

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

OHIO DIVISION OF
FINANCIAL INSTITUTIONS

05 OCT 10 AM 9:02

IN THE MATTER OF:

ANTHONY E. WELLS

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. M2006-9992851

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

October 5, 2006

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was scheduled for 9:00 AM on September 27, 2006, at 77 South High Street, 21st Floor, Library, Columbus, Ohio.

The hearing was held at the request of Respondent Anthony E. Wells, of Trotwood, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent had been convicted in 2004 of attempted domestic violence, in Montgomery County Court, and pleaded guilty in 2005 in Butler County Court of Common Pleas, to nonsupport of dependents, and, also, that Respondent failed to disclose such convictions on his Application and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented

by the Ohio Attorney General's Office, Assistant Attorney General James M. Evens. Neither Respondent nor any representative appeared or submitted a written statement, although the start of the hearing was delayed until 9:50 AM.

At the hearing, State's Exhibits 1 through 10 were admitted into the record. One witness appeared for the Division.

B. JURISDICTION

The Division issued the NOH against Respondent on August 3, 2006. Service was perfected on Respondent on August 5, 2006. Respondent requested a hearing, received by the Division on August 17, 2006. On August 18, 2006, the Division scheduled the hearing for August 28, 2006, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to September 27, 2006, on its own motion, at which time the hearing went forward.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322.
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer (hereinafter "Loan Officer.") (Exhibit 1.)
3. On or about March 2, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"), signed by Respondent on February 10, 2006. (Exhibit 1.)
4. The Application was incomplete. By letters dated March 13, 2006, the Division notified Respondent and his employer that the criminal background check needed to be obtained. (Exhibits 2, 3; Testimony of DeFrank.)
5. At the June 14, 2006, request of the Division, Respondent submitted a letter explaining his two prior convictions and supporting court documents. (Exhibit 5; Testimony of DeFrank.)
6. The records Respondent sent to the Division involving the nonsupport convictions were incomplete. The Division sent a letter July 25, 2006, to Butler County and, as a result, received more

complete records relating to Respondent's convictions of nonsupport of dependents. (Exhibit 6; Testimony of DeFrank.)

7. On Question 5 of the first Application, which asks if the applicant has been convicted of any criminal offense, Respondent responded "No." (Exhibit 1.)
8. Respondent, under oath administered by a notary public, attested on February 10, 2006, to the truthfulness of the answers he gave to the questions on the Application. (Exhibit 1.)
9. Respondent caused the Application to be submitted to the Division, on, or about, March 2, 2006, in furtherance of his license to be a loan officer. (Exhibit 1.)
10. An investigation by the Division determined that, on, or around, April 7, 2004, in Montgomery County, Respondent pleaded Guilty to attempted domestic violence, and a finding was made of guilty. (Exhibits 5, 6; Testimony of DeFrank.)
11. An investigation by the Division determined that, on, or around, November 3, 2005, Respondent was convicted of four counts of nonsupport of dependents, in Butler County Court of Common Pleas. (Exhibits 5, 6; Testimony of DeFrank.)
12. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and that there is no basis in fact for believing that he would not commit such offenses again.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 2005, Respondent was convicted of nonsupport of dependents, "a criminal offense involving money." Section 1322.041(A)(3) O.R.C. While nonsupport of dependents may not have been what

the legislature intended by such language, it literally fits within the cited language because it is a criminal offense involving money.

3. The money conviction being proven by the Division, the Respondent must now prove, by a preponderance of the evidence, that the Respondent'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" in order to obtain a license. The Respondent must also demonstrate that the Respondent's character and general fitness will command the confidence of the public and will warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Sections 1322.041(A)(3) and 1322.041(A)(5), O.R.C.
4. Respondent did not offer any prove of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.

C. DISCUSSION

The Division has proven that the theft offense occurred. The burden to prove, by a preponderance of the evidence, that he should receive a license now falls to the Respondent. As the Respondent did not appear, did not submit any written statements and, in fact, did not present any evidence at all, there must be a finding for the Division in this case.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO ANTHONY E. WELLS.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
October 5, 2006
Docket No. 06-DFI-178