

05 DEC -6 AM 8:35

**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

**THOMAS E. ROYSTON, II**

:  
:  
:  
:  
:  
:  
:

DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. M2006-9992777

---

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

**December 4, 2006**

**I. FINDINGS OF FACT**

After having heard the testimony, considered the evidence, observed and weighed the demeanor and credibility of the witnesses, the following factual findings are made:

**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 2:00 PM on November 1, 2006, at 77 South High Street, 23<sup>rd</sup> Floor, West Conference Room, Columbus, Ohio.

The hearing was held at the request of Respondent Thomas E. Royston, II, of Streetsboro, Ohio, formerly of Akron, 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, in a previous application, failed to disclose that he had a past criminal conviction, and, in the current application,

Respondent failed to disclose that the prior application resulted in a denial, 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 Todd A. Nist. Neither Respondent nor any representative appeared, or previously contacted the Division's counsel, as instructed in the letter setting the hearing date, even though the start of the hearing was delayed until 2:48 PM.

At the hearing, State's Exhibits A through H were admitted into the record. One witness appeared for the Division. During the course of Respondent's 2004 application, Respondent submitted a written statement which was introduced herein as Respondent's Exhibit 1. Respondent did not present any evidence, did not present any witnesses, nor appeared at the hearing.

## B. JURISDICTION

The Division issued the NOH against Respondent on August 23, 2006. The NOH was sent to the address Respondent provided on the Loan Officer Application but was returned as undeliverable. The Division then sent the NOH to Respondent at the same street address but a different apartment number and it was received on, or about, September 27, 2006. Respondent requested a hearing, which was received by the Division on October 18, 2006. On October 19, 2006, the Division sent a letter that scheduled the hearing for October 25, 2006. The Division continued the original date of the hearing to November 1, 2006, on its own motion, at which time the hearing went forward without any further communication from Respondent or anyone representing Respondent.

## 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 D.)
3. On March 13, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "2006 Application"), signed and attested as true and complete by Respondent on March 8, 2006. (Exhibit D.)
4. On Question 4 on the 2006 Application, which asks if the applicant has ever had a license revoked, suspended, or refused to be

renewed, or been fined, by any regulatory agency, Respondent answered "No." (Exhibit D.)

5. On Question 8 on the 2006 Application, which asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense in a state other than the state where you currently reside, Respondent answered "Yes" and gave a short description of 2003 and 2004 violations in Ohio. (Exhibit D.)
6. On August 12, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "initial 2004 Application"), signed and attested as true and complete by Respondent on August 4, 2004. (Exhibit E.)
7. On September 17, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "second 2004 Application"), signed and attested as true and complete by Respondent on September 13, 2004. The second 2004 Application was submitted to transfer to a different employing company. (Exhibit F.)
8. On both 2004 Applications, Respondent answered "No" to the Question 5 which asked: "Have you ... ever been convicted of any criminal offense? ..." (Emphasis in original.) (Exhibits E and F.)
9. On, or around, September 19, 2003, in Cuyahoga Falls Municipal Court, Ohio, Respondent pleaded Guilty to Domestic Violence, a misdemeanor of the first degree, and a finding was made of guilty. Respondent was sentenced to be incarcerated for 30 days, but all days suspended with two years probation and ordered to pay a fine of \$250. (Exhibit H.)
10. On February 2, 2005, the Division issued a Denial of Respondent's initial 2004 Application for violation of sections 1322.07(A), (B) and (C), O.R.C., based upon Respondent's failure to disclose his prior criminal conviction. (Exhibit G.)
11. During the course of the testimony, the Division stated that the response to Question 4 in the current Application was correct in that the question did not ask if the applicant had ever had a license denied. The question asks if the applicant has ever had a license revoked, suspended, or refused renewal. (Exhibit D; Tr. p. 21.)
12. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and if his character and general fitness do 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.

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. Pursuant to the Tenth District Court of Appeals decision in Porter v. State Medical Board (2006) 2006 Ohio App. LEXIS 5279, the Division failed to procedurally comply with O.R.C. Chapter 119 by not publishing or making personally deliver but, rather, sending a second certified mailing after the first mailing was undeliverable.

### **B. LICENSE APPLICATION**

2. Respondent was found by the Division, in a final order dated 2005, to have violated sections 1322.07(A), (B) and (C), O.R.C. in August 2004.
3. The Division having once made the finding, a subsequent administrative hearing cannot change that finding. Consequently, in a new hearing, the Respondent cannot seek to have the finding altered, nor can the Division seek to make a new finding on the same facts. The matter is res judicata. Therefore, there can be no new violation for Respondent's failure to disclose the criminal conviction on his 2004 Applications.
4. Respondent could be charged as having been found in 2005 to have violated sections 1322.07(A), (B) and (C), O.R.C. as evidence of dishonesty or lack of competency.
5. There is nothing noted in Chapter 1322, O.R.C., which suggests Respondent should be held accountable indefinitely for any mistake made on an earlier Application. Since section 1322.041 indicates an applicant can receive a license, despite past criminal convictions, if he can demonstrate that he has paid his debt to society and redeemed himself, the logical conclusion is that the incorrect response to Question 5 on the 2004 Applications should not be a permanent bar to obtaining a license.

7. Respondent answered Application Question 4 correctly. Respondent's answer to Question 8 exceeds what is requested. The incorrect answer "yes" only pertains to his residence and is trivial. The Division is not harmed by the response.
8. in order to obtain a license, Respondent must demonstrate that 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.
9. Respondent did not offer any prove that his 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.

#### C. DISCUSSION

The Division has proven that the violation of 1322.07(A), (B) and (C), O.R.C. occurred in 2004, although no new violation occurred. The burden to prove that he should receive a license now falls to the Respondent. As the Respondent did not submit any written statements, did not present any evidence at all, and, in fact, did not appear, there would be a finding for the Division in this case. However, because of the jurisdictional defect, any Order issued by the Division in this matter would be invalidated, by virtue of section 119.07, O.R.C.

### III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **TERMINATE CASE NO. M2006-9992777, THE NOTICE OF INTENT TO DENY A MORTGAGE LOAN OFFICER'S LICENSE TO THOMAS E. ROYSTON, II.**

Respectfully submitted,

—  
D. Michael Quinn  
Administrative Hearing Officer  
December 4, 2006  
Docket No. 06-DFI-202