

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

WILLIAM EZRA KAY

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 05-0139-LOD

**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued March 21, 2006

I. FINDINGS OF FACT

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 3:00 PM on November 22, 2005, at 77 South High Street, 19th Floor, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent William Ezra Kay, of Pepper Pike, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent had pleaded guilty in US District Court for Northern Ohio in 2001 to Conspiracy to Defraud the United States, Mail Fraud, Depriving Patients of Intangible Right of Honest Services, Aiding and Abetting, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General

Martine Jean. Neither Respondent nor any representative appeared or submitted a written statement.

At the hearing, State's Exhibits 1A, 2, 3A, 3B, 3C, 4A, 4B, 5, 6, 7A, 7B, 8, 9, 10, 11 were admitted into the record. One witness appeared for the Division. No exhibits or witnesses were offered for the Respondent, although the hearing was started 43 minutes after the scheduled time. It is noted that Respondent had sent in an explanation in an earlier Application but did not do so with the current Application.

B. JURISDICTION

The Division issued the NOH against Respondent on August 9, 2005. Respondent requested a hearing, received by the Division on August 16, 2005. On August 17, 2005, the Division scheduled the hearing for August 26, 2005, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to October 13, 2005, by the same letter. On October 11, 2005, at Respondent's request, the hearing was continued to November 22, 2005 at which time the hearing went forward without any communication from Respondent or anyone representing Respondent.

C. PROPOSED ISSUANCE OF ORDER TO CEASE AND DESIST

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322.
2. Respondent is an individual who has conducted, and wishes to continue to conduct, business in Ohio as a Mortgage Loan Officer (hereinafter "Loan Officer.") (Exhibit 6.)
3. On or about January 28, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the Application). (Exhibit 6.)
4. On the Application, Respondent responded "Yes" to Question 5, which asks if the applicant has been convicted of any criminal offense. (Exhibit 6.)
5. An investigation by the Division at the time of Respondent's previous Application in 2003, determined that on August 27, 2001, Respondent pleaded guilty to Conspiracy to Defraud the United States, Mail Fraud, Depriving Patients of Intangible Right of Honest

Services, Aiding and Abetting, for activities in 1996, in US District Court for Northern Ohio. Respondent was sentenced to incarceration of 12 months and ordered to pay restitution of \$842,497.74. (Exhibits 3A, 3B, 3C.)

6. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and that there is no basis in fact for believing that he would not commit such offenses again.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 2001, Respondent was convicted of, among others, Mail Fraud "a criminal offense involving ... fraud ...", an offense specifically cited in section 1322. 041(A)(3) O.R.C.
3. The fraud conviction being proven by the Division, the Respondent must now prove, by a preponderance of the evidence, that the Respondent'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" in order to obtain a license. The Respondent must also demonstrate that that the Respondent's character and general fitness will command the confidence of the public and will warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Sections 1322. 041(A)(3) and 1322. 041(A)(5), O.R.C.
4. Respondent did not offer any proof of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO WILLIAM EZRA KAY.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
March 21, 2006
Docket No. 05-DFI-092