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STATE OF OHIO
DEPARTMENT OF COMMERCE

CASE NO. 05-0133-LOD

IN THE MATTER OF: JAMES CURRY

*Wrong case #
should be
05-0149-LOD*

REPORT AND RECOMMENDATION OF THE HEARING (
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 11, 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 to James Curry, an individual, because Mr. Curry was convicted of attempted breaking and entering and has not proved since his conviction 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 similar criminal offense, that he made substantial misrepresentations on his license application, made false or misleading statements of material fact, and engaged in conduct that constitutes improper, fraudulent, or dishonest dealing, and that Mr. Curry'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 James M. Evans. Appearing as a witness for the Division was Mark L. Rhea, Consumer Finance Staff Attorney. James Curry ("Respondent") did not appear in person or through counsel, and presented no evidence to be considered at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Respondent on August 10, 2005, and served it upon Respondent by certified mail. The letter was signed for by Respondent on August 12, 2005. (State's Exhibits #3)
2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny Respondent a license. This request was received by the Division on August 23, 2005. (State's Exhibit #4)

2. By letter of August 24, 2005, the Division notified Respondent that the requested hearing was to be held on October 11, 2005. (State's Exhibit #5)
3. Respondent did not attend the hearing. The hearing starting time was delayed by thirty minutes to allow Respondent an opportunity to participate. Neither Division personnel nor Division counsel received notice from Respondent that he would not be attending or participating in his hearing. (Tr. pp. 5, 10, 11)

C. Respondent's Loan Officer Application and Criminal Convictions

1. On or about January 13, 2003, the Division received a loan officer license application from Respondent. (State's Exhibit #2)
2. In completing the application, Respondent indicated by answering "No" on question #5, that he had not ever been convicted of any criminal offense. (State's Exhibit #2)
3. By letter of February 7, 2003, the Division notified Respondent that it had information that Respondent had a criminal conviction, and that Respondent needed to submit information to explain his legal situation. By letter of August 5, 2003, the Division notified Respondent that, since he had not responded to the demand for information, the Division considered his application withdrawn. (State's Exhibit # 2)
4. On May 12, 2005, the Division received a second loan officer license application from Respondent. (State's Exhibit #1)
5. In completing the application, Respondent indicated by answering "Yes" on question #5, indicating that he had been convicted of a criminal offense. (State's Exhibit #1)
6. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
7. In response to the Division's request, Respondent submitted documentation obtained from the Franklin County Common Pleas Court providing the Division with the details concerning a March 20, 1990 conviction for attempted breaking and entering. Respondent provided no written explanation of the circumstances surrounding his conviction. (State's Exhibit #1)

II. Conclusions of Law

A. Jurisdictional and Procedural Matters

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her 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 she 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.

- (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. The Division's argument in seeking to deny Respondent a loan officer's license rests on R.C. Sections 1322.07, which states in pertinent part:

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 licensure through 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;

7. The Division has proved that Respondent answered question #5 incorrectly on his first application by checking the box marked "No", when the criminal background check proved that Respondent had been convicted of a criminal offenses. This conviction is beyond dispute, as on Respondent's second application he answers "Yes" to the same question and submits information outlining his conviction for attempted breaking and entering.
8. Since a conviction has been proved, Respondent bears the burden of showing that, since his conviction, he is honest, truthful, and of good reputation, and that his actions since his conviction demonstrate that he is not likely to commit another criminal offense.
9. With respect to the answer to Question #5, concerning criminal convictions, it is incumbent upon Respondent to offer some explanation for the obviously incorrect answer provided in his first application.
10. Respondent's failed to participate in his hearing, failed to offer any information or evidence to meet his burden, and failed to offer any explanation for his answer to questions on his first application.
11. The Division has met its burden of proof of showing that Respondent is not entitled to a license.
12. Respondent has failed to present any evidence to meet his burden of proof that he is entitled to a license.

II. Recommendation

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

William R. Damschroder

William R. Damschroder, Esq.
Hearing Officer

3/10/06

Date

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

In the matter of:)	Case No. 05-0149-LOD
)	
JAMES P. CURRY)	<u>DIVISION ORDER</u>
1976 Tupsfield Road)	Denial of Loan Officer License Application
Columbus, Ohio 43229)	&
)	Notice of Appellate Rights
)	

Respondent, James P. Curry ("Respondent"), submitted a loan officer license application to the Division of Financial Institutions ("Division") on January 13, 2003. On February 7, 2003, the Division requested information and documentation from the Respondent concerning his prior criminal record. Respondent did not comply, and on August 5, 2003, the Division notified Respondent that it was withdrawing his loan officer license application ("Application") due to his failure to provide the information.

Subsequently, on May 12, 2005, Respondent re-applied for a loan officer license. On August 10, 2005, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1990, in the Franklin County, Ohio, Court of Common Pleas, Respondent was convicted of Attempted Breaking and Entering; (2) Respondent violated R.C. 1322.07(A) by failing to disclose the conviction on the 2003 Application; (3) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the 2003 Application; (4) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct during the course of his 2003 Application; and (5) pursuant to R.C. 1322.031(A)(2) and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or

securities; and (6) because 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on October 11, 2005. Respondent failed to appear. A Report and Recommendation ("Report") was filed with the Division on March 13, 2006, recommending that the Division deny Respondent's Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. (The Hearing Examiner's Report and Recommendation is attached). Following its review of the record, the Division hereby adopts the hearing officer's recommendation and denies the loan officer license application of James P. Curry.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

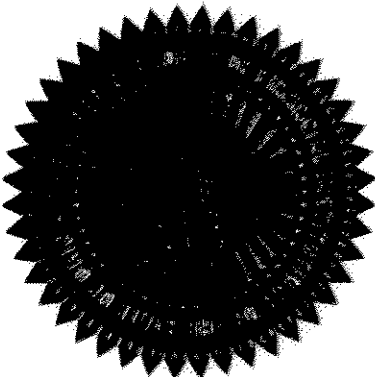
Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal, pursuant to R.C. 119.12, must also 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 8th day of February 2007.



RICHARD F. KECK

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



06 MAR 13 AM 11:21

STATE OF OHIO
DEPARTMENT OF COMMERCE

CASE NO. 05-0133-LOD

0149

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REPORT AND RECOMMENDATION OF THE HEARING OFFICER
William R. Damschroder

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6. The Division's argument in seeking to deny Respondent a loan officer's license rests on R.C. Sections 1322.07, which states in pertinent part:

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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;

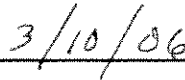
7. The Division has proved that Respondent answered question #5 incorrectly on his first application by checking the box marked "No", when the criminal background check proved that Respondent had been convicted of a criminal offenses. This conviction is beyond dispute, as on Respondent's second application he answers "Yes" to the same question and submits information outlining his conviction for attempted breaking and entering.
8. Since a conviction has been proved, Respondent bears the burden of showing that, since his conviction, he is honest, truthful, and of good reputation, and that his actions since his conviction demonstrate that he is not likely to commit another criminal offense.
9. With respect to the answer to Question #5, concerning criminal convictions, it is incumbent upon Respondent to offer some explanation for the obviously incorrect answer provided in his first application.
10. Respondent's failed to participate in his hearing, failed to offer any information or evidence to meet his burden, and failed to offer any explanation for his answer to questions on his first application.
11. The Division has met its burden of proof of showing that Respondent is not entitled to a license.
12. Respondent has failed to present any evidence to meet his burden of proof that he is entitled to a license.

II. **Recommendation**

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



William R. Damschroder, Esq.
Hearing Officer



Date