

Bob Taft
Governor

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

Doug White
Director

In the matter of:)	Case No. 04-0061-LOR
)	
THOMAS P. GILMARTIN, Jr.)	DIVISION ORDER
4600 Rhode Island, # 1)	
Youngstown, OH 44515)	Revocation of Loan Officer License
)	&
)	Notice of Appellate Rights
)	

DIVISION ORDER

On or around August 25, 2004, the Division of Financial Institutions issued notice to Thomas P. Gilmartin, Jr. ("Respondent") that the Division intended to revoke his loan officer license because he had been convicted in 1994 of thirty-five (35) federal convictions, each involving fraud, money or securities. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on October 27, 2004.

The hearing officer filed a written Report and Recommendation, recommending that the Division revoke Respondent's loan officer license. Respondent filed objections, which have been considered.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted and incorporated herein. (The Report and Recommendation is attached).

The Division modifies paragraph 4 on page 3 and paragraph 17 on page 5 of the Report and Recommendation.

The Report and Recommendation makes reference to Respondent's disclosure of his criminal convictions for fraud on Question 5 of his loan officer application. The hearing officer's discussion of the relevant law with respect to a disclosure of a fraud conviction was inaccurate. Pursuant to R.C. 1322.041(A)(3), a conviction for fraud requires an applicant to prove to the Division, "by a preponderance of the evidence that the applicant'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."

Here, the basis for the revocation was not R.C. 1322.041(A)(3), but rather R.C. 1322.10(A)(1)(b), which only requires the Division to provide proof of a fraud conviction. R.C. 1322.10(A)(1)(b) permits the Division to revoke a license if the Division finds that a licensee has been convicted of or entered a guilty plea "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." Respondent was convicted in federal court on 35 counts each involving fraud, money, or securities. (Exhibit F) Although it is immaterial to a revocation under R.C. 1322.10(A)(1)(b), the Division agrees with the hearing officer's conclusion 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. R.C. 1322.041(A)(5).¹

The Division adopts the hearing officer's recommendation and revokes the loan officer license of Thomas P. Gilmartin, Jr.

¹ While Respondent's loan officer license was not revoked pursuant to R.C. 1322.041(A)(5), it is appropriate to correct the Report and Recommendation to reflect that under that statute it remains the Division's burden to prove that an applicant's character and fitness do not command the public's confidence, etc.

It is so ordered.

NOTICE OF RIGHT TO APPEAL

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, 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 17th day of March 2006.

ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce