

February 23, 2005

*Confidential*

Amanda M. Axtell, Esq.  
In House Counsel-Consumer Finance  
Ohio Department of Commerce  
Division of Financial Institutions  
77 S. High St.  
21st Floor  
Columbus, Ohio 43215-6120

**RE: IN THE MATTER OF VANESSA L. CUNNINGHAM  
CASE NO. 04-0034-LOD**

Dear Ms. Axtell:

Enclosed please find a copy of the Hearing Examiner's Report and Recommendation in the above-captioned matter, pursuant to Ohio Revised Code section 119.09.

The original transcript in this matter is also enclosed.

Thank you.

Very truly yours,

Jeffery E. Smith  
Hearing Examiner

Enclosure

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**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Vanessa L. Cunningham**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0034-LOD**

**FINDINGS OF FACT**

1. On or about May 8, 2003, Vanessa L. Cunningham ("Respondent" herein) submitted an application to the Ohio Department of Commerce, Division of Financial Institutions, (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A herein.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on September 28, 2004. At the Hearing, Respondent failed to appear, and the Division was represented by Assistant Attorney General Anthony Sicilliano Esq.. Mark Rhea, Esq., staff counsel for the Division, was also present on behalf of the Division.
4. As of the date of the Application, Respondent was employed by Heartland Home Finance Company.

**CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.

3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

### **DISCUSSION**

Respondent's criminal record involves a conviction for petty theft in or around the year 1978.

Respondent failed to disclose the conviction in the Application as required by question five (5) of the Application.

Section 1322.041(A)(3) of the Ohio Revised Code provides that, following conviction of a theft offense, the burden is on the Respondent to prove, by a preponderance of the evidence, that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that the Respondent will commit such an offense again.

In addition, Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent of the Division (the "Superintendent") shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

At the Hearing, the Division presented its evidence, including copies of the Application, the Notice, the Request for Hearing, and notice of the time and date of the Hearing. The Division also provided the testimony of Mr. Rhea (Tr. Pages 5 through 13)

Respondent unfortunately failed to appear at the Hearing. Nothing in the record indicated that Respondent sought or received an extension or continuance of the Hearing, or notified the Division that Respondent would not be present. Respondent therefore presented no evidence or testimony at the Hearing to contradict or to refute the Superintendent's findings under Ohio Revised Code section 1322.041.

In light of the lack of appearance by the Respondent, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.041 and 1322.10.

**RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the Application of the Respondent be denied.

Respectfully submitted,

  
\_\_\_\_\_  
Jeffery E. Smith, ~~Hearing Examiner~~

  
\_\_\_\_\_  
Date

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS

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# Loan Officer Application

Ohio Mortgage Broker Act  
Ohio Revised Code Chapter 1322  
Ohio Administrative Code Chapter 1301:8-7  
(Print or type using black or blue ink.)

CHECK NO 9855  
AMOUNT \$100  
DATE 5/8/03  
REC. BY [Signature]

1. Company Name: HEARN AND HOME FINANCE Company Number: 800448-LO-15696  
(Mortgage Broker Registrant) (Office Use Only)

2. Loan Officer:

Name: Vanessa Lorraine Cunningham  
First MI Last

Address: 4511 East B St Cosfield OH 44105  
Residence Address City State Zip

Date of Birth: 04-10-59 Social Security Number: \_\_\_\_\_

Driver License or State ID Number \_\_\_\_\_ Issuing State: Ohio

Home Telephone Number: (216) 441-9829 Fax Number: N/A

Has your name ever been legally changed? Yes ☐ No ☒

If yes, attach a certified copy of the name change order(s).

Have you ever used or been known by any other name? Yes ☐ No ☒

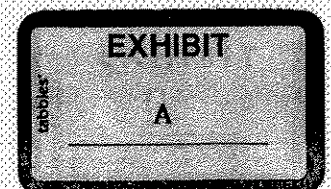
If the answer is yes, furnish details.

3. Will you hold any other job (including self-employment) while you are employed as a mortgage loan officer? Yes ☐ No ☒

If the answer is yes, furnish details.

4. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever had a license, certificate, approval to conduct business, or otherwise, canceled, suspended, revoked, fined or refused to be renewed by any court or regulatory agency in this state or any other state? Yes ☐ No ☒

If the answer is yes, furnish details.



5. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?  
If the answer is yes, furnish details. Yes ☐ No ☒

6. Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty?  
If the answer is yes, furnish details. Yes ☐ No ☒

7. Have you filed for personal bankruptcy or have you ever been a director, an officer, or more than 5% shareholder, a partner or a joint venturer in any business enterprise which has been insolvent or filed for protection from its creditors?  
If the answer is yes, furnish details. Yes ☐ No ☒

8. The applicant must submit a fingerprint background check as part of the application.  
(Please refer to page 6 of this application for instructions on completing the background verification.)

### ATTESTATION

State of OHIO

Ss.

County of CUYAHOGA

Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly. The answers are complete and true of my own knowledge.

Vanessa L. Cunningham

Loan Officer Applicant PRINTED Name

Loan Officer Applicant SIGNATURE [Signature]

Subscribed and sworn to or affirmed before me this 14 day of APRIL, 2003.

Seal or stamp must be affixed to original

Darrell F. Boehmke  
Notary Public PRINTED Name

[Signature]  
Notary Public SIGNATURE

My Commission Expires SEPT 27, 2004

## Certificate of Employment

(This form must be completed by the Operations Manager designated under the Mortgage Broker Act, pursuant to R.C. 1322.03.)

In the Matter of the Application of VANESSA L CUNNINGHAM (full legal name) to apply for a license as a Loan Officer under the Ohio Mortgage Broker Act.

### Mortgage Broker Information

Registration Number: MB 530 CR 800448

Name of Company: HEARTLAND HOME FINANCE

Address: 7123 PEARL RD SUITE 110

MIDDLEBURG HEIGHTS OHIO 44130 CUYAHOGA  
(City) (State) (Zip) (County)

Telephone Number: 440 843-9777 Fax Number: 440 843-9719

Contact Person: KEN JURKIEWICZ

### ATTESTATION

I CERTIFY that VANESSA L CUNNINGHAM  
(Applicant First Name) (Middle Name) (Last Name)

will be employed by the above listed Mortgage Broker upon issuance of his/her mortgage loan officer license.

State of OHIO Ss.

County of CUYAHOGA

Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Certificate of Employment fully and frankly. The answers are complete and true of my own knowledge.

Subscribed and sworn to or affirmed before me this 14th day of April, 2003

Donald Flynn  
Operations Manager PRINTED Name

Operations Manager SIGNATURE

Dorothy Boehme  
Notary Public PRINTED Name

Notary Public SIGNATURE

My Commission Expires Sept 27, 2004

Seal or stamp must be affixed to original.

My Commission Expires Sept. 27, 2004

AK

**Loan Officer Application**  
Ohio Mortgage Broker Act  
Ohio Revised Code Chapter 1322  
Ohio Administrative Code Chapter 1301:8-7

In the Matter of the Application of

Vanessa L. Cunningham (full legal name)  
to apply for a license as a Loan Officer in compliance with the Ohio Mortgage Broker Act.  
Ohio Revised Code Chapter 1322 and Ohio Administrative Code Chapter 1301:8-7.

I hereby make Application for a license as a Loan Officer in Ohio, pursuant to the Ohio Mortgage Broker Act. In conformity therewith, I am submitting the following (check each item being submitted) by mailing those items checked to the Division of Financial Institutions:

- ☒ (1) One original properly executed Certificate of Employment completed by the Mortgage Broker with whom the Applicant is or will be exclusively employed as a loan officer;
- ☒ (2) One original Mortgage Loan Officer License Application, properly executed;
- ☒ (3) A fingerprint identification card or an Applicant will submit to NBCI background check;
- ☒ (4) A nonrefundable application fee in the amount of \$100, by check or money order made payable to the Department of Commerce, Division of Financial Institutions.

I have read the Ohio Mortgage Broker Act, codified in Revised Code Chapter 1322, and the rules relating thereto, found in Ohio Administrative Code Chapter 1301:8-7, which pertain to mortgage brokering in Ohio. I understand that it is a crime to act as a loan officer in Ohio without first having obtained a license from the Superintendent of Financial Institutions for the Department of Commerce. I further understand that submission of my application materials does not authorize me to act as a loan officer; rather, I must first be issued a license by the Superintendent to act as a mortgage loan officer in Ohio.

I also understand that if I am issued a mortgage loan officer license, that license, or the authority granted under that license, is not assignable and cannot be franchised by contract or by any other means. I realize that if I am granted a license, I have ninety days from the date the license is issued to successfully complete an examination approved by the Superintendent. If I fail to do so, my license will automatically terminate.

Notary Public, State of Ohio  
My Commission Expires Sept. 27, 2004  
(Printed in blue ink)

[Signature]  
Signature of Applicant

4-14-03  
Date



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

In the matter of:

VANESSA L. CUNNINGHAM  
4511 East 131<sup>st</sup> Street  
Garfield Heights, Ohio 44105

) Case No. 04-0034-LOD

) Notice of Intent to Deny Loan Officer License Application  
&

) Notice of Opportunity for a Hearing  
)

**JURISDICTION**

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322. In accordance therewith, the Division is accountable for the licensing of individuals as residential mortgage loan officers.

**RESPONDENT**

VANESSA L. CUNNINGHAM ("Respondent") has applied to the Division for a loan officer license. Her address of record is 4511 East 131<sup>st</sup> Street, Garfield Heights, Ohio 44105, and her date of birth is April 12, 1959. Respondent's employer of record is Heartland Home Finance, 7123 Pearl Road, Suite 110, Middleburg Heights, Ohio 44130.

**NOTICE OF PROPOSED ACTION**

In accordance with sections 1322.041 and 1322.10 of the R.C., and R.C. Chapter 119, the Division intends to DENY Respondent's loan officer license application.

**BASIS FOR PROPOSED ACTION**

- I. In or around 1978, in the Common Pleas Court of Cuyahoga County, Ohio, Respondent was convicted of PETTY THEFT.
- II. On or around April 14, 2003, Respondent attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false.
- III. On or around May 8, 2003, Respondent provided untruthful information to the state of Ohio, Department of Commerce, Division of Financial Institutions.

As a result of the findings listed above, the Division has determined that:

1. Respondent 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 involving theft or any criminal offense involving money or securities. See R.C. sections 1322.031(A)(2) and 1322.041(A)(3).
2. 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 the Ohio Mortgage Broker Act. See R.C. 1322.041(A)(5).

EXHIBIT

B

3. Respondent violated R.C. 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application[.]"
4. Respondent violated R.C. 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law[.]"
5. Respondent violated R.C. 1322.07(C), which prohibits a loan officer applicant from "[e]ngagin[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings."

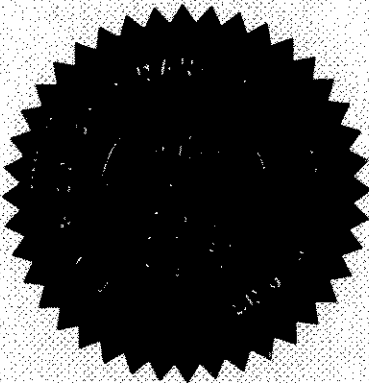
**NOTICE OF OPPORTUNITY FOR A HEARING ON PROPOSED ACTION**

Therefore, pursuant to R.C. Chapters 1322 and 119, Respondent is hereby notified that thirty-one (31) days from the date of the mailing of this Notice, the Superintendent intends to issue an order denying Respondent a loan officer license under the Ohio Mortgage Broker Act.

Respondent is further notified, pursuant to R.C. Chapter 119, that Respondent is entitled to a hearing on this matter. If Respondent desires to request a hearing, the request must be made in writing, and must be received in the offices of the Ohio Division of Financial Institutions within thirty (30) days of the time of the mailing of this Notice. Hearing requests should be addressed: Ohio Division of Financial Institutions, Attn: Diane Wagenbrenner—Consumer Finance Staff Attorney, 77 South High Street, 21<sup>st</sup> Floor, Columbus, Ohio 43215-6120.

At the hearing, Respondent may appear in person, by Respondent's attorney, or by such other representative as is permitted to practice before the Agency, or Respondent may present its position, arguments, or contentions in writing, and, at the hearing, may present evidence and examine witnesses appearing for and against Respondent.

If the Ohio Division of Financial Institutions does not receive a written request for a hearing in its offices within thirty (30) days of the time of the mailing of this Notice, the Superintendent will issue an order denying Respondent a loan officer license.



Signed and sealed this 22<sup>nd</sup> day of January, 2004.

**ROBERT M. GRIESER**  
Deputy Superintendent for Consumer Finance  
Division of Financial Institutions  
Ohio Department of Commerce

Certified Mail No. 7002 2030 0002 6802 2433