

STATE OF OHIO  
DEPARTMENT OF COMMERCE

CASE NO. 05-0129-LOD

IN THE MATTER OF:      LAWRENCE A. VAN KANNEL

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. Damschroder

I.      Findings of Fact

A.      Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on October 6, 2005, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division regarding Lawrence A. Van Kannel, an individual, because Lawrence A. Van Kannel has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense, and that Mr. Van Kannel's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Mindy Worly. Lawrence A. Van Kannel ("Respondent") appeared in person and represented himself *pro se*.

B.      Jurisdiction and Procedural Matters

1. The Division issued a Notice of Opportunity for Hearing to Respondent on July 20, 2005, and served it upon Respondent by certified mail. Respondent's wife signed a certified mail receipt on July 22, 2005. (State's Exhibits #4, Tr. p. 29)
2. Respondent's hearing request was received by the Division on August 17, 2005. (State's Exhibit #5)
3. By letter of August 18, 2005, the Division notified Respondent that the requested hearing was to be held on August 29, 2005, but in the same letter rescheduled the hearing to October 6, 2005. (State's Exhibit #6)
4. Respondent attended the hearing and represented himself *pro se*. Respondent made clear that he understood that he was entitled to an attorney if he wanted one but chose to proceed without counsel. (Tr. p. 5)

**C. Respondent's Loan Officer Application**

1. On or about August 17, 2004, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. Respondent admitted on his application that he had two criminal convictions. (State's Exhibit #1)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. The Division obtained documentation proving that Respondent had been convicted of Forgery, a misdemeanor of the first degree, on or about October 11, 1995. Respondent was sentenced to three months of incarceration, with all but two days of sentence suspended, he was ordered to pay a fine of seven hundred fifty dollars (\$750), and to pay restitution of two hundred three dollars (\$203). Subsequently, the Respondent was convicted of Unauthorized Use of Property, a misdemeanor of the fourth degree, on or about August 27, 1996. Respondent was sentenced to thirty days of incarceration, with all thirty days suspended. Respondent was fined fifty dollars (450) and ordered to pay court costs. He was also ordered to stay away from Lazarus Department Store, the owner of the property in question, for one year. (State's Exhibit #3, Tr. p. 24)
5. With respect to the forgery conviction, Respondent testified that his girlfriend modified the dollar amount of a store credit received when returning items to a sporting goods store, and then later used the altered credit to purchase goods. Respondent testified that the store credit had been issued in his name on a prior visit to the store because his girlfriend was not carrying identification. Respondent testified that his girlfriend changed the face amount of the store credit, but she blamed the change on Respondent when confronted, and Respondent could not prove otherwise. (Tr. pp. 14-21, 39)
6. With respect to the conviction for unauthorized use of property, Respondent testified that his girlfriend placed a shirt that she had not paid for in a shopping bag that Respondent was holding while shopping at a Lazarus Department Store. When Respondent left the store with the bag, a security officer stopped him and found the shirt. Respondent claimed no knowledge of the shirt, but signed a document offered by Lazarus officials on the belief that the matter would be dropped. When a criminal complaint was issued by Franklin county Municipal Court, Respondent plead guilty to a charge of unauthorized use of property. (Tr. pp. 21-28)
7. Respondent testified that his girlfriend, who he claims was responsible for both crimes, was the same person. His girlfriend was questioned in both cases but was not charged in either instance. (Tr. pp. 22-23)

8. Respondent testified that he has proven his honesty and integrity throughout his professional career in financial services, banking, the mortgage industry and an alarm company. Respondent submitted written statements from persons attesting to Respondent's character and integrity. (Tr. pp. 51-52, Respondent's Exhibits #B, #C)

## **II. Conclusions of Law**

### **A. Jurisdictional and Procedural Matters**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. *Reed v. State Med. Bd.* (1988) 40 Ohio App. 3d 124, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

### **B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show he is entitled to a license.
4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
- (3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of 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.

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- (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.

- 6 Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has 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.
7. The Division has proved that Respondent has been convicted of forgery, and a criminal offense related to receiving stolen property or theft. These offenses are directly related to the license he seeks, indeed they go to the heart of the integrity needed to adequately and fairly represent the interests of mortgage

clients. For this reason, Respondent's convictions must be considered when reviewing his application for licensure. Accordingly, Respondent must show that, since his convictions, he is honest, truthful and of good reputation, and that the Superintendent has no basis for believing that Respondent will commit another criminal offense.

8. Respondent's conduct since his convictions does demonstrate a significant degree of "rehabilitation", as he has a history of holding jobs in the financial services industries. For this effort, Respondent should be commended. It cannot be denied, however, that Respondent's criminal acts are those specifically enumerated in the Ohio Mortgage Act, and go directly to the heart of the integrity needed to serve clients in need of mortgage financing. Even if Respondent's testimony is looked at in the light most favorable to him, his conduct still demonstrates incredibly bad judgment in his choice of relationships, and a disregard for assuring that justice be done. Respondent testified, in effect, that he was not responsible for any criminal activity, he was in a relationship with the person who was responsible criminal activity, he took no steps to make sure that authorities knew that his girlfriend was the guilty party, and he consented to be saddled with convictions for illegal acts that he did not commit. If this is the *best* that can be said for Respondent's conduct, it does not paint a flattering picture. Given these circumstances, I am not persuaded that Respondent has met his burden of showing that he is honest, truthful and of good reputation, and that he is no risk to commit another offense.
9. The Division has met its burden of proof to deny a license to Respondent.
10. Respondent did not present evidence of sufficient weight to meet his burden of proof that he is entitled to a license.

### III. Recommendation

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Lawrence A. Van Kannel be found to not have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions **deny** Respondent's application for a Loan Officers License.

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William R. Damschroder, Esq.  
Hearing Officer

4/21/06  
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Date