

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 05-0121-LOD
)	
MICHAEL A. CARNEY)	<u>DIVISION ORDER</u>
1850 Dooridge Drive)	Denial of Loan Officer License Application
Twinsburg, OH 44087)	&
)	Notice of Appellate Rights

Respondent, Michael A. Carney (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on June 9, 2005. On July 7, 2005 the Division notified Respondent that it intended to deny his Application because: (1) in or around 2001, in the Municipal Court of Willoughby in Lake County, Ohio, respondent was convicted of cop-receiving, a misdemeanor of the first degree; (2) in or around 2002, in the Municipal Court of Willoughby in Lake County, Ohio, Respondent was convicted of receiving property obtained through a theft offense, a misdemeanor of the first degree; (3) Respondent 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 involving receiving stolen property or any criminal offense involving money or securities; and (4) because his character and general fitness did not 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 R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on November 15, 2005. A Report and Recommendation (“Report”) was filed with the Division on February 27, 2006, recommending that the Division grant Respondent’s application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner’s Report is attached).

The Division disapproves paragraphs 2, 3, and 4 on pages 3 and 4 of the Report.

The cases cited in the Report are not applicable to the present case. The appropriate burden of proof is delineated in the Ohio Mortgage Broker Act. (See R.C. 1322.01 to 1322.12).

The Division disapproves paragraphs 9, 10, and 11 on page 5 and the Recommendation on page 6 of the Report.

Respondent has not met his burden of proof as set forth in R.C. 1322.041. At the hearing the only evidence he presented besides his own testimony were three unsworn letters. This is simply not enough to demonstrate that since his theft related conviction in 2001 that he is honest, truthful and of good reputation, and that he will not commit another theft related crime again. The mere fact that he has managed to not be convicted of any other crimes since 2001 is not enough to meet his burden. Additionally, having provided the evidence of Respondent's fairly recent convictions, the Division has proven that Respondent'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.

For the reasons stated above, the Division hereby denies the loan officer license application of Michael A. Carney.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 8th day of January 2007.

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce