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

IN RE: : CASE NO. 04-0059-LOD  
: :  
CHARLES L. DANIELS : JANE S. ARATA, HEARING OFFICER

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued August 10, 2004

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I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on May 12, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Charles L. Daniels ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of theft in 1997 and violated R.C. 1322.07(A), (B) and (C) by failing to disclose that conviction on his loan officer license application. Therefore, the Division asserted 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 violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application;
2. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit such an offense again as required by R.C. 1322.041(A)(3); and
3. 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).

Paula Luna Paoletti, Deputy Attorney General of the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. The Respondent appeared pro se and testified at the hearing. At the hearing, State's Exhibits 1 through 7 and Respondent's Exhibits A through P were admitted into the record.

**B. Jurisdiction and Procedural Matters.**

The Division issued the NOH to Respondent on January 22, 2004. Respondent received the NOH by certified mail on March 1, 2004. Respondent's hearing request was received by the Division on March 4, 2004. The Division scheduled the hearing for March 15, 2004, and continued it until May 12, 2004. The Respondent received the NOH by certified mail and received written notice of the date, time, and location of hearing.

**C. Respondent's Loan Officer Application and Theft Conviction.**

1. Respondent is an employee of Mortgages Unlimited who wants to continue to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; TR at 13-16.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}").
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. On October 21, 2002, Respondent signed a Loan Officer Application ("Application") which was submitted to the Division. The Division received the Application on November 1, 2002. (State's Exhibit 1.)
4. Respondent's signature on the Application is notarized. Directly above the applicant signature line, the Application states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge." (State's Exhibit 1.)

5. Respondent answered "No" to Question 5 on the Application which asked:

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.

(Application, State's Exhibit 1; TR at 16.)

6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031(B).
7. In response to the Division's inquiry, the Respondent submitted a court record and a letter confirming that he was convicted of theft in 1997. (State's Exhibits 2, 3, and 4; TR at 16-18.)
8. The conviction resulted from Respondent's attempt to shoplift clothes from a department store. Respondent, then eighteen years old, was trying to impress older friends when he committed the crime. He was stopped before he left the store, arrested and taken to the police station. Respondent appeared in court and was convicted of theft. He paid a fine and restitution to the store. (TR at 13, 21-25.)
9. The incident was a "wake up call" that had a big impact on Respondent at the time. It made him think about the life he wanted to lead and as a result, he does not associate with the people he was with when the incident occurred. (TR at 13, 26.)

**D. Respondent's Failure to Disclose Conviction on Application.**

10. The Respondent did not disclose the 1997 theft conviction on his Application. (State's Exhibit 1; TR at 16.)
11. Respondent understood that Question 5 asked if he had been convicted of any criminal offense including theft. (TR at 16.)
12. Initially, Respondent testified that he did not disclose the conviction because he forgot about it. He later claimed that the five-year-old conviction "didn't cross his mind" after it happened. (TR at 12, 27-28.)

13. Respondent also stated that he knew he did it, knew he was convicted, and was embarrassed by the situation. (TR at 13.) He discussed the impact it had on him. When cross-examined about how he could forget an event he described as a "wake up call" Respondent admitted that the conviction was something he "wouldn't like to remember" and "didn't even want to remember." (TR at 27.)
14. Respondent's claim that he forgot about the conviction is inconsistent with his testimony indicating knowledge of the conviction and the impact that it had upon him. His testimony that he would like to forget was credible and that is exactly the situation. Respondent would like to forget, but he did not do so.
15. This Hearing Officer finds Respondent's claim that he forgot about the five-year-old theft conviction when filling out his application, incredible. The Respondent knew he had a criminal conviction for theft well before he filled out his loan officer license application.
16. Respondent knew that he had a theft conviction that should have been disclosed on the Application and his explanation for not doing so was not credible to this Hearing Officer.

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

17. Respondent has worked as a loan officer at Mortgages Unlimited since 1998. His mother owns the company. Respondent enjoys working with people and helping them with their finances. Respondent also worked at a large entertainment complex where he was responsible for handling funds from ticket sales. He established his own entertainment organization designed to provide activities and entertainment for teens to help keep them off the streets. (Respondent's Exhibits E, F, and N; TR at 13-14, 20, 31-32, 34.)
18. Diann Ham, Respondent's mother and the owner of Mortgages Unlimited, testified about her experiences with the Respondent. Respondent has worked with her since 1998 and she plans to have him take over the company when she retires. She testified that Respondent gets along well with others at work and outside of work. He does a good job on his loans and helps train other loan officers. She believes that Respondent would not commit a theft offense again. (Respondent's Exhibit K; TR at 40-46.)
19. Kelvin Mitchell, the General Manager of Mortgages Unlimited, also testified on Respondent's behalf. He has known Respondent for four years and finds him to be honest, helpful, productive, responsible, and truthful. There have been no problems with Respondent's loan files and no complaints from his customers. (TR at 48-51.)

20. Respondent provided favorable reference letters from customers, employers and others who have known him since 1997. These materials indicate that those individuals consider Respondent to be honest and of good reputation. (Respondent's Exhibits I, J, K, L, M and N; TR at 33-34.)
21. The letters submitted on Respondent's behalf, with the exception of Exhibit H written by Diann Ham, were not authenticated by or the subject of testimony from their respective authors at the hearing. The authors of those letters were also not available for cross-examination by the Division at the hearing. The letters and the record do not indicate whether any of those people had day-to-day contact with the Respondent and whether they were aware of his criminal conviction.
22. Especially in a case involving a theft conviction that is not too far in the past, it is important for the Division to have an opportunity to cross-examine character witnesses and for the Hearing Examiner to be able to observe their demeanor. How well they know the Respondent and whether they know about his criminal conviction go to the weight given to their statements and opinions.
23. While the letters were admitted into the record, they were given less weight than they might have been given if the authors had testified regarding the bases for their opinions as well as been available for cross-examination. The weight given to the letters also took into account the lack of specific information on the frequency of the authors' contact with the Respondent. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letters were reviewed and given some weight but not the weight they might have been given if their authors had testified at the hearing.
24. Respondent also provided customer surveys from two customers. (Respondent's Exhibits G and H; TR at 32-33.) The surveys were not authenticated by or the subject of testimony from the customers at the hearing. The customers were also not available for cross-examination by the Division at the hearing. (Respondent's Exhibits G and H; TR at 32-33.) Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the customer surveys (Respondent's Exhibits G and H) were reviewed but not relied upon by the Hearing Officer in this matter.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

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

### **B. Loan Officer License Application.**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license application to include 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.
3. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(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.

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(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.

R.C. 1322.041(A)(2), (3) and (5).

4. Respondent was convicted of theft in 1997. Theft is an offense required to be disclosed on an application for a loan officer license. R.C. 1322.031(A)(2) and 1322.041(A)(3).
5. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
6. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
7. Respondent's response to Question 5 of the Application indicating that he did not have any criminal convictions, when in fact he had a 1997 theft conviction was a substantial misrepresentation in his application that violated R.C. 1322.07(A). This response was also a false statement of a material fact, that he did not have any criminal convictions when in fact he had a 1997 theft conviction, in violation of R.C. 1322.07(B).
8. Respondent violated R.C. 1322.07(B) by omitting the statement regarding his theft conviction required to be in an application by R.C. 1322.031(A)(2).
9. Ohio Revised Code Section 1322.07(C) prohibits a loan officer license applicant from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
10. Respondent has engaged in improper and dishonest dealings in violation of R.C. 1322.07(C) by falsely indicating that he did not have any criminal convictions on his loan officer license application when in fact he had a 1997 theft conviction.
11. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude him from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
12. Once the theft conviction was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that his "activities and employment record since the conviction show that {he} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
13. Instead, the evidence established that he failed to disclose a fairly recent theft conviction on his Application. Question 5 of the Application explicitly mandates disclosure of theft convictions without any limitation. The Respondent's failure to disclose the conviction as well as his lack of credibility when explaining this failure, preclude him from establishing that he is honest, truthful, and of good reputation.

14. The Respondent did establish that it is unlikely that he will commit a similar offense in the future. The testimony from Respondent, his mother, and his manager indicate that Respondent will not make this type of mistake again.
15. Respondent did not prove by the preponderance of the evidence that he is honest, truthful and of good reputation. Therefore, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(3).
16. The Respondent's failure to disclose the theft conviction as well as his lack of credibility when explaining this failure, establish 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, Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(5).

### III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3) and (5). Therefore, I respectfully recommend to the Superintendent of the Division of Financial Institutions that Respondent's loan officer's license application be denied pursuant to R.C. 1322.041 and 1322.10(A).

Respectfully submitted,

  
Jane Stempel Arata  
Administrative Hearing Officer  
August 10, 2004