

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

In the matter of:)	Case No. 04-0258-LOD
)	
DONALD R. SHIVELY)	<u>DIVISION ORDER</u>
3616 Ringling Lane)	
Gahanna, Ohio 43230)	Denial of Loan Officer License Application
)	

DIVISION ORDER

On April 30, 2002, Donald R. Shively ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on March 18, 2004.

The hearing officer filed his written report and recommendation with the Division on May 13, 2004, recommending that the Division deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent via certified mail. Respondent did not file objections.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and /or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

- The Division modifies the first sentence of paragraph 4 on page 6 of the Report and Recommendation.

The first sentence of paragraph 4 on page 6 reads "[b]ecause the Respondent has been convicted of burglary, a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again."

Not only was Mr. Shively convicted of burglary, but he was also convicted of forgery, which is also an offense in which the burden of proof is shifted to Mr. Shively. (See Exhibit 6) The first sentence of paragraph 4 on page 6 shall read "[b]ecause the Respondent has been convicted of burglary, a theft offense, and forgery, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his convictions show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such offenses again."

- The Division modifies the third sentence of paragraph 2 on page 6 of the Report and Recommendation.

The third sentence of paragraph 2 on page 6 reads “The Respondent has failed to meet his burden to establish by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest truthful and of good reputation and that there is no basis for believing he will commit such an offense again.”

The third sentence of paragraph 2 on page 6 reflects that the Respondent was only convicted of one burden-shifting offense when he had been convicted of two. (burglary and forgery) The third sentence of paragraph 2 on page 6 shall read “The Respondent has failed to meet his burden to establish by a preponderance of the evidence that his activities and employment record since his convictions show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such offenses again.”

Upon consideration of the hearing officer’s report and recommendation, the Division confirms and approves the recommendation. Accordingly, Respondent’s application for a loan officer license is hereby denied.

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, must 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 13th day of July 2005.

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

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