

STATE OF OHIO
DEPARTMENT OF COMMERCE

OHIO DIVISION OF FINANCIAL
INSTITUTIONS
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IN THE MATTER OF:

CURTIS L. FOSTER

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 04-0008-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued July 27, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above 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 2:00 PM on November 4, 2004, at 77 South High Street, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Curtis L. Foster, of Cleveland Heights, 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 was convicted of receiving stolen property, a misdemeanor and, also, that Respondent provided false information to the Division on a licensing application, 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 Monica L. Rausch. Although Respondent had

requested the hearing and the commencement of the hearing was postponed one hour, Respondent did not appear.

At the hearing, State's Exhibits A through H were admitted into the record (Transcript (hereinafter "Tr.") p. 19). One witness appeared, and gave sworn testimony, on behalf of the Division. No exhibits or witnesses were presented by, or for, Respondent, although Respondent's letter attached to Exhibit A – the Loan Officer Application – may constitute a statement in writing.

B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Service was perfected on April 14, 2004. Respondent timely requested a hearing on April 19, 2004, that the Division, by letter dated April 19, scheduled for April 26, 2004, all within the requirements of Chapter 119, O.R.C. The Division, on its own motion, continued the original date of the hearing to a later, unspecified, date. By letter of May 10, 2004 the hearing was scheduled for August 10, 2004, and, at Respondent's request, the hearing was continued to October 26, 2004 and November 4, 2004, on which latter date the hearing went forward. (Exhibits E, F, G.)

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to O.R.C. Chapter 1322. (Exhibit E.)
2. Respondent is an individual who wishes to conduct business in Ohio as a mortgage loan officer. (Exhibit A.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that mortgage loan officers become licensed. (Senate Bill 76, 2001.)
4. On or about May 2, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"), wherein Respondent sought a Loan Officer License. (Exhibit A.)
5. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense ...?" (Exhibit A.)
6. In 1984, Respondent was found guilty of some criminal offense, in the East Cleveland Municipal Court. (Exhibit B.)

7. Respondent's written explanation of the 1984 conviction, if one was supplied to the Division, was not submitted into evidence.
8. Cases numbers 97 CR 33783 and 97 CR 33964, both in Franklin County Municipal Court, Columbus, Ohio, were both dismissed as against Respondent. (Exhibit B.)
9. In, or about, 1998, in case number 98 CR 1208, probably in Franklin County Municipal Court, Respondent pleaded guilty to some criminal charge for which he was fined. (Exhibit A.)
10. Respondent did not submit any evidence into the hearing record. However, the letter received from Respondent by the Division as part of the investigation, introduced by the Division as part of the Application, was treated as Respondent's written statement. That letter cannot replace sworn testimony and was thus given reduced weight. (Exhibit A.)
11. Respondent's written explanation of the facts leading to the conviction in the 1998 case was that it involved a traumatic breakup with a former live-in girlfriend. Respondent suggests the girlfriend used a criminal complaint to achieve her civil ends. Additional information about the case, which Respondent sent to the Division in conjunction with his written explanation, was not supplied at the hearing nor submitted into the record by the Division. (Exhibit A.)
12. Respondent did indicate in the Application that there were criminal charges stemming from the breakup with his former girlfriend. (Exhibit A.)
13. Nothing in the hearing record indicates Respondent referred to the 1984 conviction in the Application. (Exhibit A.)
14. No evidence at all was submitted into the record explaining the 1984 criminal conviction. Respondent's letter did not refer to the 1984 criminal conviction.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

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

B. LICENSE APPLICATION

2. The Division has proven that Respondent was convicted of two criminal offenses – one in 1984 and one in 1998 – but the actual offenses are unknown. It cannot be determined from the record if the convictions are, or are not, offenses specifically cited in sections 1322.041(A)(3) or (4), O.R.C.
3. Section 1322.041(A)(5), O.R.C., requires the Division to make a finding that Respondent'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 the Ohio Mortgage Broker Act.
4. While the Division has not proven what the 1984 and 1998 criminal convictions were, there is sufficient evidence that convictions exist in Respondent's history that, without evidence by Respondent to refute or explain the convictions, an affirmative finding required by Section 1322.041(A)(5), O.R.C., cannot be made.

III. RECOMMENDATION

The Division has proven the Respondent has two criminal convictions. Respondent did not submit any evidence to prove that Respondent'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 the Ohio Mortgage Broker Act. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO CURTIS L. FOSTER.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
July 27, 2005
Docket No. 04-DFI-105