

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 03-LO-D-86-87
)	
ROBERT W. CHENAULT)	<u>DIVISION ORDER</u>
4340 Normandy Avenue)	Denial of loan officer license application
Cincinnati, Ohio 45227)	&
_____)	Notice of Appellate Rights

Respondent, Robert W. Chenault, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 28, 2003. On August 6, 2003, the Division notified Chenault that it intended to deny his loan officer license application because: (1) he had been convicted of theft in 1994, and he had not proven that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another theft-type offense; (2) he violated R.C. § 1322.07(A) by failing to disclose his theft conviction on his loan officer license application; (3) he violated R.C. § 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; and (4) because his character and general fitness did not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of R.C. §§ 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Chenault requested a hearing and an administrative hearing was held on August 26, 2003. A Report and Recommendation was filed with the Division on October 16, 2003, recommending that the Division approve Chenault's application and grant him a loan officer license. No objections were filed.

In accordance with R.C. §119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

- Conclusion of law number 4 on page 5 of the Report and Recommendation (hereinafter referred to as "R&R") states:

Because Respondent failed to answer Question 5 of the Application truthfully, the burden of proof shifted to the

Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

In accord with R.C. §§1322.031(A)(2) and 1322.041(A)(3), the Division modifies conclusion of law number 4 to read:

Because Respondent had been convicted of theft, the burden of proof shifted to Respondent to show, by a preponderance of the evidence, that Respondent's activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit a theft-type offense again.

- Paragraphs 1 and 2 on page 6 of the R&R reference "Exhibit 6." This appears to be a typographical error, as the Division's exhibits were numerically marked and Chenault's exhibits were designated with letters. Exhibit number 6 is a copy of Chenault's letter requesting a hearing; Chenault's Exhibit G is a letter authored by him about his character, which was read into the record at the hearing. Paragraphs 1 and 2 are modified to read "Exhibit G" instead of "Exhibit 6."

- The Division disapproves paragraph 8 on page 6 of the R&R, which reads:

There is little doubt that the 1984 arrest of the Respondent was his only involvement with the criminal process. He has not been charged with any other criminal offenses. (Tr. 17).

The record is void of any 1984 arrest. The evidence shows that Chenault was involved with the criminal justice system in 1994 when he was convicted of theft, and more recently when he was criminally charged with being in a park after hours. (See Transcript page 21.) Furthermore, none of the testimony found on page 17 of the transcript supports the findings in paragraph 8.

- The Division modifies paragraph 9 on pages 6-7 by striking the reference to page 3 of the transcript. Page 3 of the transcript is merely the index of witnesses and exhibits.

- The Division disapproves the second sentence of paragraph 5 on page 5 of the R&R, which states:

The Respondent answered Question 5 of the Application falsely.
At the time of the submission of the Application, the Respondent's conviction had not yet been expunged.

The second sentence is disapproved as it implies that Chenault has had his record expunged or has at least made application for an expungement, which is contrary to the evidence.

- The Division disapproves paragraph 10 on page 7 of the R&R, which reads:

The record is devoid of testimony or evidence regarding why the Respondent has not pursued his rights to have a misdemeanor criminal conviction expunged. The Respondent would be well-served to contact counsel of his choice to explore an expungement possibility.

The Division, and hearing examiners acting on behalf of the Division, are not authorized to give applicants legal advice. Hearing examiners appointed by the Division serve solely as impartial decision makers. Paragraph 10 is disapproved.

- The Division disapproves of the classification of Chenault's theft conviction as "*de minimus*" as found in paragraph 9 on page 6 and paragraphs 11 and 12 on page 7.

De minimis means "about petty details."¹ It is derived from the Latin legal phrase *de minimus no curat lex*, which means "the law does not concern itself with petty matters."²

While \$43.49 may not be a significant amount of money, the Division will not characterize a conviction involving a small dollar amount as *de minimis*—insignificant or immaterial, one that will have no legal relevance or bearing on the end result. The Ohio General Assembly has stated that "*any* criminal offense

¹ *The Oxford Essential Dictionary of Foreign Terms in English*. Ed. Jennifer Speake. Berkley Books, 1999. *Oxford Reference Online*. Oxford University Press. Ohio State University. 9 February 2004 <<http://proxy.lib.ohio-state.edu:2154/views/ENTRY.html?subview=Main&entry=t33.e1820>>

² *Id.*

involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, *** drug trafficking, or any criminal offense involving money or securities” is significant and will have a bearing on the licensing of mortgage loan officers, regardless of whether the offense constituted a misdemeanor or felony. (Emphasis added.) R.C. 1322.031(A)(2) and 1322.041(A)(3).

- The Division disapproves, in part, with paragraph 11 on page 7 of the R&R. Paragraph 11 states:

Even assuming that the Respondent has had no involvement with the criminal justice system for 9 years and committed a misdemeanor offense that can easily be classified as *de minimus*, we are still faced with the fact that he failed to answer Question 5 correctly. Criminal convictions are material facts. The failure to disclose a criminal conviction is a violation of Ohio Revised Code 1322.07(A). An omission of a criminal conviction is the making of a false or misleading statement of a material fact and a violation of Ohio Revised Code 1322.07(B). The division has a right to expect that each applicant will answer Question 5, as well as all other questions, fully, truthful, and accurately. No applicant should expect to be able to answer Question 5 untruthfully in the hope that the Division simply does not find a prior criminal conviction.

Chenault has been involved with the criminal justice system since his 1994 conviction. (See Transcript page 21 and discussion on page 2 herein.) Chenault’s theft conviction cannot be classified as “*de minimus*.” (See pages 3-4 herein.) For these reasons, the Division disapproves and strikes the following from paragraph 11: “Even assuming that the Respondent has had no involvement with the criminal justice system for 9 years and committed a misdemeanor offense that can easily be classified as *de minimus*[.]”

The Division further modifies the last sentence of paragraph 11 by striking everything after “untruthfully,” so that the final sentence reads: “No applicant should expect to be able to answer Question 5 untruthfully.” Regardless of one’s reason for answering a question untruthfully, an untruthful answer on a licensing application is unacceptable.

- The Division disapproves paragraph 12 on page 7 of the R&R. Chenault violated R.C. § 1322.07(A) and (B) by failing to disclose his 1994 theft conviction on his licensing application. Question number 5 on the loan officer license application asked whether Chenault had “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?” Chenault answered “NO,” and then attested that he had “completed the *** [a]pplication fully and frankly[,]” and that his “answers [were] complete and true[.]”

R.C. § 1322.07(A) forbids any license applicant from “[o]btain[ing] a *** license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or [from] mak[ing] any substantial misrepresentation in any *** license application[.]” R.C. § 1322.07(B) prohibits a license applicant from “[m]aking false or misleading statements of a material fact, [or] omission of statements required by state law[.]”

Chenault testified that he did not disclose his conviction on his application. (See Transcript, pages 16-17.) The hearing officer found that Chenault had not disclosed his conviction on his licensing application. (See R&R paragraph 8, page 4; R&R paragraph 5, page 5; and R&R paragraph 11, page 7.) Accordingly, the evidence demonstrates that Chenault violated R.C. §§ 1322.07(A) and (B).

- The Division disapproves paragraph 13 on page 7 of the R&R. Because Chenault violated R.C. §§ 1322.07(A) and (B), the Division finds that Chenault’s character and general fitness do not command the confidence of the public and warrant the belief that his business would be operated honestly and fairly in compliance with the purposes of R.C. §§ 1322.01 to 1322.12.

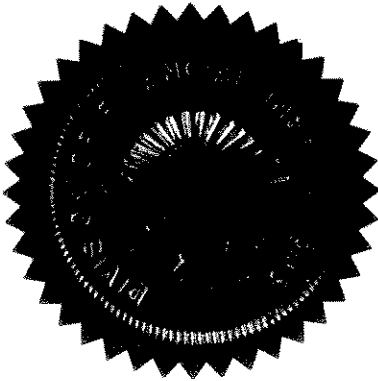
- Based on the reasons stated above, the Division disapproves the recommendation of the hearing officer to approve Chenault’s application and to grant him a loan officer license.

Chenault's loan officer license application is hereby denied.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.

Signed and sealed this 13th day of April, 2004.



ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

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

DIVISION OF FINANCIAL
INSTITUTIONS
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In re: Robert W. Chenault

: Case No. 03-LO-D-86-87

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License Application of Robert W. Chenault not be granted. The Division conducted an investigation and found:

1. In or around 1994, Mr. Chenault was convicted of Theft, a first degree misdemeanor, in the Hamilton County Municipal Court;
2. Respondent violated Ohio Revised Code Sections 1322.07(A) and 1322.07(B) by failing to disclose the criminal offense in the loan officer license application.

As a result, the Division determined:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.041(A)(2) and (3); and
- ii. that Mr. Chenault's character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in Section 1322.041(A)(5).

Mr. Chenault's address for service is 4340 Normandy Avenue, Cincinnati, Ohio 45227. He is hereinafter referred to as the "Respondent". The Respondent is employed by Pengrove Mortgage Company. (Exhibit 5, Tr. 16).

This matter was initiated by the Superintendent of the Division by the issuance on August 6, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 5).

On August 7, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 6).

On August 13, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for August 18, 2003 at 9:00 a.m. (Exhibit 7). The hearing was simultaneously continued and rescheduled for Tuesday,

Exhibit
A

August 26, 2003 at 9:00 a.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 7).

The hearing was held beginning at 9:00 a.m. on August 26, 2003 and was attended by: Anthony Siciliano, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; the Respondent, *pro se*, and Earlene Smitherman of the Division.

The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. On March 13, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

2. Question 5 of the Application provides:

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?

3. In response to Question 5, the Respondent answered "No".

4. On May 9, 2003, the Division wrote to the Respondent to indicate that his background check showed a charge of theft filed by the Cincinnati Police Department. (Exhibit 2). The Respondent was asked to provide additional information.

5. The Respondent submitted a letter dated May 13, 2003 in which he wrote:

Robert Chenault's
Statement of the facts and circumstances which gave rise to
the charge

On Feb. 5th, 1994, I showed up to work the 2nd shift (3pm-12am) at Stop-N-Go convenient store. I was working that night as a clerk/cashier with another older female cashier, Betty. This particular Saturday night, Cincinnati (Vice Squad) Police set up an operation to catch Stop-N-Go or it's employees violating alcohol laws. The Police didn't catch any alcohol violations, but they did catch two employees, Eric and Damien groceries shopping while off the clock

(not scheduled to work that day) and not paying for the merchandise.

Eric and Damien entered the store and after talking to Betty and I for a while, began casually shopping. They loaded up two bags of groceries and put the bags in their car. Shortly after Eric and Damien left, Cincinnati Police came in, flashed their badges and asked to speak to Betty and I. (Eric and Damien told the police that they were employees and that they had permission from the owner to take the groceries). The Police wanted to know if Eric and Damien were actually employed at Stop-N-Go. They also wanted to know if the owner of Stop-N-Go had an employee grocery credit policy (get groceries on credit and work it off or pay it off on pay day). Betty and I said yes to both questions and called the owner, Debbie and let the police talk to her.

Debbie admitted that there was an employee grocery credit policy, but felt that Eric and Damien were stealing and not adding these groceries onto their tab (this is correct, Eric and Damien were stealing). While talking to the police, Debbie became angry and inflamed and wanted to press charges against everybody in the store, but Betty (cashier) and Debbie (owner) are close friends (both women in their 50's), so Debbie told the police, "Betty wouldn't do such a thing." And the police assumed that Betty had nothing to do with the actions of Eric and Damien. But the police's assumptions about me were a different story.

The police tried to arrest me, I resisted the arrest and made them explain the charges against me or else I would not go peacefully. With four to five police officers holding on to different parts of my body, one officer calmly explained that I was an accomplice, thus being charged with "accomplice to petty theft." I asked what me an accomplice? The officer explained, that when Eric and Damien first entered the store the police observed me hugging them and shaking their hands (our greeting to one another). The Police also said I had given Eric and Damien the two grocery bags used to fill up with groceries (true, they asked me for the bags instead of walking around the counter to get it themselves, they were employees) and lastly, I had given them merchandise that we only keep behind the counter (true). One last critical detail, all three of us were young black men (21 to 22 years old). We looked the same and dressed the same and talked the same. (So from the police's point of view), I was guilty by

association. If I was being charged as an accomplice, then Betty also should have been charged. Debbie (the owner) assumed I was stealing with Eric and Damien simply because we were friends.

When the court day finally rolled around, Debbie didn't show up to court and the case was continued to a later date and the State of Ohio became the new plaintiff.

In court, Eric and Damien pleaded not guilty and had their cases continued to a later date. I pleaded no contest. I could have gotten a public defender and fought the charge (probably with a worse outcome), but I wanted it all be over with, no more continuous' of court dates, I was ready to move on with my life. I was emotionally drained and feeling wrongly accused. I was very angry with Eric and Damien, at Debbie, and at the police, I lost my job and missed some University of Cincinnati classes because I had to go to court. So, like I said, I pleaded no contest and was fined \$250 plus court costs. I paid the fine immediately and washed my hands of the incident and forgave everybody, so that I would not be harboring anger in my heart. Nine years later, I still find myself dealing with things that happened that crazy night.

Robert Chenault's
Statement any time served in confinement

I was fined \$250 plus court costs, which equaled \$298. Stop-N-Go received all items, which was taken from the store. I never had to serve any time in confinement as part of this sentence or any sentence.

(Exhibit 3).

6. The Respondent was convicted of Theft, a first degree misdemeanor.

7. The Hamilton County Clerk of Courts has written to the Division indicating that it no longer has the journal entry for the Respondent's criminal case. (Exhibit 4). A copy of the original criminal complaint together with a copy of the case file cover sheet are admitted into the record as part of Exhibit 4. Those documents show that the Respondent was charged with the theft of \$43.49 of various grocery items as well as resolution of the criminal case and the payment of a \$250 fine. (Id).

8. The Respondent answered Question 5 of the Application falsely.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit 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.

2. Ohio Revised Code Section 1322.041 provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (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.

3. Ohio Revised Code Section 1322.07(A) and (B) provide:

No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under Sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

- (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;
- (B) Make any false or misleading statements of a material fact, omissions or statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

...

4. Because the Respondent failed to answer Question 5 of the Application truthfully, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

5. The Respondent answered Question 5 of the Application falsely. At the time of the submission of the Application, the Respondent's conviction had not yet been expunged.

DISCUSSION

1. The Respondent claims that the Respondent is currently employed as a driver at Mio's Pizza. (Tr. 23, Exhibit 6). He is a graduate of the University of Cincinnati with an Economics' degree. (Tr. 23, Exhibit 6). He has worked at Breaking the Cycle, a juvenile sex offender program, for 8 months, has worked at Kroger's as a store manager, at Kinko's as a corporate business representative and at Systematic Software as a sales representative. (Tr. 23, Exhibit 6).

2. The Respondent is married and the father of three children, ages 13, 11 and 8 months. (Exhibit 6).

3. The record contains several references to the fact that the Respondent is active in the competitive game of Chess, including having participated in tournaments. (Tr. 35).

4. Jon Applebee, a loan officer with Pengrove Mortgage Company, testified in support of the Respondent. (Tr. 33, *et seq.*). He has known the Respondent for nearly 20 years. (Tr. 33). At one time, the Respondent and Mr. Applebee even shared an apartment and he has attended family weddings and other events. (*Id.*).

5. The Respondent also called Scott Bent, an employee of Free Style Graphics. Mr. Bent has known the Respondent since both were in high school in 1988. The Respondent was captain of the Chess team and taught Mr. Bent how to play that game. (*Id.*). Mr. Bent testified that the Respondent's good business ethics, outgoing and friendly attitude make(s) him "a natural businessman and entrepreneur". (Tr. 36). The Respondent and Mr. Bent started the business of Free Style Graphics, originally known as Fluid Illusions, Ltd., together, along with others. (Tr. 37-38). Mr. Bent believes that the Respondent's reputation is a good one. (Tr. 38).

6. The Respondent also called David Iyoha. (Tr. 29, *et seq.*). Mr. Iyoha testified that the Respondent was previously employed at Systematic Software as a sales representative from January, 2000 to May, 2001 and that he carried himself in a professional manner. Several compliments were received about the work of the Respondent. (Tr. 29).

7. The Respondent contends that he misread "Question 5". He saw the words "embezzlement", "forgery", "fraud", "passing bad checks", "money laundering" and "drug trafficking" and he felt that these offenses did not apply to him. (Tr. 16-17). He believed that he was charged as an accomplice to petty theft. (Tr. 17). The Respondent thought he had pled "no contest" to being an accomplice to petty theft. (Tr. 17).

8. There is little doubt that the 1984 arrest of the Respondent was his only involvement with the criminal process. He has not been charged with any other criminal offenses. (Tr. 17).

9. The amount at issue in the criminal offense was \$43.49. (Exhibit 4). The Respondent's summary of the events leading to his arrest indicates the *de minimus* nature

of the offense. (Tr. 3). That, coupled with the nearly 9 years that have expired since the offense along with the fact that the Respondent has had no further involvement in the criminal justice system, mitigate against denial of a license in this situation.

10. The record is devoid of testimony or evidence regarding why the Respondent has not pursued his rights to have a misdemeanor criminal conviction expunged. The Respondent would be well-served to contact counsel of his choice to explore an expungement possibility.

11. Even assuming that the Respondent has had no involvement with the criminal justice system for 9 years and committed a misdemeanor offense that can easily be classified as *de minimus*, we are still faced with the fact that he failed to answer Question 5 correctly. Criminal convictions are material facts. The failure to disclose a criminal conviction is a violation of Ohio Revised Code 1322.07(A). An omission of a criminal conviction is the making of a false or misleading statement of a material fact and a violation of Ohio Revised Code 1322.07(B). The division has a right to expect that each applicant will answer Question 5, as well as all other questions, fully, truthfully and accurately. No applicant should expect to be able to answer Question 5 untruthfully in the hope that the Division simply does not find a prior criminal conviction.


12. In this single, isolated case, the Hearing Officer believes that the Respondent mistakenly read and answered Question 5. Ordinarily, such mistakes, without more, are not enough for an applicant to sustain the burden of proof. In this instance, however, the supportive weight of the evidence submitted by the Respondent outweighs his error in completing Question 5 of the Application. The Respondent's emotional testimony, the unwaivering support of three character witnesses, the 9 years that have passed since the criminal conviction, the *de minimus* nature of the criminal offense and the fact that no further criminal justice involvements had been made by the Respondent all cumulatively show evidence that the Respondent should not be denied a license in this situation.

13. Based on the evidence and the Exhibits and the Transcript, the Hearing Officer concludes that by a preponderance of the evidence the Respondent's character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly and in compliance with purposes of the Ohio Mortgage Broker Act and that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will commit such an offense again.

RECOMMENDATION

Based on the above-findings of fact, conclusions of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,


Kenneth R. Cookson
Hearing Officer
October 14, 2003

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