

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0106-LOD  
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Frank T. Key : James J. Lawrence, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
November 16, 2004

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I. FINDINGS OF FACT

**A. Background**

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 3:00 p.m. on October 25, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Frank T. Key (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted of drug trafficking in 1997. As a result of this conviction, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322 for the following reasons:

1. 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 drug trafficking or any criminal offense involving money or securities.
2. Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

James M. Evans, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. At the hearing, State's Exhibits 1 through 12 were admitted into the record. The Respondent did not appear at the hearing without explanation for his absence.

**B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on January 22, 2004 by certified mail, return receipt requested. The U.S. Postal Service returned the mail marked "UNCLAIMED." The Division remailed the notice, by certified mail, return receipt requested, on May 18, 2004 to a different address. Respondent's hearing request was received by the Division on June 4, 2004. The Division scheduled the hearing for June 16, 2004 but, on its own motion, continued the hearing to July 19, 2004. That hearing was continued at the Respondent's request to October 25, 2004. The Division sent notices of the hearings by ordinary mail to the same address to which it mailed the NOH on May 18, 2004. (Exhibits 11 & 12.)

**C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on May 3, 2002. (Exhibit 1.)
2. Question five of that application asked the following question:
  5. 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?
3. In response to Question 5, the Respondent answered "yes." However, he provided no details concerning the nature of the offenses or the circumstances that gave rise to the offenses. (Exhibit 2; TR at 7 – 8.)
4. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B). The background check on Respondent's application revealed criminal charges for trafficking in marijuana. (Exhibit 2; TR at 8.)

5. By letter dated July 19, 2002, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the journal entry evidencing the disposition and sentence resulting from each charge. (Exhibit 2; TR at 8.)
6. The Respondent provided an entry from the Kenton Circuit Court, Fourth Division, Commonwealth of Kentucky, showing that the Court convicted the Respondent of trafficking in over 8 ounces of marijuana in Case No. 97 – CR-00072 on May 14, 1997. The Court sentenced the Respondent to five years' imprisonment but probated the sentence for a term of five years. (Exhibit 5; TR 10 - 11.)

**D. Respondent's Reputation and Character.**

1. In a letter dated April 16, 2003 to the Division, the Respondent asserted that his life has changed since 1997. He married, had a daughter, got divorced, joined a church, remarried and had another child. He and his wife now "live Christian oriented lives." (Exhibit 5.)
2. The Respondent's April 16, 2003 letter states that it is accompanied by letters of recommendation written by others. However, the only letter entered into the record was a letter from the Respondent's probation officer stating the Respondent had successfully completed probation and that since his conviction he has conducted himself in a positive manner and should be given any possible consideration.

## **II. CONCLUSIONS OF LAW**

**A. Jurisdictional and Procedural Matters.**

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

**B. Loan Officer Application.**

1. R.C. 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. R.C. 1322.041(A) provides that a loan officer license shall be issued if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

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

\* \* \*

(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.

3. R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds either of the following:

(a) A violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12 ...

(b) A conviction of or guilty plea 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.

## C. DISCUSSION

1. The Division determined that Respondent's loan officer application should be denied because the Respondent did not prove that he is honest truthful and of good reputation, and that there is no basis in fact for believing that he will

commit another criminal offense involving drug trafficking or any criminal offense involving money or securities as required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). The record shows that Respondent was convicted in the Commonwealth of Kentucky of the offense of trafficking in marijuana. R.C. 1322.041(A)(3) requires that an applicant for a loan officer license who has been convicted of trafficking in drugs must prove by the preponderance of the evidence that his actions since the conviction show that he is honest, truthful and of good reputation, and that there is no basis in fact for believing that he will commit another such offense again. The applicant asserts that he has changed since his conviction; but the only evidence in the record that supports this assertion is the letter from his probation officer. However, this letter is in the record without the benefits of testimony under oath, observation of the writer as he testifies, and cross examination. Accordingly, this letter can be given only modest weight as evidence. In the absence of any other evidence, the Respondent has not proven by the preponderance of the evidence that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another such offense again as required by R.C. 1322.041(A)(3).


2. The Division also determined that the Respondent's loan officer application should be denied because the Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5). The Respondent has a criminal record that includes an offense that Ohio law specifically identifies as disqualifying an applicant from receiving a loan officer license (unless the applicant meets the additional burden discussed in paragraph one above.) The record in this case supports the Division's determination that the Respondent's loan officer application should be denied because the Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act.

### **III. RECOMMENDATION**

The 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 commit another such offense again as required by R.C. 1322.041(A)(3) and the nature of his criminal record supports a determination that his character and general fitness do 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the

Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

  
James J. Lawrence  
Hearing Officer  
November 16, 2004