

B. JURISDICTION

The Division issued the NOH against Respondent on March 30, 2004. The Respondent requested a hearing, which was received by the Division. On April 8, 2004, the Division scheduled the hearing for April 19, 2004. The Division, upon its own motion continued the hearing to May 21, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Ex. 5).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio. (Tr. p. 21).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about January 6, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Ex. 1).
5. Respondent filled out and signed the Application on or about, December 19, 2003. (Ex. 1).
6. Within the Application Respondent answered "no" to Question number 5, which asked: "Have you . . . ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, . . ." (Ex. 1).
7. In 1988, fifteen years prior to the submission of the Application Respondent was charged with and convicted of failure to disperse, which was a Minor Misdemeanor. (Ex.'s 4, A).
8. In 1997, six years prior to the submission of the Application, Respondent was charged with Grand Theft a Felony of the Fourth Degree. The charge was later amended to and Respondent pled guilty to Theft, a Misdemeanor of the First Degree. (Tr. pp. 9 -12, 25).
9. Respondent's Exhibit A was a statement of what happened to Respondent written by Respondent. (Tr. p.17; Ex. A).
10. Respondent did not bring any witnesses nor did Respondent bring any affidavits for character references.

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. 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.
3. Ohio Revised Section 1322.041 provides the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

(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. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 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 any false or misleading statements of a material fact or any omission or 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;

5. Because the Respondent answered "no" to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Mortgage Broker act.
6. In providing character references Respondent submitted a letter that he wrote about his own situation. (Tr. p. 17; Ex. A).

DISCUSSION

1. The Respondent stated that he is currently employed by Amortgagenow.net. (Tr. p. 21; Ex. 1).
2. The Respondent testified that in 1997 he was found guilty of Theft and was fined \$500.00 and sentenced to jail for thirty days, however the jail sentence was suspended provided Respondent pay his fine in the time allowed by the court. (Tr. p. 25; Ex. 4).
3. The Respondent testified that it was his understanding of Question 5 "that it kind of tripped him up" and that he kept "going over the first part.." was to exclude minor misdemeanors, traffic offenses, and parking offenses. (Tr. pp. 25 - 26).
4. Respondent stated in his letter that was submitted as Exhibit A that "I have chosen not to bring anymore aspects of my personal life into this than was absolutely necessary. I am humbled by the amount of support from family and friends, receiving nearly a dozen unsolicited character letters which I respectfully decline to admit into evidence . . . as well numerous people wanted to make the trip today, but again I wanted to separate them from my quandary." (Ex. A).
5. Respondent was advised by letter that "At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing may present evidence and examine witnesses appearing for and against Respondent. (Ex. 5). Respondent brought no witnesses.
6. Further Respondent was informed by letter that it is "your responsibility to prepare and present your appeal . . . including the arranging of subpoenas or appearances of any witnesses . . . you might feel . . . support your appeal." (Ex.7).
7. Respondent states in his letter (Ex. A) he had nearly a dozen unsolicited character letters but chose not utilize them, as well numerous people that wanted to come an testify on his behalf and Respondent chose not to have them appear on his behalf.

8. Respondent did nothing to overcome his burden to prove he has the character and fitness to command the trust of the general public. It appears from Respondent's letter (Ex. A) that he chose not to utilize the very evidence necessary to overcome his burden of proof.

9. Based upon Respondent's testimony, his character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division deny a Loan Officer License to the Respondent.

Respectfully submitted,

Julie M. Lynch
Hearing Officer
July 18, 2004