

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

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DIVISION OF FINANCIAL
INSTITUTIONS
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In re: David E. Carter

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Case No. 04-0211-LOD

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

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

- a. In or around 1973, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter was convicted of the offenses of armed robbery, (two counts) and aggravated assault;
- b. In or around 1981, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter pleaded guilty to and was convicted of the offenses of forgery, (three counts), and uttering, (two counts);
- c. In or around 1984, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter pleaded guilty to and was convicted of the offense of attempted receipt of stolen property (motor vehicle);
- d. In or around 1992, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter pleaded guilty to and was convicted of the offense of passing bad checks;
- e. In or around 1992, in the Court of Common Pleas of Summit County, Ohio, Mr. Carter pleaded guilty to and was convicted of the offenses of theft, a felony in the fourth degree, and defrauding a livery or hostelry, a felony of the fifth degree;
- f. In or around 1993, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter pleaded guilty to and was convicted of the offense of defrauding a livery; and
- g. In or around 1994, in the Court of Common Pleas of Cuyahoga County, Ohio, Mr. Carter pleaded guilty to and was convicted of theft, a felony of the third degree.

2. As a result, the Division determined:

- a. Mr. Carter has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money

or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);

- b. Mr. Carter'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 set forth in Revised Code Section 1322.041(A)(5);

3. Mr. Carter's address for service is 479 Stinaff Avenue, Kent, Ohio, 44240. He is hereinafter referred to as the "Respondent." The Respondent is employed by Union National Mortgage, 8241 Dow Circle West, Strongsville, Ohio 44136.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 1A).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 1A).

6. On February 4, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 1B).

7. On February 10, 2004, the Division wrote to the Respondent indicating that a hearing would be held at 9:00 a.m. on February 17, 2004, and that the hearing was continued on the Division's own motion until Tuesday, March 16, 2004 at 1:00 pm in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio.

8. The hearing was conducted beginning at 1:00 p.m. on Tuesday, March 16, 2004 in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio.

9. Attending were John A. Izzo, Assistant Attorney General of Ohio in the Executive Agencies Section, and the Respondent, *pro se*.

10. 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 18, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act. (Exhibit 3). The Respondent was given the standard explanation and instructions for that Application (Exhibit 2).

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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "Yes" and wrote "Pre-1995, Cleveland Ohio".

4. The Respondent also submitted a packet containing the following information which includes a writing as follows:

To whom ever it may concern in response to your reply concerning my application for a loan officer's license. I regretfully must acknowledge that I am the person charged in each of the charges listed in your reply dated May 15, 2002. Charge 1, 2 and 3 dated Dec 1972, Jan 5, 1973 and Jan 5, 1973 are all arising from a singular incident that resulted obviously in multiple charges. The case arose as a result of a constant problem with alcohol. I was a passenger in an automobile with two other individuals. We entered the store with the intent of removing beverages and were confronted in the store. We resisted and accomplish removed cash from the draw and 2 customers. We were caught several blocks away and each charged and convicted of the same charges. I was 22 years old at the time of the incident and I make no excuse for what was a serious offense. I did not realize or in any way consider at the time that I was an alcoholic and never sought treatment. I was subsequently charged with those charges listed as items 4, 5, 6, and dated Nov 13, 1980 the incidence arose as a result of my accepting payment for installing a air condition impart with a credit card that the person accompanying me did not own I was aware of this but thought that the individual did have permission. Charges 7 8 9 10 11 12 and 13 arise from a singular incident. I purchased a automobile for 10,500 and amount that was demonstrated to have been withdrawn from my account the day of the incident. I approached the motor vehicle bureau for registration having purchased the car and the registrar told me that the title had a flaw and notified the police. I waited for there arrival and went to court thirteen times trying to resolve the issue. Having a prior record the court advised that they would like to resolve the matter by my pleading guilty to the charges and guaranteed me probation. I was married with two kids at the time I pled guilty and served the probation. The last charge involving this incident was a untimely payment of the fines associated with this matter charge 13. The probation was reinstated and all funds eventually satisfied. Items 14 and 15 arose as a result of a check that I wrote to a catering service for a wedding reception I was of the opinion that the check was good and when I couldn't make it good they prosecuted. Charges 16 17 and 18 are the result of hotel bill that was unpaid. My wife died in 1998 and I was emotionally and financially distressed and without any primary resident. Charges 19 20 21 22 23 and 24 were all as result of the same circumstance refusing to accept that I was in effect homeless and that my drinking problem has escalated to a point of disastrous results. I voluntarily entered drug rehab at Brecksville

Veterans Hospital and completed the drug rehab program and for the first time in my adult life was sober for an extended period of time that has lasted to today. I stayed in the VA hospital for over one year while attending rehab services. I also underwent a triple by-pass while there. I returned from surgery and completed my program and acted as president of the dormitory program for months. I contracted with the bureau of vocational rehabilitation and attended school to exploit my interest in the real estate market and learned both real estate appraisal and home inspection principles and practice finance, law and auctioneering. I am committed to performing my job with the highest degree of ethical responsibility. I certainly regret ever having had any exposure to the criminal justice system and am absolutely committed to the highest ethic in performing my job. I have been clean and sober now for 8 years without any incident.

(Exhibit 4).

5. The Respondent also submitted the following materials:

- a. A Certificate of Completion from Hondros College showing 1.5 credit hours of instruction in the Uniform Standards of Appraisal Practice;
- b. A Certificate of Completion from Hondros College showing 3.0 credit hours of instruction in Real Estate Appraisal – Weekday;
- c. A Certificate of Completion from Hondros College showing 1.5 credit hours of instruction in Uniform Residential Appraisal Report;
- d. A Certificate of Completion from Hondros College showing 1.5 hours of instruction in Appraising Small Residential Income Property;
- e. A Certificate of Completion from the Kent/Portage Small Business Development Center for instruction in Tools for Small Business Success Series for 1998;
- f. A Certificate of Completion from Hondros College showing the designation of Graduate Home Inspector, upon recognition of successful completion of 40 hours of study;
- g. Correspondence from the Commonwealth of Virginia Department of Professional and Occupational Regulation showing completion of the Virginia Auctioneer's Examination administered on July 10, 1998;
- h. Correspondence from the Certified Appraisers Guild of America showing membership in the Certified Appraisers Guild of America;
- i. A Certificate from the Certified Appraisers Guild of America showing successful completion of a course of study in personal property appraisal in 1998;
- j. A diploma from the Florida Auctioneer Academy showing completion of a 90-hour program in auctioneering;

k. A certificate from the Florida Auctioneer Academy showing completion of the requirements for RingMaster;

l. a journal entry from the Cuyahoga County Court of Common Pleas showing the 1973 convictions for armed robbery and aggravated assault;

m. A journal entry from the Cuyahoga County Court of Common Pleas showing the 1984 conviction for attempted receiving stolen property (motor vehicle);

n. A journal entry from the Cuyahoga County Court of Common Pleas showing the 1992 conviction for passing bad checks;

o. A copy of the journal entry from the Cuyahoga County Court of Common Pleas showing the 1993 conviction for defrauding a livery;

p. Documents showing consolidation of several criminal matters in Cuyahoga County Common Pleas Court;

q. A journal entry from Cuyahoga County Court of Common Pleas showing the 1994 conviction for theft;

r. A journal entry from Cuyahoga County Court of Common Pleas showing a Nolle Prosequi on a 1994 indictment for drug abuse; and

s. A journal entry from the Summit County Court of Common Pleas showing the conviction in 1992 the theft.

6. On October 21, 2003, the Division wrote to the Respondent indicating that the Division was not able to make a decision on the Application and requested information on four particular criminal cases. (Exhibit 5). In response thereto, the Respondent submitted;

a. Information that the first of the four charges had been consolidated into another case. (Exhibit 6);

b. Copy of an indictment from the Cuyahoga County Common Pleas Court charging the Respondent with attempted receiving stolen property, passing bad checks and defrauding a livery which occurred in 1993 and 1994 (Exhibit 6);

c. A journal entry from the Cuyahoga County Court of Common Pleas showing an entry of a guilty plea to theft;

d. A certificate from the Cuyahoga County Clerk of Courts indicating that the records were part of the official records of that office;

e. A copy of an indictment issued in 1980 for forgery, uttering (multi-counts);

f. A copy of an indictment from the Cuyahoga County Court of Common Pleas dated 1981 for receiving stolen property;

g. A copy of an indictment issued in 1980 for forgery, uttering, possession of criminal tools; and

h. A copy of a indictment dated in 1981 for forgery, petty theft, receiving stolen property and possession of criminal tools.

(Exhibit 6).

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 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(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

...

- (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 Section 1322.01 to 1322.12 of the Revised Code.

3. Because the Respondent has been convicted of theft offenses, receiving stolen property offenses, forgery offenses, fraud offenses, and passing bad checks offenses, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such offenses again. The Division has the burden to show that the Respondent's character and 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.

DISCUSSION

1. The Respondent acknowledges that the convictions set forth in the record in this matter occurred. (Tr. 11, 14). The Respondent asserts that he was an alcoholic for years and years and years and had not sought treatment. (Tr. 14). He began drinking when he was fifteen or sixteen years of age. (Tr. 14). He grew up in Pensacola, Florida and attended a segregated school. (Tr. 15). He grew up in a strict environment at home. (Tr. 15). The Respondent struggled with his sense of self-identity and to "validate" himself. (Tr. 15). He spent eleven months in the Air Force. (Tr. 16). He got married in 1976 and remained married for twelve years until his wife passed away in 1988. (Tr. 16).

2. The Respondent worked as a contractor in construction for some time. (Tr. 16). The Respondent asserts that the conviction for receiving stolen property involving an automobile occurred when he paid more than \$10,000 in cash for the car. (Tr. 17-18).

3. The Respondent spent time in the penitentiary. (Tr. 19). He went to college while in prison, attending Wilmington University. (Tr. 19). For the first time in his life he was exposed to different concepts. (*Id.*). The Respondent acknowledged he finally said to himself that he had been acting like an animal and that he probably deserved to have been incarcerated. (Tr. 20). The Respondent's last criminal conviction was in 1994. (Tr. 21). After being released from confinement, he went to the VA Hospital in Cleveland and stayed for fifteen months. (Tr. 21-22). He even had heart surgery at the VA Hospital. (Tr. 22). Afterwards, he went to classes at Hondros College (Tr. 22). He also took classes in computer science at a school called Bryant-Stratton. (Tr. 23).

4. One day he walked into the offices of Equity Plus and asked for a chance to get into the mortgage business. (Tr. 24). He worked for that organization for one year and closed a number of loans. (Tr. 24). In fact, he has done over \$20 million in business. (*Id.*). He has not had a problem with a single loan that he has produced. (Tr. 25).

5. Later, he left Mortgage Plus and began work in the mortgage banking environment. (Tr. 26).

6. The Respondent currently works for Union National; Bill Cosgrove is his supervisor. (Tr. 27). Most of the Respondent's leads come from realtors. (Tr. 28).

7. At the time of the hearing in this matter the Respondent was fifty-three years of age. (Tr. 29). He has just finished putting his daughter through cosmetology school. He is a licensed auctioneer in Virginia. (Tr. 29). The Respondent is also a licensed minister. (Tr. 30). The Respondent is rightfully proud that he has gained control over his alcoholism and has been gainfully employed. The Respondent attends AA meetings regularly (Tr. 37).

8. The Respondent asserts that some of his criminal convictions arose out of his work as a construction contractor. (Tr. 39). When the general contractor did not have money to pay the Respondent, the Respondent would be paid with merchandise from the general contractor. (Tr. 39). The merchandise, on some occasions, was purchased with other people's credit cards. (Tr. 39).

9. The record before the Hearing Officer shows unequivocally that the Respondent was convicted in 1973 of two counts of armed robbery, in 1991 of three counts of forgery and two counts of uttering, in 1984 for receiving stolen property, in 1992 of passing bad checks as well as theft and defrauding a livery, in 1993 of defrauding a livery and in 1994 of theft. Because of those convictions, the Respondent has the burden to show that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing that he will commit such offenses again. In this case, the Hearing Officer finds that the Respondent has not met his burden. There is little evidence in the record about the Respondent's reputation in the community, or of his honesty and truthfulness, other than the testimony of the Respondent himself. While the Respondent has made considerable positive progress since his last conviction in 1994, the Hearing Officer is not convinced that the Respondent's activities and employment record, since the last conviction in 1994, without more evidence in the record, show that the standard has been met.

10. The Hearing Officer also finds that the Division has met its burden to show that the Respondent's character and fitness do not command the confidence of the public or warrant the belief that the business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. Again, the record is devoid of evidence of the Respondent's character and fitness as well as testimony about the confidence that the public may have in the Respondent. The Respondent provided no testimony or evidence from his employer, his friends, members of the community, his customers or others.

11. Accordingly, the Hearing Officer determines that the Respondent has not met his burden here to show that his 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 the Respondent will commit such offenses again. Likewise, the Hearing Officer finds that the Division has established that the 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.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson
Hearing Officer

May 14, 2004
[Signature]