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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

MARK A PERCASSI

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 05-0040-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued March 21, 2006

I. FINDINGS OF FACT

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:30 PM on November 22, 2005, at 77 South High Street, 19th Floor, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Mark A. Percassi, of Eastlake, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent had pleaded guilty to theft in 1987, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Martine Jean. Neither Respondent nor any representative appeared or submitted a written statement.

At the hearing, State's Exhibits 1A, 1B, 1C, 2A, 2B, 3, 4, 5 and 6 were admitted into the record. One witness appeared for the Division. No exhibits or witnesses were offered for the Respondent.

B. JURISDICTION

The Division issued the NOH against Respondent on April 27, 2005. Respondent requested a hearing, received by the Division on June 6, 2005. On June 14, 2005, the Division scheduled the hearing for June 16, 2005, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing indefinitely by the same letter. On July 14, 2005, the Division sent a letter setting the hearing date for September 20, 2005. Because no one appeared on behalf of Respondent that day, and because the prior hearing made it too late to commence this matter, the Division, on September 26, 2005, reset this hearing to proceed at 1:30 PM on November 22, 2006, at which time the hearing went forward without any communication from Respondent or anyone representing Respondent.

C. PROPOSED ISSUANCE OF ORDER TO CEASE AND DESIST

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322.
2. Respondent is an individual who has conducted, and wishes to continue to conduct, business in Ohio as a Mortgage Loan Officer (hereinafter "Loan Officer.") (Exhibit 1A.)
3. On or about January 13, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the Application). (Exhibit 1A.)
4. On the Application, Respondent responded "Yes" to Question 5, which asks if the applicant has been convicted of any criminal offense. (Exhibits 1A, B, 1C.)
5. An investigation by the Division determined that, around April of 1987, Respondent pleaded No Contest to Petty Theft and a finding was made Marietta Municipal Court of guilty. Respondent was sentenced to a \$100 fine and 60 hours of community service. (Exhibits 1B, 1C.)

6. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and that there is no basis in fact for believing that he would not commit such offenses again.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 1987, Respondent was convicted of Petty Theft "a criminal offense involving theft ...", an offense specifically cited in section 1322. 041(A)(3) O.R.C.
3. The theft conviction being proven by the Division, the Respondent must now prove, by a preponderance of the evidence, that the Respondent'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" in order to obtain a license. The Respondent must also demonstrate that that the Respondent's character and general fitness will command the confidence of the public and will warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Sections 1322. 041(A)(3) and 1322. 041(A)(5), O.R.C.
4. Respondent did not offer any prove of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.

C. DISCUSSION

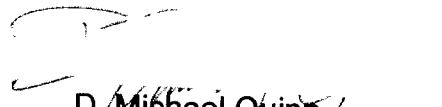
The Division has proven that the theft offense occurred. The burden to prove, by a preponderance of the evidence, that he should receive a license now falls to the Respondent. As the Respondent did not appear, did not submit any written statements, and did not present any evidence at all, there must be a finding for the Division in this case. If Respondent had presented evidence as to

his honesty, reputation and general character, it is unlikely that a 1987 petty theft conviction would have kept Respondent from obtaining his license.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO MARK A. PERCASSI.**

Respectfully submitted,


D. Michael Quinn
Hearing Officer
March 21, 2006
Docket No. 05-DFI-092