

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of:	:	
	:	Case No. 04-0129-LOD
John Paul Kazmierczak	:	
6005 Judge Drive	:	Terrence O'Donnell, Hearing Examiner
Toledo, OH 43615	:	

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HEARING EXAMINER'S  
REPORT AND RECOMMENDATION

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I. Introduction

This case came to be heard on June 21, 2004. Appearing were Respondent Mr. John P. Kazmierczak and his character witness Mr. Ray Uballe. Assistant Attorney General James M. Evans represented the Department of Commerce's Division of Financial Institutions ("the Division").

After due consideration of the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

A. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C. 1322.01 to O.R.C. 1322.12, the Department of Commerce's Division of Financial Institutions is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.
2. On February 4, 2003, Mr. Kazmierczak applied for a license to be a loan officer. See Loan Officer Application, State's Exhibit 1.
3. On May 8, 2003, the Division notified Mr. Kazmierczak that it was unable to make a

determination regarding his license because he had not supplied sufficient information concerning his criminal background. See Letter, State' Exhibit 4.

4. Mr. Kazmierczak subsequently sent the Division the information it had requested. See State's Exhibit 6.
5. On January 22, 2004, the Division sent Mr. Kazmierczak a Notice of Intent to Deny his Loan Officer Application. In the Notice, the Division stated that in or around 1997, Mr. Kazmierczak was convicted of trespassing; that in or around 1998, he was convicted of driving under the influence; that in or around 1998, he was convicted of petty theft; that in or around 1998, he was convicted of driving while intoxicated; that in or around 2002, he was convicted of operating a motor vehicle while under the influence; and that in or around 2003, he was convicted of driving under the influence. The Division also stated that Mr. Kazmierczak knowingly provided false information on his loan officer application. See Notice, State's Exhibit 5.
6. As a result, the Division stated that Mr. Kazmierczak had not proven he is honest, truthful, and of good reputation, and had not proven there is no basis in fact to believe he will not commit such offenses again. In addition, the Division alleges his character and general fitness do not command the confidence of the public and do not warrant the belief that his mortgage business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act. The Division also alleges that he violated O.R.C. 1322.07 by failing to disclose his criminal record on his loan officer application. See Notice, State's Exhibit 7.
7. On February 23, 2004, the Division received Mr. Kazmierczak's request for a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 8.

B. Conviction for Trespassing (1997)

8. At the hearing, the State offered into evidence documentation indicating Mr. Kazmierczak was convicted of trespassing in 1997. See Docket Entry, State's Exhibit 6. The details of this conviction were not explored at the hearing.

C. Convictions for OMVI (1998, 1998, 2002, 2003)

9. At the hearing, the State offered into evidence documentation indicating Mr. Kazmierczak was convicted four times since 1998 for driving while under the influence of alcohol. See Court Entries and Documentation, State's Exhibit 6. The last was a fourth degree felony. See Transcript, p. 30.
10. Mr. Kazmierczak was very open at the hearing about these convictions. He stated that these convictions stemmed from his problems with alcohol. "I drank too much. I wanted to be one of the guys. I had an alcohol problem." See Transcript, p. 37.
11. He also noted for the record that he has served time for these convictions, been in inpatient services for alcohol treatment, as well as counseling and related programs such as Alcoholics Anonymous. See Transcript, p. 16. He elaborated on these crimes in a letter to the Division. See Letter, State's Exhibit 5.

D. Conviction for Petty Theft (1998)

12. At the hearing, the State offered into evidence documentation indicating Mr. Kazmierczak was convicted of petty theft in 1998. See Judgment, State's Exhibit 6.
13. Mr. Kazmierczak explained that this conviction stemmed from an incident in which he had been drinking and then attempted to steal videos from a department store. See Letter, State's Exhibit 5.

E. Failure to Fully Disclose Convictions on Loan Officer Application

14. In response to Question 5 on his loan officer application, asking:

“[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (DUI’s and DWI’s are criminal offenses.),” (all emphasis in original),

Mr. Kazmierczak checked the box indicating “no.” See Application, State’s Exhibit 1.

15. At the hearing, Mr. Kazmierczak stated that he was confused by the wording of the question, such that he did not believe it called for disclosure of his convictions. On direct examination, he explained:

“When this question came across, I thought it meant past tense, so I made an error, because yes, I did commit offenses and I gave that stuff—sent that in to you guys afterwards when you asked for basically all my court appearances...So the omission was by error. It says there are several events, one of those was the petty theft, which was important because you wanted to know everything, but one got missed. It was by accident. I would not try to hide anything from the State of Ohio when they have everything in front of them. It would be foolish. So that was in error, and this other one was in error.” See Transcript, pp. 15-16.

And on cross examination:

Q: ...[t]he question is posed, “Have you or has any company...” Did you not see the word or in there?”

A: I see the word “or.” It’s asking me, or any company for which I have been...”—have been is looking at it as past tense. I didn’t understand the more than five percent owner. That just threw me way off.”

Q: Did you also not see where it indicated DUI’s and DWI’s were criminal offenses?

A: I see where it says that now, but like I said, it—I was thinking it was talking about past tense, had I ever worked as a loan officer for another company where I didn’t disclose it or something to that effect.” See Transcript, pp. 20-21.

#### F. Personal Testimony

16. Mr. Kazmierczak offered personal testimony to his character. He testified that he has worked as a loan officer for eighteen months without incident, and that he receives “much praise” at work. He also stated that he trains other loan officers on how to do proper “cold calling.” See Transcript, p. 16.

#### G. Character Witness

17. Mr. Ray Uballe, who has observed Mr. Kazmierczak’s work for approximately one year, testified that Mr. Kazmierczak is a valuable asset to the company. He corroborated the testimony that Mr. Kazmierczak is an effect phone solicitor, and also stated that he has witnessed Mr. Kazmierczak’s attempts to treat his alcoholism. See Transcript, pp. 40-41.

#### III. Conclusions of Law

18. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial Institutions shall license loan officers. It states in part:

“...the superintendent of financial institutions shall issue a loan officer’s license to the applicant if the applicant has not been convicted of or plead guilty to any criminal offense described in Division (A)(2) of Section 1322.031 of the Revised Code.” O.R.C. 1322.041.

19. The criminal offenses incorporated by reference are:

“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.” O.R.C 1322.031 (A)(2). Emphasis added.

20. Mr. Kazmierczak was convicted of petty theft in 1998.

21. Once the fact of conviction is established, the statute allows for a burden-shift in which Mr. Kazmierczak assumes the burden of proving by a preponderance of the evidence that despite his conviction, he otherwise should receive a loan officer’s license.

22. The statute sets out a number of criteria the applicant must meet, two parts of which are relevant to this analysis. The first part states:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(3) ...the applicant has proven 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 honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.” O.R.C. 1322.041 (A)(3).

23. Three times since his petty theft conviction in 1998, he has been convicted for driving under the influence. While petty theft and OMVI might appear to be unrelated offenses, in this case, Mr. Kazmierczak testified that his theft occurred while intoxicated. His conviction for petty theft is thus not an isolated event in his criminal record. Rather, it seems to be part of a pattern of reckless behavior he would engage in when under the influence of alcohol, a pattern that continued well after his petty theft offense.

24. Thus, while he testified with sincerity that he has made significant efforts toward sobriety in the last year, and his professional colleague concurred, the record reflects that since his petty theft conviction, he has not demonstrated that there is no basis to believe he would commit such an offense again.

25. As to whether Mr. Kazmierczak’s activities since the conviction demonstrate honesty, his representations to the Division concerning his criminal record are relevant. By failing to disclose any criminal conviction on his application whatsoever, his reputation for honesty and truthfulness is called into question.

26. His testimony that he misunderstood the question was itself difficult to comprehend. The question called for disclosure of any criminal offenses, and explicitly classified DUI and

DWI as such. It is difficult to comprehend that these examples did not raise a red flag for Mr. Kazmierczak, who has acquired *four* such convictions. His testimony that he believed the question to be referred to “past tense” was confused and lacked credibility. This failure to make the necessary criminal disclosures to the Division makes it more difficult to conclude Mr. Kazmierczak’s activities since his conviction demonstrate that he is honest and truthful.

27. The second relevant portion of the Ohio Revised Code relates to the applicant’s “character and general fitness.” It states in part:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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.” O.R.C. 1322.041 (A)(5).

28. The Hearing Examiner is not unmindful of Mr. Kazmierczak’s efforts to better his behavior and ensure he will not relapse.

29. But his pattern of recent convictions does raise questions about whether or not his character and fitness command the confidence of the public. Providing only self-serving personal testimony and one witness, he never answered these questions to the Hearing Examiner’s satisfaction.

30. Further, the relative recency of his offenses has not provided him with a great amount of time to demonstrate that his character and general fitness would command the confidence of the public.

31. Mr. Kazmierczak’s improper omissions on his loan officer application are also relevant to this statutory analysis. An assessment of his honesty is critical in determining whether or not he possesses the character that commands the confidence of the public, and in

determining whether his “business will be operated honestly and fairly,” as the statute demands.

32. He failed to disclose any of six convictions on his application, even though five of the six are specifically enumerated in the question. At the hearing, he did not offer a credible, coherent explanation for this omission. See Paragraphs 25-26. This precludes the Hearing Examiner from finding that he will operate his business “honestly and fairly.”

33. The law also makes explicit that no applicant should receive a license who knowingly withholds information from the Division in the application process. It states:

“No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 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 false or misleading statements of a material fact, omissions of 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;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings...”

34. As has been discussed, Mr. Kazmierczak did not disclose any of his convictions to the Division. His explanation for this omission was weak, and insufficient to satisfy the Hearing Examiner that his omissions should for some reason be excused. See Paragraphs 25-26. His failure to disclose his conviction on his application is a false representation of a material fact and an omission of a statement required by law.

35. Based on the foregoing, the Hearing Examiner finds that Mr. Kazmierczak has not proven by a preponderance of the evidence, that the his activities and employment record since the



conviction show that the he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again. Nor does the Hearing Examiner find that his character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the intent of O.R.C. 1322.01 to 1322.12. The Hearing Examiner also finds he violated O.R.C. 1322.07 by failing to fully disclose his criminal convictions to the Division.

#### IV. Recommendation

36. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends that the Superintendent of the Division of Financial Institutions deny Mr. Kazmierczak's loan officer application pursuant to Ohio Revised Code 1322.041.

1/28/05  
Date

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Terrence O'Donnell  
Hearing Examiner