

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

GLENN K. BRANT, JR.

CASE NO. 04-0173-LOD

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REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued February 16, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned 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 3:00 PM on March 25, 2004, at 77 South High Street, 19<sup>th</sup> Floor, room 1914, Columbus, Ohio.

The hearing was held at the request of Respondent Glenn K. Brant, Jr., of Strongsville, 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 pleaded guilty in 2000, in Medina County, Ohio, to 3<sup>rd</sup> Degree Theft and pleaded guilty in 2001, in Cuyahoga County, Ohio, to 4<sup>th</sup> Degree Theft, involving business events dating from 1995, 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 Paula L. Paoletti. Respondent appeared pro se.

At the hearing all witnesses were sworn. State's Exhibits 1 through 10 were admitted into the record. Respondent was called, as on cross, by the Division as their only witness. Respondent's Exhibits A through F were admitted into the record, over the Division's objections on hearsay grounds, all subject to the weight determined appropriate to be afforded the documents, as discussed in the transcript (hereinafter "Tr.") pages 104-105. Respondent called two witnesses to testify and also gave direct testimony.

## B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent requested a hearing, which was received by the Division on February 18, 2004. On February 19, 2004, the Division scheduled the hearing for March 1, 2004, but continued the hearing to March 25, 2004, on its own motion, at which time the hearing went forward.

## 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 8.)
2. Respondent is an individual who has conducted, and wishes to be licensed to continue to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 1; Tr. pp. 14-15.)
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 October 16, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1.)
5. Respondent signed the Application on October 9, 2002, which he had filled out on, or about, the same day. (Exhibit 1; Tr. pp. 14-15.)
6. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, ..." (Exhibit 1; Tr. pp. 15-16.)

7. On December 4, 2000, In Medina County, Ohio, Respondent entered a plea of guilty to one count of Theft, a felony of the third degree, and the Court found Respondent guilty of that charge. (Exhibit 4; Tr. pp. 17-18.)
8. On April 18, 2001, In Cuyahoga County, Ohio, Respondent entered a plea of guilty to one count of Theft, a felony of the Fourth degree, and the Court found Respondent guilty of that charge. (Exhibit 6; Tr. 18-19.)
9. Respondent began working in the mortgage loan industry in March 2001. (Exhibit F; Tr. p. 38.)
10. Respondent's explanation of the two convictions is that they arise from the same circumstances. Respondent had worked 25 years in automotive sales and, in 1994, opened his own retail car dealership with a floor plan (revolving loan) from Commercial Investment Associates (hereafter CIA). As time progressed his business was not sufficient to cover his expenses and his finances became progressively worse until, during 1998, when he began liquidating his inventory, sell assets and repaying those persons he could with the money realized. After all assets were expended, Respondent still owed at least \$140,000 to CIA and \$64,000 to an individual, Mr. George Gosnick. The Medina County conviction relates to the CIA loan and the Cuyahoga County conviction relates to the Gosnick loan. (Tr. pp. 20-35, etc.)
11. Respondent was ordered to pay restitution to both CIA and Gosnick. (Exhibits 5, 7.)
12. CIA wrote a letter of recommendation on behalf of Respondent, which letter indicated that Respondent made payments before and after the conviction and otherwise conducted himself in a professional manner. This letter indicates that Respondent is honorable and has integrity and the only reason for the criminal action was, as Respondent stated, to protect CIA's investment. (Exhibit A.)
13. CIA has a vested interest in Respondent remaining employed and making regular payments. That interest does not necessarily discredit the positive recommendation of CIA's letter. (Exhibit A.)
14. Respondent's Probation Officer supplied a letter of recommendation indicating that Respondent dealt with his probation responsibly and has continued to make restitution on a regular basis. (Exhibit B.)

15. Letters of recommendation provided statements of a former employer, past customers and a person who has worked with the Respondent, all while Respondent was a loan officer. These statements, while hearsay, provided specifics why the individual wrote the letter and the activities of Respondent that caused a favorable impression, including Respondent's honesty, concern for his customers and sense of obligation. While not as convincing as live testimony, these letters are more convincing than most such evidence because of that specificity. (Exhibits C-F.)
16. Respondent acknowledges his debt to both CIA and Gosnick and states an intention, echoed by CIA, that he intends to repay those debts. (Tr. pp. 40-42.)
17. Two persons, who currently work with Respondent in the mortgage loan business, one of whom is Respondent's supervisor, spoke convincingly that Respondent was known for his honesty and good reputation and they have observed Respondent's behavior with customers and his attitude is to professionally address their needs. (Tr. pp. 106-140.)
18. No evidence was presented indicating that Respondent was convicted of any crime before or since the auto-dealership loans incident. (See Tr. p. 129.)

## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

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

### B. LICENSE APPLICATION

2. In 2000 and 2001, Respondent was found guilty of a "criminal offense involving ... theft...", an offense specifically cited in section 1322.041(A)(3), O.R.C.
3. The theft offense being proven by the Division, in order to obtain a license 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." Section 1322.041(A)(3), O.R.C.

4. Respondent's Exhibits A through F are letters of recommendation from persons who were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, Exhibits A through F were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, the Exhibits have been afforded limited weight. However, the detail and the specificity of the letters, in conjunction with the credibility afforded Respondent's two witnesses cause more weight to be granted these Exhibits than would normally be the case.
5. Although the 2000 and 2001 convictions are in the recent past, the actions causing the charges to be filed occurred between 1995 and 1998. Respondent's explanation of the complex circumstances leading up to the criminal charges – which were really collection actions (See Tr. pp. 30-35) – and Respondent's demeanor during the hearing, in combination with the testimony of witnesses, are sufficient to meet Respondent's burden to show there is no basis in fact for believing that he will commit such offenses again.
6. The Division did not rebut evidence of Respondent's current reputation and employment record. There is no basis in fact for believing that the Respondent will commit such an offense again.
7. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, Respondent demonstrated that, on or about September 18, 2002, Respondent signed an application under oath and answered Question 5 honestly.
8. Filing an accurate Application is favorably demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law.
9. The Division also charged that 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.



10. The Division brought into question Respondent's character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's two recent theft convictions.
11. Respondent's own testimony and the two witnesses and letters from six other individuals all spoke highly of Respondent's character and general fitness to command the confidence of the public and that the business will be operated honestly and fairly in compliance with the Mortgage Broker Act.
12. Respondent provided sufficient evidence to overcome the Division's evidence questioning his character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly in compliance with the Mortgage Broker Act.

#### C. DISCUSSION

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Respondent's criminal convictions were felonies specifically cited in section 1322.041(A)(3), O.R.C. Respondent has presented evidence that the offenses occurred as a result of a bad business deal poorly handled, that he has, and is, paying his debt to society and that he would not be likely to engage in the criminal activity again. Respondent has also demonstrated that he has been a productive member of the mortgage loan community

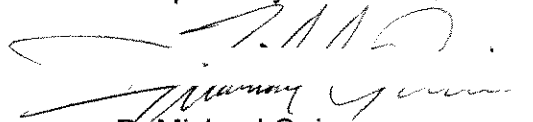
Three factors weighed against Respondent: a) The theft convictions involved decisions about handling money owed to other people; b) Respondent showed very poor judgment, or understanding, about his legal responsibilities; and, c) the convictions occurred recently, albeit the underlying facts did not. On the other side of the equation: a) Respondent did not try to hide his convictions and responded "Yes" to Question 5 on the Application; b) Respondent has proven through his own testimony, witnesses' testimony and letters of recommendation (although the latter do not carry as much weight) that he has conducted his activities as a loan officer since the convictions in a manner demonstrating integrity and honesty; c) Respondent will not be in a supervisory position and will have limited access to customers' funds; d) Respondent has been successfully operating in the mortgage loan industry for over two years and has earned a very favorable reputation; and, e) Respondent's demeanor and the demeanor of his witnesses provided strong support for Respondent's position.

Based on the record available, it must be concluded that Respondent has proven by a preponderance of the evidence that his 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, and that Respondent's character and general fitness do command the confidence of the public and the belief that the business will be operated honestly and fairly in compliance with the Mortgage Broker Act.

### III. RECOMMENDATION

The Division has proven the prior criminal convictions. Respondent did present sufficient evidence to prove, by a preponderance of the evidence, that his activities since the convictions show that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO GLENN K. BRANT, JR.**

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D. Michael Quinn", is written over a horizontal line.

D. Michael Quinn

Hearing Officer

February 16, 2005

Docket No. 04-DFI-030