

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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DIVISION OF FINANCIAL  
INSTITUTIONS

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IN THE MATTER OF:

**JOHN H. KEENAN**

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DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. 05-0145-LOD

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

**Issued January 18, 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 held at 1:30 PM on October 13, 2005, at 77 South High Street, 19<sup>th</sup> Floor, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent John H. Keenan, of Lakewood, 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 was convicted of Criminal Non-Support and Attempted Criminal Non-Support, and, also, that Respondent failed to disclose the past criminal offenses on his sworn 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 Martine Jean. Respondent appeared pro se.

At the hearing, State's Exhibits 1, 2A, 3A, 3B, 4A, 4B, 4C, 5 and 6 were admitted into the record, as discussed in the transcript (hereinafter "Tr."). Respondent's presented no Exhibits. Two witnesses appeared for Respondent, including Respondent.

## B. JURISDICTION

The Division issued and mailed the NOH against Respondent on August 10, 2005. Respondent requested a hearing, which was received by the Division on August 15, 2005. On August 17, 2005, the Division scheduled the hearing for August 25, but continued the hearing to October 13, 2005, on its own motion, at which time the hearing went forward.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 4B.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1.)
3. On June 16, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1.)
4. Respondent signed the Application, attesting to his responses, on June 9, 2005. (Exhibit 1; Tr. pp. 19-22.)
5. On, or about, January 7, 2003, Respondent was convicted of Criminal Nonsupport and Attempted Criminal Nonsupport, in Cuyahoga County Court of Common Pleas. (Exhibits 3B; Tr. pp. 34-36, 54.)
6. Within the Application, Question number 6 asked: "Have you 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?" (Exhibit 1; Tr. p. 22.)
7. On May 10, 2005, Respondent, initially believing that the nonsupport had to be reported to the state on Question 6, obtained a certified copy of the Journal Entry of Cuyahoga Court of Common

Pleas, relating to the Nonsupport conviction, a month before he sent the Application to the Division. (Exhibit 3B; Tr. p. 32.)

8. Respondent discussed how to complete his Application with his co-workers and his supervisor at his prospective place of employment when he was unclear how to answer Question 6. Ultimately, neither he nor his supervisor thought that child support was included in the type of offenses described on Question 6. (Tr. pp. 20-25, 46-55 78-91.)
9. The supervisor did not know, at the time the Application was being completed, that Respondent's child support matter resulted in a criminal conviction. (Tr. pp. 80-81, 83.)
10. Within the Application Respondent answered "No" to Question number 6, which asked: "Have you 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?" (Exhibit 1; Tr. p. 22.)
11. Respondent's explanation of the non-support offenses was that he had become delinquent for 26 weeks. Respondent acknowledges his commission of the offenses. (Tr. pp. 34-36, 54.)
12. Respondent was brought into court on the nonsupport, entered a plea on the charges and sentenced to a fine and probation with jail time suspended. (Exhibit 3B; Tr. pp. 25-27.)
13. Respondent knew his nonsupport was a criminal matter. Respondent has been arrested, put into jail overnight and appeared in court and was sentenced to probation so he would have to report and make regular payments. (Tr. pp. 25-27, 36-39.)
14. Respondent and his supervisor did not consider the Nonsupport conviction to be an "offense involving money or securities" when he was completing the Application because of the other types of offenses specifically listed in the question. (Tr. p. 27.)
15. Respondent's testimony that he believed that the list of offenses in Question 6 demonstrated that the Nonsupport conviction was not within the category of offenses about which the Application was requesting information was credible. Respondent's mannerisms, behavior, body language and intensity all indicated that he believed what he stated.

16. Mr. Cahill, Respondent's witness, was likewise credible in the same issue, not only because he spoke with a straightforward candor, but because his recitation of the events differed somewhat from Respondent's. In addition, the witness indicated that he did not have prior knowledge that the child support matter was a criminal offense for Respondent.
17. Mr. Cahill has not had a long or significant knowledge of Respondent. (Tr. pp. 74-75.)

## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

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

### B. LICENSE APPLICATION

2. Respondent has been proven to have been convicted of two criminal offenses. The offenses are not specifically cited in sections 1322.041(A)(3) or (4), O.R.C., or on the Application, but are included within the phrase "involving money".
3. The proven offenses are in the category which automatically requires the Respondent to 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." Section 1322.041(A)(3), O.R.C.
4. The Division charged 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.
5. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's convictions.

6. The Division also brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's inaccurate response to Question 6.
7. Respondent's only evidence that his "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." was his, and his one witness', testimony, and his witness has not demonstrated sufficient contact with Respondent to demonstrate he could testify reliably as to Respondent's character or honesty.
8. A reading of the language of Question 6, which mirrors the language of section 1322.031(A)(2), O.R.C., could lead a reasonable person to intuitively believe that the type of offenses which are the focus of the licensing concern are offenses involving a taking of another's money or property or dishonest conduct. There is a real question whether the legislature intended to include something like Nonsupport in the same category as "theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking." However, the offense of Nonsupport does involve money and the literal reading of the language "...or any criminal offense involving money or securities" would encompass Respondent's Nonsupport conviction. If the legislature did not intend to include such offenses in its list it will be necessary for the statute to be more specific.
9. Respondent considered disclosing his Nonsupport conviction on the Application but, albeit on advice of his supervisor, chose not to do so. As a result, while the Division has not demonstrated that such non-disclosure was with the intent to deceive or misrepresent, it was done intentionally and Respondent must shoulder the responsibility. Respondent demonstrated that he had the necessary paperwork to supply to the Division at the time he sent the Application, but he chose to not disclose the convictions.
10. Accepting Respondent's explanation of his response to Question 6, it demonstrates a lack of attention to detail and is negatively demonstrative of an applicant's character and general fitness. The Application specifically asks for any criminal convictions. Respondent knew he had been criminally convicted and, ultimately, he simply did not disclose the past conviction because he was concerned it would jeopardize his chances to obtain a license.

11. The Division proved Respondent's character and general fitness does 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. – specifically relating to his response to Question 6.
12. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
13. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application "No."
14. The Division failed to demonstrate that Respondent's response to Question 5 was a substantial misrepresentation or a false statement of a material fact or was anything other than a misunderstanding of what the question was asking. The evidence presented demonstrates that the error was in the interpretation of the language of the Application and not an attempt to defraud the Division.

#### C. DISCUSSION

It is questionable if the legislature intended to include Respondent's criminal convictions in the type of offenses listed in sections 1322.041(A)(3) and (4), O.R.C. However, a literal reading of the statute indicates Nonsupport convictions are included as offenses involving money.

Because the burden of proof shifted to the Respondent and the Respondent did not present adequate proof to meet his burden, the Division has shown the criminal conviction of Nonsupport proves 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.

### III. RECOMMENDATION

The Division has proven the prior criminal convictions. Respondent did not present sufficient evidence to prove that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO JOHN H. KEENAN.**

Respectfully submitted,



D. Michael Quinn  
Hearing Officer  
January 18, 2006  
Docket No. 05-DFI-128