

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF George W. Miller, IV**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0303-LOD**

**FINDINGS OF FACT**

1. On or about January 3, 2003, George W. Miller, IV ("Respondent" herein) submitted an application and related materials (together with materials relating thereto and submitted by Respondent or it's agent subsequent thereto, accepted by the Ohio Department of Commerce, Division of Financial Institutions, collectively the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a Loan officer as defined in Chapter 1322 of the Ohio Revised Code (a copy of which is attached and incorporated as Exhibit A herein).
2. On or about January 27, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on March 23, 2004. At the Hearing, Respondent appeared *pro se*, and the Division was represented by Assistant Attorney General James M. Evans, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 24)
5. As of the date of the Application, Respondent was employed by Buckeye Mortgage Group, Inc.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Section 1322.041 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a Loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Section 1322.041 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a Loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the Loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences a theft conviction in 1998 which unfortunately reflects one of the very criminal offenses which the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). Respondent was forthright in his response to question 5 of the Application in disclosing the conviction, and provided further information concerning that matter. The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual which have occurred since the facts which gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the theft record of Respondent as described in the Notice and Application (Tr. Paged 9, 24), and the Respondent presented his own testimony as well as that of his spouse, together with certain unsubstantiated written testimonials (which were authored by the Respondent; Tr. Page 28), in support of Respondent's general

contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and 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. No testimony beyond that of Respondent and Respondent's spouse was provided at the Hearing.

While Respondent testified that "...in the ensuing years (since the theft conviction)...there's never been anything to blemish my integrity" (Tr. Page 14), upon inquiry by the Division the Respondent also admitted to a litany of vehicular offenses, including DUI, license suspension, driving under suspension, assured clear distance, speeding, and starting and backing (Tr. Pages 17, 18, 20, 21, 22)

The single theft conviction appears as an independent event, and not indicative of a pattern of criminal behavior which would necessarily reflect a concern for ongoing similar behavior. However, the history of vehicular and traffic offenses, while not necessarily indicative of inappropriate business dealings in the mortgage industry, is indicative of a troubling pattern of behavior which adversely reflects on Respondent's character and fitness, and whether the business will be operated in compliance with the law. The offenses reflect not only "traffic" offenses, but offenses involving compliance with vehicular licensing laws of the State of Ohio and driving while under a court-ordered suspension. (Tr. Pages 20, 22) The offenses are inconsistent with the requirements of Ohio Revised Code section 1322.041(A)(5), and Respondent's initial assertion that there has been nothing to "...blemish my integrity" since the theft conviction, followed by his testimony regarding ongoing vehicular and traffic offenses, is inconsistent with Respondent's obligation under Ohio Revised Code section 1322.041(A)(3) to prove, by a preponderance of the evidence, that he is honest, truthful, and of good reputation.

Therefore, in consideration of the limited evidence in favor of Respondent presented by Respondent at the Hearing, and in consideration of the testimony provided by the Respondent regarding his activities since the conviction, Respondent has not provided a preponderance of evidence sufficient to overcome the findings of the Division under Ohio Revised Code section 1322.041(A)(3). Further, in consideration of the testimony provided by the Respondent regarding the vehicular and traffic offenses and activities since the conviction, Respondent has failed to provide evidence sufficient to overcome the findings of the Division under Ohio Revised Code section 1322.041(A)(5).

#### RECOMMENDATIONS

For the reasons set forth herein, the referenced Application of the Respondent should be denied.

Respectfully submitted,

^

Jeffery E. Smith, Hearing Examiner

20 May 04  
Date