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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS  
CONSUMER FINANCE

In re: Michael G. Thomas

:

Case No. 04-0382-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF  
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Michael G. Thomas not be granted. The Division conducted an investigation and found:

- a. In or around 1986, in the Court of Common Pleas of Lake County, Ohio, Mr. Thomas pleaded guilty to was convicted of drug abuse, a felony of the fourth degree; and
- b. In or around 1987, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Thomas pleaded guilty to and was convicted of theft, a misdemeanor of the first degree.

2. As a result, the Division determined that:

- a. Mr. Thomas' actions, as listed above, show that he 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 theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3); and
- b. Mr. Thomas' actions, as listed above, show 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 the Ohio Mortgage Broker Act as set forth in Revised Code Section 1322.041(A)(5).

3. Mr. Thomas' address for service is 13122 Ravenna Road, Chardon, Ohio, 44024. He is hereinafter referred to as the "Respondent." The Respondent is employed by North American Lending, 35401 Euclid Avenue, Suite 200, Willoughby, Ohio 44014.

4. This matter was initiated by the Superintendent of the Division by the issuance on May 14, 2004 of a Notice of Intent to Deny Loan Officer License Application & Notice of Opportunity for a Hearing. (Exhibit 1A).

5. The Respondent signed a certified mail receipt for that document. (*Id.*). Thereafter, the Division received a Hearing Request Form from the Respondent. (Exhibit 1B).

6. On June 16, 2004, the Division wrote to the Respondent scheduling a hearing for Friday, July 16, 2004, at 3:00 p.m. in Room 1924 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 1C).

7. On July 21, 2004, the Division wrote to the Respondent granting a request for a continuance and rescheduling the Hearing for Friday, August 13, 2004, at 10:00 a.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 1D).

8. The Hearing was held beginning at 10:00 a.m. on August 13, 2004, in Room 1910 of Vern Riffe Center, 77 South High Street, Columbus, Ohio. Attending were Martine Jean, Assistant Attorney General of Ohio in the Executive Agencies Section, and Mark L. Rhea, Staff Attorney with the Division.

9. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

#### FINDINGS OF FACT

1. On October 7, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 2A).

2. Question 5 of the Application provides:

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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "Yes" and added "I have a drug conviction some 15 years ago, not trafficking, but I was a stupid kid at the time (see attachment)".

4. Attached to the Application, the Respondent submitted the following writing:

In 1986 I had an unfortunate chapter of my life. I was 22 years old, a naïve kid. I experimented with drugs and suffered the consequences. I was incarcerated for a couple of months and released and that was the end of it. During this unfortunate incident, I had rented a car from Avis. I was unable to turn the car in. The car was eventually returned to Avis, however the bill was over \$3,000.00. I had no money at the time, so Avis threatened to charge me with stealing the car if I did not pay the bill.

When the prosecutor's office found out what Avis was trying to do, the charges were dismissed. This incident occurred over 16 years ago. I am a totally different person now. I have a wife and 3 kids that I support. I am also involved in my church youth group and consider myself a fine upstanding citizen. Please do not penalize me for a past that is long behind me. I really need this job in order to support my family.

(Exhibit 2B).

5. On February 14, 2003, the Division wrote to the Respondent indicating that the Division was unable to make a decision as to whether to grant the license because of insufficient evidence. The Division indicated that its investigation had determined that on July 22, 1986, the Respondent was charged by the Willoughby Police with one count of possession of cocaine, on August 8, 1986, the Respondent was charged in Lake County, Ohio with one count of drug trafficking and one count of committing drug abuse and February 4, 1986, the Respondent was charged in Cuyahoga County with one count of grand theft (motor vehicle), one count of possession of criminal tools and one count of theft. The Division also noted that the Respondent was listed as a "multi-state offender". (Exhibit 3). The Division asked for a detailed explanation of all of those charges. (*Id.*).

6. On August 8, 2003, the Division wrote to the Respondent indicating that the Division had not received a response to its letter of February 14<sup>th</sup>, and that therefore the Application was withdrawn. (Exhibit 4).

7. On November 11, 2003, the Respondent signed a form Loan Officer Application ("Second Application"). Question 5 of the Second Application reads identically to the same question in the Application. In response to Question 5 on the Second Application the Respondent marked "Yes" and stated: "details attached. Was approx. 20 years ago." (Exhibit 5A).

8. In the record is a Questionnaire for Applicants listed as Multi-State Offenders on Background check indicating that the Respondent was charged in Florida with one count of ticket scalping. The Division is not proceeding in this matter on any aspect of that charge. (Tr. 20).

9. The Respondent also supplied documentation from the Lake County Court of Common Pleas regarding his criminal convictions. (Exhibit 5C).

10. On March 8, 2004, the Division wrote to the Respondent asking for a detailed explanation of the facts and circumstances regarding the 1986 charges. (Exhibit 6).

11. On March 25, 2004, the Division received a letter from the Respondent which provided as follows:

The following is a detailed description of the circumstances surrounding my court cases in 1986:

1. I was 21 years old experimenting with drugs

2. I got caught with a large amount of cocaine.
3. I was charged with trafficking because it was over the bulk amount.
4. It was pleaded down to felony drug abuse.
5. I was sentenced to 1 ½ years and was supposed to serve 30 days and be let out on shock probation.
6. When I was to be released, the court would not allow it because Avis Rent-A-Car had charged me with stealing an auto that I had rented. This was in an effort to collect the bill, that I could not pay.
7. It took 4 months to get the Cuyahoga county charge rectified. Once disposed of I could proceed with my release.
8. The judge deemed that I had served enough time and reduced my sentence and released me, immediately, with no probation.
9. I have never done or been involved with drugs since the incident.

With respect to the original charge. Let it be known that the original charge was dismissed, and a lesser offense was pleaded to.

With all due respect, this all happened almost 20 years ago, and I submitted this application back in November 2003. Please take this into consideration when it is being reviewed. My life is on hold until this matter has been rectified. I really think that the deadline of March 29<sup>th</sup> is ridiculous, considering the state has had my application since November and is just now asking for more documentation.

(Exhibit 7A)

12. The Respondent also submitted a copy of the Indictment for Grand Theft as filed in the Cuyahoga County Court of Common Pleas. (Exhibit 7B).

#### CONCLUSIONS OF LAW

1. 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 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. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 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 misrepresentations in any registration or license application;
- (B) Make false or misleading statements of a material fact, omissions of 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;
- (C) Engage in conduct that constitutes improper, fraudulent or dishonest dealings[.]

....

4. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

## DISCUSSION

1. The Respondent also submitted two letters of recommendation. (Exhibit 8). The first was from Mitchell Swindell of North American Lending Co. The second is from Don Fisher, a Licensed Loan Officer.

2. The Hearing Officer Notes at the outset that the Hearing was delayed nearly one hour while waiting for the Respondent or a representative to arrive. *See*, Transcript 6-8. The Respondent, in fact did not attend the Hearing in the matter and sent no representative. The Division, as well as the Assistant Attorney General made a diligent effort to locate the Respondent but he could not be found.

3. The Division has made an adequate effort, through live testimony, as well as exhibits, that demonstrate that the Respondent's character and 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. The Respondent has provided no substantive evidence in opposition to the Division's evidence and testimony.

4. The Respondent has not produced any evidence to meet his burden to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis to believe that he will commit such an offense again. The Respondent has mailed in only two letters of recommendation.

## RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that, based on both the Application and the Second Application, the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson  
Hearing Officer  
September 2, 2004