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STATE OF OHIO  
DEPARTMENT OF COMMERCE

CASE NO. 05-0115-LOD

IN THE MATTER OF: DARLENE M. SLEDGE

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. DamschroderI. Findings of FactA. 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 September 8, 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 Darlene M. Sledge, an individual, because Darlene M. Sledge has not proven that she 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 Ms. Sledge's character and general fitness do not command the confidence of the public and warrant the belief that the she would operate her 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. Darlene M. Sledge ("Respondent") appeared in person and represented herself *pro se*.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Opportunity for Hearing to Respondent on June 30, 2005, and served it upon Respondent by certified mail. Respondent signed a certified mail receipt on July 2, 2005, and also sent the Division the hearing request form sent to her along with the Notice. (State's Exhibit #5, #6, #9)
2. Respondent's hearing request was received by the Division on July 8, 2005. (State's Exhibit #6)
3. By letter of July 11, 2005, the Division notified Respondent that the requested hearing was to be held on July 21, 2005, but in the same letter continued the hearing to a later date. By subsequent letter of August 2, 2005, the Division notified Respondent that the hearing was to be held on September 8, 2005. (State's Exhibit #7, #8)

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

1. On or about March 4, 2004, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. Respondent admitted on his application that she had a criminal conviction in United States District Court for the Northern District of Ohio. (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 found guilty of Conspiracy to distribute and possess with intent to distribute cocaine and /or cocaine base on November 5, 1997. Respondent was sentenced to be f imprisoned for a term of sixty months. Upon release, Respondent was further sentenced to an additional term of four years of supervised release. (State's Exhibit #2)
5. Respondent submitted with her application a written explanation of her legal difficulties, claiming that she had made a bad personal choice by dating a drug dealer and allowing him to involve her in his drug activities. Respondent also stated that her bad choice cost her a career and caused a lifetime of pain. Since her conviction, Respondent has worked in her community to help young people. Respondent states that she was released early from supervised release because of her community involvement. (State's Exhibit #1)
6. Respondent testified that at the time of her conviction she had obtained a bachelor's degree and a master's in education. (Tr. p. 24)
7. Respondent testified that at the time of her arrest she was licensed as a teacher with the Ohio Department of Education, and had just completed employment for the school year with the Cleveland Public School District. (Tr. pp. 37-38)
8. After her conviction, the Department of Education revoked Respondent's license as a teacher. (Tr. p. 38)
9. Respondent testified that whenever she applies for any type of job she always discloses her felony conviction and the circumstances surrounding her conviction. (Tr. p. 44)
10. Respondent submitted as an exhibit a document containing several letters of reference, a listing of her educational achievements, a compilation of her community service involvements, a resume with a list of her employment and community service accomplishments, and a copy of the form documenting

Respondent's early termination from supervised release. This exhibit was admitted over the objection of the Division. (Respondent's Exhibit #A)

11. When asked to point to some indicator of her rehabilitation, Respondent pointed to the early termination of her supervised release as evidence of the fact that she would not be likely to commit another criminal act. (Tr. p 36)

## **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.


4. 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[.]”

5. The Division has proved that Respondent has been convicted of a significant criminal offenses related to drug trafficking. In addition, the illegal activities leading to her arrest and conviction took place while Respondent was a licensed teacher employed by a public school district, with her conviction leading to a significant prison sentence and subsequent supervised release.
6. Respondent does not deny her culpability for her criminal conduct, or try to excuse it in any way. She admits to making bad choices, and only asks that the Division consider the steps she has taken since her conviction, incarceration and release to turn her life around.
7. Respondent does, through her testimony and exhibit, offer evidence of a serious effort at leading a productive life, in compliance with the law. While she does provide evidence of rehabilitation, it must, however, be balanced with a consideration of the seriousness of the crime committed. Though she is taking the steps in the right direction, given the serious nature of her crime, I am not persuaded that she meets the standard of necessary to convince the Superintendent that she is not a risk to commit a criminal offense in the future. Respondent, therefore, has not convinced this hearing officer that she possesses the character and fitness to command the respect of the general public, and does not warrant the belief that her business would be operated in compliance with state law.
8. The Division has met its burden of proof to deny a license to Respondent.
9. Respondent did not present evidence of sufficient weight to meet her burden of proof that she is entitled to a license.

**II. Recommendation**

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Darlene M. Sledge be found to have not met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions deny Respondent's application for a Loan Officers License.

  
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William R. Damschroder, Esq.  
Hearing Officer

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Date

3/3/06