

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

In the matter of:	)	Case No. 04-0122-LOD
	)	
<b>STANFIELD SIMMONS</b>	)	<b><u>DIVISION ORDER</u></b>
1652 Peardale Road N.	)	<b>Denial of Loan Officer License Application</b>
Columbus, Ohio 43229	)	<b>&amp;</b>
	)	<b>Notice of Appellate Rights</b>

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On August 29, 2002, Stanfield Simmons ("Respondent") submitted a loan officer license application ("Application") to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Simmons notice of the Division's intent to deny his application because: (1) He had been convicted in 1992 of conspiracy to commit an offense against the United States; (2) He had been convicted of attempted theft in 1992 and receiving stolen property in 2001, and he had not proven that he is honest, truthful, and of good reputation and that there is no basis for believing that he will not commit another offense involving receiving stolen property, theft, or money; and (3) Because his character and general fitness did not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

Simmons requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on June 15, 2004.

The hearing officer filed his written Report and Recommendation with the Division on September 1, 2004, recommending that the Division grant Simmons' application. Simmons was served with a copy of the Report and Recommendation and a letter explaining his right to submit written objections. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the September 1, 2004 Report and Recommendation, all 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.)

The Division modifies paragraph 13 on page 4 of the Report and Recommendation to reflect that, in contradiction of Simmons testimony, when Simmons pleaded guilty to receiving stolen property in 2001, he pleaded guilty to a charge that states he either knew or "ha[d] reasonable cause to believe that the [car he purchased] ha[d] been obtained through commission of a theft offense." (See R.C. 2913.51(A).)

The Division modifies paragraph 2 on page 4 of the Report and Recommendation to reflect that although Michelle Gladney states that she does not believe that Simmons would ever engage in dishonest or criminal conduct, nowhere in her testimony does she state that she has any knowledge of his previous criminal convictions. (Transcript pp. 52-58.)

The Division modifies paragraph 3 on page 4 of the Report and Recommendation to reflect that although Fabienne Butler states that she does not believe that Simmons would ever engage in dishonest or criminal conduct, when further questioned, she admits in her testimony that she did not know about his previous criminal convictions and was never told about them by Simmons. (Transcript pp. 65-66.)

The Division modifies paragraph 4 on page 5 of the Report and Recommendation to reflect that Carrie Pettus does not state that she has any knowledge of Simmons' previous criminal convictions. (Transcript pp. 68-72.)

The Division modifies paragraph 5 on page 5 of the Report and Recommendation to reflect that although Rhonda McIntyre states that she does not believe that Simmons would ever

engage in dishonest or criminal conduct, when further questioned, she admits in her testimony did not know about his previous criminal convictions. (Transcript pp. 75, 77.)

The Division modifies paragraph 6 on page 5 of the Report and Recommendation to reflect that although Erica Burton states that she does not believe that Simmons would ever engage in dishonest or criminal conduct, nowhere in her testimony does she state that she has any knowledge of his previous criminal convictions. (Transcript pp. 79-85.)

The Division modifies paragraph 7 on page 5 of the Report and Recommendation to reflect that although Timothy Brown states that he does not believe that Simmons would ever engage in dishonest or criminal conduct, when further questioned, he admits in his testimony that he did not know about his previous criminal convictions and was never told about them by Simmons. (Transcript pp. 89, 92.)

The Division disapproves paragraph 2 on pages 7 and 8 of the Report and Recommendation; paragraph 3 on pages 8 and 9 of the Report and Recommendation; and the Recommendation on page 9 of the Report and Recommendation.

Three times Simmons has been convicted of a crime, yet despite those convictions, his testimony is that of a man who has refused to acknowledge or accept responsibility for his past actions. With respect to his recent felony conviction for receiving stolen property, Respondent claims he had no reason not to trust the man he bought a stolen car from, but when he pleaded guilty to that charge, he pleaded guilty to a crime in which it states he either had to know or “ha[d] reasonable cause to believe that the [car he purchased] ha[d] been obtained through commission of a theft offense.” (See R.C. 2913.51(A), Exhibit 6, and Transcript pp. 40-41.) With respect to his federal conspiracy charge in 1992, he claims that he did not know that handguns were in the automobile in which he was traveling, yet he pleaded guilty to a federal

conspiracy charge and was incarcerated for it. (Exhibit 4, Transcript pp. 26-27.) Finally, he was convicted for attempted theft five years after the original charge was filed for an incident that he did not recognize was a crime. (Exhibit 5, Transcript pp. 32-34.) In all circumstances, Simmons would have people believe that he was ignorant of the wrongdoing occurred. Simmons also testified that he had another “brush” with the law in 2002. It again involved an automobile. Simmons states that he rented a vehicle from Avis for a period of two weeks, but kept the rental car for a period of thirty days. (Transcript pp. 44-46.) Simmons did not notify Avis that he was keeping the car. (Id.) Simmons stated that Avis tried to contact him about the car but that they could not because he had moved. (Id.) This shows that Simmons is not a responsible person and makes the Division further question his character and general fitness. Although the fact that Simmons was convicted of three crimes already reflects negatively on his character and general fitness, so does his refusal to accept responsibility for his past actions. Even if the Division accepted Simmons’ explanations as to the circumstances surrounding his criminal convictions, the Division is greatly troubled by the fact that Simmons cannot seem to recognize when he is either a part of the wrongdoing or an observer to a crime. In an industry where recognition of wrongdoing is important and when that wrongdoing can result in persons losing their homes, the Division cannot find that Simmons has the character and general fitness to originate loans.

Because he has been twice-convicted of offenses enumerated in R.C. 1322.031(A)(2), it was Simmons’ burden to prove, by a preponderance of the evidence, that his employment history and activities since the convictions, show that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such offenses again. (R.C. 1322.031(A)(2) and 1322.041(A)(3).) Simmons was convicted of receiving stolen property in July 2001. (Exhibit 6.) As a result, only thirty-five months have elapsed from the time of his

receiving stolen property conviction until the hearing in this matter. (Exhibit 1.) As only thirty-five months have elapsed, Simmons has not had enough time to meaningfully demonstrate that he is honest, truthful, and of good reputation and that there is no basis in fact for believing he would commit such an offense again. (See *Ryan O'Reilly English v. State of Ohio, Dept. of Commerce* (Case No. 04CIV0163) Medina County Court of Common Pleas (affirming the Division's decision to deny an applicant's application on the basis that three years since a conviction was insufficient time to meaningfully demonstrate the burden of proof set forth in R.C. 1322.041(A)(3)); see also *In the matter of: Brian D. DeStefanis* (Division Case No. 04-0056-LOD, Division Order dated February 8, 2005) (Division found that 28 months was insufficient time for applicant to meet the burden of proof set forth in R.C. 1322.041(A)(3)); and *In the matter of: Steven A. Perrigo* (Division Case No. 04-0279-LOD, Division Order dated February 11, 2005) (Division found that 33 months was insufficient time for applicant meet the burden of proof set forth in R.C. 1322.041(A)(3)).

Further, the Division has concerns with the evidence presented by Simmons. Six people testified on Simmons' behalf. That said, not one of them ever indicated that they knew that Simmons had three criminal convictions in his background. In fact when Fabienne Butler, Rhonda McIntyre, and Timothy Brown were asked if they knew that Simmons had a criminal history, they all indicated that they did not know of Simmons' criminal background. (Transcript pp. 66, 77, and 92.) Of the affidavits provided by Simmons, none of the affiants state that they had knowledge of Simmons' criminal background nor were they made available for cross-examination. (Exhibits A through E.) The absence of knowledge of anyone knowing about Simmons' criminal history seriously diminishes the weight given to the testimony of the witnesses for Simmons and the affidavits. Given the short amount of time that has passed since

his felony receiving stolen property conviction and the insufficiency of the evidence presented by him contained in the record, the Division finds that Simmons has not proved that his employment records and activities show that he is honest, truthful, and of good reputation and there is no reason to believe that he will commit an offense outlined in R.C. 1322.031(A)(2).

With Simmons' recent criminal background and his inability to take responsibility for his actions, the Division finds Simmons' character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. On a daily basis loan officers deal with consumers' personal financial information and advise consumers on what is most often their largest financial investment. Simmons' does not hold the requisite character and general fitness to originate loans.

In accordance with the foregoing, the Division concludes that Simmons' loan officer license application should be denied.

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 3<sup>rd</sup> day of April 2006.

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**ROBERT M. GRIESER**

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