

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

In the matter of:)	Case No. M2007-164
)	
CARROLL M. HOLTZ)	<u>DIVISION ORDER</u>
18381 Worthington Park)	Denial of Loan Officer License Renewal Application
Strongsville, OH 44149)	&
)	Notice of Appellate Rights

Respondent, Carroll M. Holtz ("Respondent"), submitted a loan officer license renewal application ("Application") to the Division of Financial Institutions ("Division") on or before April 12, 2007. On May 10, 2007, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1968, in the Huron County Court of Common Pleas, Respondent was convicted of Breaking and Entering; (2) in or around 1971, in the Huron County Court of Common Pleas, Respondent was convicted of Breaking and Entering in the Night Season; and (3) because Respondent has been convicted of a theft offense as described in R.C. 1322.031(A)(2), the Division is not authorized to renew Respondent's loan officer license pursuant to R.C. 1322.041(A)(3).

Respondent requested an administrative hearing, which was held on September 19, 2007. Respondent appeared with counsel. The Notice of Intent to Deny Respondent's Application was amended without objection at the hearing to reflect that the renewal denial was based upon R.C. 1322.041(B)(3) and 1322.041(A)(3). (Transcript, p. 12; State's Ex. B). This amendment was written in blue ink on the Notice upon the Hearing Officer's direction and agreement of Respondent and the Division. (State's Ex. B). A Report and Recommendation ("Report") was filed with the Division on November 27, 2007, recommending that the Division grant Respondent's Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, the post-hearing briefs, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (A copy of the Report is attached).

The Division disapproves paragraphs 36-38, 44-47, 50, and 53-67 on pages 6 to 10 of the Report.

Discussion and consideration of the constitutionality of the Senate Bill 185 (“S.B.185”) version of R.C. 1322.041(A)(3) is beyond the Division’s authority. It is well settled that administrative agencies lack the authority to interpret the Constitution. *Jones v. Village of Chagrin Falls* (1997), 77 Ohio St.3d 456, 460. Accordingly, the paragraphs that comment on the soundness and fairness of either the pre-S.B.185 or S.B.185 versions of R.C. 1322.041(A)(3) and/or the constitutionality of R.C. 1322.041(A)(3) are disapproved.

The S.B.185 version of R.C. 1322.041(A)(3), which went into effect on January 1, 2007, is among the statutory provisions that govern whether or not the Division may approve a loan officer’s license renewal application. See R.C. 1322.041(B)(3). The amended statute reads as follows:

(A) Upon the conclusion of the investigation required under division (B) of section 1322.031 of the Revised Code, the superintendent * * * shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(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 * * * [.] However, if the applicant *has been convicted of or pleaded guilty to any such offense other than theft*, the superintendent shall not consider the offense if the applicant *has proven* to the superintendent, by a preponderance of the 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. (Emphasis added.)

The language of the S.B.185 version of R.C. 1322.041(A)(3) is retrospective in that it applies to past and present convictions and guilty pleas; therefore, the statute applies to convictions or guilty pleas that occurred before its effective date of January 1, 2007. R.C. 1322.041(A)(3), as amended, provides in pertinent part that “if the applicant *has been convicted of or pleaded guilty to any such offense other than theft*, the superintendent shall not consider the offense if the applicant *has proven*... that the applicant’s activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation[.]” R.C. 1322.041(A)(3), as applied to renewal applicants through paragraph (B)(3), prohibits the Division from issuing a license to a renewal applicant who has been convicted of or pleaded guilty to a theft offense, even if the person initially applied before the enactment of S.B.185. See

Cosby v. Franklin Co. Dept. of Job and Family Svcs. (10th App. Dist.), 2007-Ohio-6641. The statute explicitly contemplates events that may have transpired in the past.

A loan officer license is not a vested interest; thus, it is subject to the requirements of annual renewal. See, *Cosby*, 2007-Ohio-6641, ¶26 (“A ‘license’ does not ordinarily confer an absolute or vested right.”); and *Shady Acres Nursing Home, Inc. v. Canary* (1973), 39 Ohio App.2d 47, 50 (“A license is frequently defined as permission to do some act without which the act would be illegal. A license is not a contract, nor does it constitute property in a constitutional sense. It does not confer an absolute right, and governmental authority can impose new burdens, create additional burdens, or revoke the license.”) R.C. 1322.041(B)(3) provides that a loan officer license may be renewed if, among other requisites, the applicant meets the conditions set forth in R.C. 1322.041(A)(2) to (6). At issue here is the condition for renewal in R.C. 1322.041(A)(3). The difference between the S.B.185 version of R.C. 1322.041(A)(3) and the previous version is that a loan officer license applicant who has pleaded guilty to or has been convicted of a theft offense no longer has the opportunity to meet or have met the statutory burden of proof therein. Because of this amendment to the law, an applicant who has been convicted of or pleaded guilty to a theft offense is now prohibited from receiving or renewing a loan officer license.

Respondent filed an application to renew his loan officer license. Pursuant to R.C. 1322.041(B)(3), Respondent, like all loan officer license renewal applicants, had to satisfy the requirements for initial licensure including those elements set forth in R.C. 1322.041(A)(3). In 1968, Respondent entered a plea of guilty to an Information charging him with breaking and entering in the night season with intent to steal property. (State’s Ex. A). In 1971, Respondent entered a plea of guilty to an Information charging him with breaking and entering in the night season. (Id.) Pursuant to Section 1301:8-7-01(K) of the Ohio Administrative Code, the crime of breaking and entering is included within the definition of “theft.” Because Respondent has been convicted of a theft offense, he does not satisfy the renewal requirement found in R.C. 1322.041(A)(3) and (B)(3). Accordingly, the Division is required by law to deny Respondent’s renewal application.

The Division disapproves the Recommendation on page 10 of the Report.

As the record reflects that Respondent has been convicted of two theft offenses, the Division finds that Respondent does not meet the requirement for licensure set forth in R.C. 1322.041(A)(3) and (B)(3).

For the reasons stated above, the Division hereby denies the loan officer license renewal application of Carroll M. Holtz.

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 must, pursuant to R.C. 119.12, 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 14th day of February 2008.

LEIGH WILLIS

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