



Ohio Department of Commerce

Division of Financial Institutions
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Ted Strickland
Governor

Kimberly A. Zurz
Director

In the matter of:

DANIEL V. TOBIN

4400 Marion Edison Road

Marion, OH 43302

)
)
) Case No. 04-0191-LOD

) **SETTLEMENT AND**

) **CONSENT ORDER**
)

WHEREAS, the Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322; and

WHEREAS, Daniel V. Tobin ("Respondent") has applied with the Division for a loan officer license pursuant to R.C. Chapter 1322. Respondent's address of record is 4400 Marion Edison Road, Marion, Ohio 43302; and

WHEREAS, on January 22, 2004, the Division issued Respondent a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing; and

WHEREAS, the Notice contained allegations and findings that:

1. In or around 1978, in the Court of Common Pleas, Morrow County, Ohio, Respondent pleaded guilty to and was convicted of Trafficking in Marijuana, a felony of the fourth degree (the "Trafficking Conviction").
2. In or around 1979, in the Mount Vernon Municipal Court, Knox County, Ohio, Respondent pleaded guilty to and was convicted of Fleeing and Eluding (the "Fleeing and Eluding Conviction").
3. On or around April 22, 2002, Respondent attested in a sworn statement that information he provided on a licensing application was truthful, without disclosing the Trafficking and Fleeing and Alluding Convictions.
4. On or around April 26, 2002, Respondent provided untruthful information to the state of Ohio, Department of Commerce, Division of Financial Institutions.
5. As a result of the findings listed above, the Division determined that per R.C. 1322.041(A)(3) Respondent has not proven that he was honest, truthful, and of good reputation, and that there was 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; per R.C. 1322.041(A)(5), that Respondent's 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 the Ohio Mortgage Broker Act; and that Respondent's failure to disclose his criminal history in the application he submitted to the Division violated R.C. 1322.07(A), (B), and (C).

WHEREAS, on May 5, 2004, an administrative hearing was conducted on the Notice before a Hearing Examiner. On January 4, 2005, the Hearing Examiner issued a Report and Recommendation recommending to the Division that Respondent be granted a Loan Officer's License pursuant to Ohio Revised Code Chapter 1322; and

WHEREAS, January 6, 2006, a Division Order was issued denying Respondent's loan officer license application; and

WHEREAS, Respondent filed an appeal with the Morrow County Court of Common Pleas on January 23, 2006 and said Court, in case number 2006CV00022, issued a Stay of the Division Order pending appeal (the "Administrative Appeal"); and

WHEREAS, on March 19, 2008, the Morrow County Court of Common Pleas issued a Journal Entry remanding the matter back to the Division for further consideration consistent with the requirements of the Journal Entry.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 2) Nothing in this Settlement and Consent Order shall be deemed to prevent the Division or its employees, agents, or assignees from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in the Notice.
- 3) In lieu of proceeding with an appeal of the March 19, 2008 Journal Entry of the Morrow County Common Pleas Court, the parties agree to obtain a *nunc pro tunc* entry terminating the appeal and vacating the March 19, 2008 Journal Entry. Upon termination of the appeal, the Division will continue to process Respondent's pending loan officer license application with the exception that the requirements of Senate Bill 185 will now apply, particularly as set forth in R.C. 1322.031 and R.C. 1322.041.
- 4) In order to complete his pending loan officer license application, Respondent agrees to submit State of Ohio and FBI (nationwide) criminal background checks conducted after the effective date of this Settlement and Consent Order; provide proof of completion of the pre-licensing education requirement set forth in R.C. 1322.031(A)(4) and 1322.041(A)(5); provide a true and accurate resume of his work

- history for the past 20 years; and to provide five notarized character references from persons familiar with Respondent's criminal history, his activities and actions since the conviction, and his reputation in the community at-large and business community.
- 5) Respondent hereby agrees to forego his Administrative Appeal, and waives any and all rights to an administrative hearing. Both Respondent and the Division, however, maintain their rights to appeal any breach of the terms of this Agreement in any court of competent jurisdiction.
 - 6) In exchange for Respondent's admission that he failed to disclose his convictions on his application and Respondent's payment of a one thousand seven hundred fifty dollar fine (\$1,750.00) made payable to the Consumer Finance Fund for the failure to disclose, the Division hereby terminates and withdraws the Notice of Intent to Deny Respondent's Loan Officer License Application and Notice of Opportunity for Hearing issued January 22, 2004.
 - 7) Upon the satisfactory completion of the application requirements set forth in paragraphs 4 and 6 above and provided Respondent has not had any criminal convictions for an offense enumerated in R.C. 1322.031(A)(2) since 1979 and has—through the personal letters of reference and his resume—met the statutory burden of proof in R.C. 1322.041(A)(3), Respondent's application will be approved. More specifically, the Division will not deny Respondent's application as a result of the existence of the Trafficking and Fleeing and Alluding Convictions or Respondents omission of those matters from his initial application. Respondent will then be cleared, for a period of ninety-days, to sit for the loan officer license examination. If Respondent does not pass the licensing examination within the ninety-day eligibility period, his loan officer license application will be withdrawn per Section 1301:8-7-17 of the Ohio Administrative Code.
 - 8) This Settlement and Consent Order shall be effective on the date it is signed by the Deputy Superintendent of the Division of Financial Institutions and on such date it will become a final order.
 - 9) This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.
 - 10) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assignees, and successors in interest.

- 11) Respondent releases the Division, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney fees or other costs arising from the within matter.
- 12) This Settlement and Consent Order shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.
- 13) Respondent has been advised by the Division to seek legal counsel if he has any questions concerning the terms and/or effect of this Settlement and Consent Order.
- 14) Respondent must submit this Settlement and Consent Order completed per the terms dictated herein, no later than May 30, 2008.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that the parties to this Settlement and Consent Order shall abide by the terms of this Order as agreed.


Approved and Agreed:



Daniel V. Tobin

4-28-08

Date



Leigh A. Willis
Deputy Superintendent of Consumer Finance

5/5/08

Date