

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

In the matter of:	)	Case No. 93-LO-D-40-41
	)	
<b>AUDREY REYNOLDS</b>	)	<b><u>DIVISION ORDER</u></b>
1801 East Waterford Court, Apt. 12	)	<b>Denial of loan officer license application</b>
Akron, OH 44313	)	&
	)	<b>Notice of Appellate Rights</b>

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Respondent, Audrey Reynolds, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 10, 2002. On April 30, 2003, the Division notified Reynolds that it intended to deny her loan officer license application because: (1) she had been convicted of a felony—passing bad checks; (2) she violated R.C. § 1322.07(A) by failing to disclose the conviction on her loan officer license application; (3) she 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 her character and general fitness did not command the confidence of the public and warrant the belief that her 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.

Reynolds requested a hearing and an administrative hearing was held on July 10, 2003. A Report and Recommendation was filed with the Division on September 10, 2003, recommending that the Division approve Reynolds' application and grant her 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.)

- The Division modifies paragraph 5 on page 5, which cites "Exhibit 2.3[.]" This is a typographical error and should read "Exhibit 2." The report is hereby modified to reflect the correction.
- The Division disapproves paragraph 6 on page 5. In paragraph 6 the Hearing Examiner characterizes Reynolds' felony conviction for passing bad

checks as a “*de minimus*” crime. *De minimis* means “about petty details.”<sup>1</sup> It is derived from the Latin legal phrase *de minimus no curat lex*, which means “the law does not concern itself with petty matters.”<sup>2</sup>

While Reynolds’ felony conviction may have occurred more than ten years ago, the Division will not characterize her conviction 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 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, and regardless of the date of the conviction. (Emphasis added.) R.C. 1322.031(A)(2) and 1322.041(A)(3).

- The Division disapproves the last sentence of paragraph 7 on page 5, which reads: “No applicant should expect to be able to answer Question 5 untruthfully in the hope that the Division simply doesn’t find a prior criminal conviction.” Regardless of one’s reason for answering a question untruthfully, an untruthful answer on a licensing application is unacceptable.

- The Division disapproves paragraphs 8 and 9 on pages 5-6. Reynolds’ conviction was not *de minimus*. Reynolds violated R.C. § 1322.07(A) and (B) by failing to disclose her conviction on her licensing application. Question number 5 on the loan officer license application asked whether Reynolds had “ever been convicted of or pleaded guilty to any criminal offense including, but not limited to \*\*\* passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?” Reynolds answered “NO,” and then attested that she had “completed the \*\*\* [a]pplication fully and frankly[,]” and that her “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

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<sup>1</sup> *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>>

<sup>2</sup> *Id.*

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[.]”

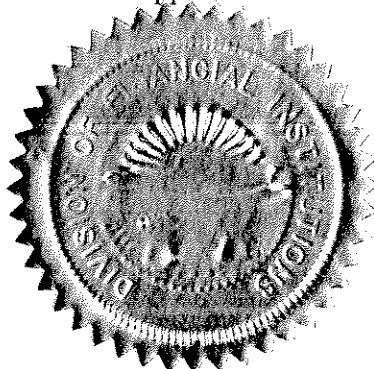
The Hearing Examiner found that Reynolds had not disclosed her conviction on her licensing application. (See R&R paragraph 3, page 2; paragraph 7, page 5; and paragraph 8, page 5.) Accordingly, the evidence demonstrates that Reynolds violated R.C. §§ 1322.07(A) and (B).

- The Division disapproves the recommendation of the Hearing Examiner to approve Reynolds’ application and to grant her a loan officer license. Reynolds’ failure to disclose her conviction on her licensing application shows recent evidence of dishonesty, and proves that Reynolds violated R.C. §§ 1322.07(A) and (B)—all evidence that Reynolds does not possess the character and general fitness to command the confidence of the public and warrant the belief that her 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.

Reynolds’ 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 7<sup>th</sup> day of May 2004.

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**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

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In re: Audrey Reynolds

: Case No. 93-LO-D-40-41

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 Audrey Reynolds not be granted. The Division conducted an investigation and found:

1. In or around 1980, Ms. Reynolds was convicted of passing bad checks in the Summit County Common Pleas Court;
2. Ms. Reynolds 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 she has not proven that she is honest, truthful and of good reputation and that there is no basis in fact to believe she will not commit such an offense again as set forth in Ohio Revised Code 1322.041(A)(2) and (3); and
- ii. that her 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).

Ms. Reynold's address for service is 1801 East Waterford Court, Apt. 112, Akron, Ohio 44313. She is hereinafter referred to as the "Respondent". The Respondent is employed by Mortgage Pointe Lending Company. (Exhibit 5).

This matter was initiated by the Superintendent of the Division by the issuance on April 30, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 5).

Thereafter, in a letter received by the Division on May 29, 2003, the Respondent requested a hearing. (Exhibit 6).

On June 4, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for June 10, 2003 at 9:00 a.m. (Exhibit 7). The Division simultaneously rescheduled the hearing for Wednesday, July

10, 2003 at 10:00 a.m. in Room 1918, Vern Riffe Center, 77 South High Street, Columbus, Ohio. A certified mail return receipt signed by the Respondent is attached as part of Exhibit 7.

The hearing was held beginning at 10:00 a.m. on July 10, 2003, and was attended by Daniel P. Jones, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio, and the Respondent, pro se.

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 April 14, 2002, 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. As part of the Application, the Respondent signed a release for a background check. (Exhibit 1).

5. The background check showed that the Respondent was charged with passing bad checks by the Akron Police Department and a corresponding conviction on the same charge in 1980. (Exhibit 2.3)

6. On December 10, 2003, the Division wrote to the Respondent to indicate that her background check showed the arrest. (Exhibit 2). The Respondent was asked to provide a detailed explanation and journal entries of the Court disposition and sentence. (Exhibit 3).

7. Thereafter, the Respondent submitted a letter in which she wrote:

1. sep 9 2003

I wrote a check to J.C. Pennys in Dec. of 78. My ex husband was to mail the check to me for Christmas for our son. I never did rec

the check I call Penneys to see if I could make payment but no way.

I have a checking account now with a over draft <500>. I know that I made a big mistake depending on someone else. Never again."

Exhibit 4.

### **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:

- (3) The applicant has not been convicted 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 offense, 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 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;

...

### DISCUSSION

1. The documentary evidence before the Hearing Officer shows that the Respondent, in response to a written request from the Division for an explanation (Exhibit 3), was convicted of passing bad checks in the Summit County Court of Common Pleas nearly twenty-four years ago. The Respondent indicated in her oral testimony that she did indeed write a check to the JC Penney store during the Christmas season. (Tr. 17). At the time she was going through a divorce. (Id). Her ex-husband was supposed to send her money. (Id) Although the ex-husband promised that he would be sending it, he failed to send it in time to cover the check that the Respondent wrote to JC Penney. (Id)

2. The Respondent realizes that her action was a mistake. (Id) She attempted to make payments to JC Penney. (Id) Following her criminal conviction, she paid the check. (Id) The check was for \$279.00. (Tr. 18). She was purchasing clothes and Christmas presents for her son. (Tr. 19). At the time of this matter, the Respondent was 32 years of age. (Tr. 20). In less than six months following her conviction she paid off the entire obligation. (Tr. 21).

3. For many years the Respondent worked at O'Neil's Department Store in Akron. (Tr. 22). The topic of a prior criminal conviction never arose. (Id) That store closed in 1989 and the Respondent took a job at a medical facility where she worked until 1994. (Tr. 23). In neither job was she ever asked whether she had a prior criminal involvement. (Tr. 23).

4. The Respondent was asked what she thought her own reputation was in the community. She responded:

I would love to think that its an excellent reputation. I belong to a club and I do attend church. I try to help volunteer at different projects as much as I can." (Tr. 24).

She considers herself to be a truthful person. (Tr. 24-25).

5. The Respondent called as witnesses Mary L. Morton and Gary Silbiger. Ms. Morton is the Vice President of Mortgage Pointe Lending Company. (Tr. 26). Mr. Silbiger is the President and Operations Manager for Mortgage Pointe Lending Company. (Tr. 30). Both testified that the Respondent has been working for Mortgage Pointe Lending Company since 1994. (Tr. 26,30). Ms. Morton in particular testified that the Respondent is Ms. Morton's personal assistant and Ms. Morton trusts her to watch over the company. Ms. Morton indicated that the Respondent routinely goes above and beyond what is expected of her to make sure that she's done a good loan. (Tr. 26). Ms. Morton considers Mortgage Pointe Lending Company to be extremely reputable. (Tr. 26). Mr. Silbiger testified forcefully that he hired the Respondent approximately nine years ago and has never regretted doing so. (Tr. 30). He felt that it was his personal obligation to her as a co-worker to testify at the hearing to help her keep what she has worked so hard to get since starting with Mortgage Pointe Lending Company. (Tr. 30). In all of the years that Mr. Silbiger has known the Respondent, she has not done one thing that would have made him concerned for her activities. (Tr. 31).

6. The Hearing Officer notes that the arrest and conviction of the Respondent occurred nearly 24 years ago. There is no evidence in the record indicating any further involvement on the part of the Respondent with the criminal process. The Respondent appears to have led an outstanding and productive life other than in this one, isolated incident. The substantial amount of time that has passed since the convictions coupled with the *de minimus* crime weigh in the Respondent's favor.

7. However, the Respondent's failure to answer Question 5 of the application accurately is troubling. Criminal convictions are material facts. The failure to disclose a criminal conviction is a violation of Ohio Revised Code Section 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 Section 1322.07(B). The Division has the right to expect each applicant will answer Question 5, as well as all other questions, fully, truthfully, and accurately. No applicant should expect to answer Question 5 untruthfully in the hope that the Division simply doesn't find a prior criminal conviction.

8. In this single, isolated case, the Hearing Officer believes that the Respondent has sustained her burden of proof. In this instance, the overwhelming weight of the evidence submitted by the Respondent including her own personal testimony, outweighs her error in completing Question 5 of the application especially when a *de minimus* conviction occurred 24 years ago. In this isolated incidence, the Hearing Officer is convinced that the failure to answer Question 5 is vastly outweighed by the cumulative testimony and evidence favorable to the Respondent in this matter.

9. Based on the evidence and the Exhibits and the Transcripts, 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 the Ohio Mortgage Brokers Act and that the Respondent has established that she is honest, truthful, and of good reputation and that there is no basis to believe that she will commit such an offence



again. The Hearing Officer has no hesitancy in recommending that a license be issued in this instance.

**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  
September 9, 2003

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