

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL  
INSTITUTIONS

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In the Matter of:

Donald F. Palmer  
12933 Mogadore Avenue  
Uniontown, OH 44685

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: Case No. 04-0452-LOD  
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: Terrence O'Donnell, Hearing Examiner  
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HEARING EXAMINER'S  
REPORT AND RECOMMENDATION

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A. REPORT

I. Introduction

This case came to be heard on November 16, 2004. Appearing was Respondent Mr. Donald F. Palmer. Assistant Attorney General James M. Evans represented the Department of Commerce's Division of Financial Institutions ("the Division"). Mr. Cory Douglas, who is unconnected with this case, observed a portion of the proceedings.

After due consideration of the evidence, the Hearing Examiner makes the following findings.

II. Findings of Fact

a. Background

1. Pursuant to the Ohio Mortgage Broker Act, O.R.C 1322.01 to O.R.C. 1322.12, the Division is charged with the responsibility to accept applications for loan officer licenses and determine whether applicants meet the statutory requirements.
2. On August 30, 2004, Mr. Palmer, employed by Aames Home Loan, 4500 Rockside Road, Independence, Ohio, 44131, applied for a license to be a loan officer. See Loan Officer Application, State's Exhibit 1.

3. On October 19, 2004, the Division issued a Notice of Intent to Deny a Loan Officer's License to Mr. Palmer. See Notice, State's Exhibit 5.
4. The Division stated in its Notice of Intent to Deny Loan Officer's License that Mr. Palmer provided information to the Division in his Loan Officer application that was "untruthful." See Notice, State's Exhibit 5.
5. The Division stated that as a result of Mr. Palmer's misrepresentations on his application, it does not believe his character and general fitness command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act. See Notice, State's Exhibit 10.
6. The Division also alleged that when Mr. Palmer provided untruthful information to the Division, he violated O.R.C. 1322.07, prohibiting a loan officer from making a substantial misrepresentation in an application, making false statements of material facts, and engaging in conduct that constitutes improper, fraudulent, or dishonest dealings. See Notice, State's Exhibit 5.
7. On October 27, 2004, Mr. Palmer requested a hearing to appeal the Division's determination. See Hearing Request Form, State's Exhibit 11.

b. Conviction for Criminal Damaging (1998)

8. At the hearing, the State offered into evidence documentation indicating Mr. Palmer was convicted of criminal damaging in 1998. See National Background Check Report, State's Exhibit 2 and Journal Entry, State's Exhibit 4. Mr. Palmer acknowledged the conviction at the hearing. See Transcript, p. 14. He also acknowledged the conviction in a letter to the Division. See Letter, State's Exhibit 4. In the letter, he states that the conviction stems from an incident in which he broke a window in order to gain entry into a friend's apartment

building because his friend was not home and the weather conditions were cold. See Letter, State's Exhibit 4. He offered the same explanation at the hearing. See Transcript, p. 14.

c. Convictions for Driving Under the Influence (3) and Underage Consumption

9. When asked on cross-examination if he had anything else to "discuss" with respect to a criminal background, Mr. Palmer stated at the hearing that he "had a DUI." See Transcript, p. 18. Upon further cross-examination, he acknowledged that he has had "several DUI's." See Transcript, p. 21.
10. The State also offered into evidence documentation indicating that his DUI conviction of April 23, 2001, was his third such conviction in six years. See Entry, Massillon Municipal Court, State's Exhibit 10. He then acknowledged these convictions. See Transcript, p. 21.
11. At the hearing, Mr. Palmer stated that he believed that four DUI convictions were required in a six-year period in order to qualify as a felony. See Transcript, p. 28. But as the State points out, this third conviction in six years qualified as a fourth-degree felony. See O.R.C. 4511.99(A)(8)(a)(i) (2001).
12. Mr. Palmer also acknowledged that he "probably" had also obtained a conviction for underage drinking. See Transcript, p. 24.

d. Failure to Disclose Convictions on Loan Officer Application

13. In response to Question 5 on the Loan Officer Application, asking:

"[h]ave you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or plead 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,"

Mr. Palmer answered, "no." See Loan Officer Application, State's Exhibit 1.

14. At the hearing, Mr. Palmer acknowledged this failure to disclose and attributed it to

misinterpreting the question on the application and forgetting about his conviction for criminal damaging. He stated:

“I basically misread question number five. When I was reviewing the application... That’s a misleading question on my part—I mean, on the State’s part, actually. I have never been convicted of stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking or any criminal offense involving money or securities. Okay. The part where they got me is this part right here, ‘but not limited to,’ which is a very small increment of the paragraph. Okay. So I mean, I simply, in my defense, misread the question. I mean, besides the fact that I didn’t even remember about a criminal offense that happened in 1998 for a \$250 fine. I mean, that was seven years ago... It’s like I said...at the time I did not even remember about a misdemeanor that happened seven years ago. I mean, I paid a \$250 fine, served no jail time. It was very miscellaneous and very, I mean, it was very—to me, it slipped my mind.” See Transcript, pp. 12-17.

15. He also testified that he and his manager believed the Division was primarily interested in felony convictions: “I even told my manager—he was under the assumption that only felonies would reflect in this application, okay...My manager had read my answers and says, ‘do you have any felonies?’ I said ‘no,’ and he said, ‘well, you should be fine with the whole process.’” See Transcript, p. 19.

e. Personal Testimony

16. Mr. Palmer testified to his own fitness for licensure. He explained that he has worked in the lending business for two years without incident. See Transcript, p. 12. He also testified that he has not consumed alcohol since 2001, and that therefore his legal troubles stemming from alcohol use and abuse are behind him. See Transcript, p. 25.
17. He also testified to the maturity he has developed since the time of his convictions. “The biggest thing I have is a family. I’m a grown man. All of these incidents happened when I was young and stupid. Now I’ve made a change in my ways. I attend church every Sunday.” See Transcript, p. 40.

### III. Conclusions of Law

18. The Ohio Revised Code sets out the criteria by which the Superintendent of Financial

Institutions shall license loan officers. It states in part:

“The superintendent shall issue a loan officer license to the applicant if the superintendent finds the following conditions are met:

(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.” O.R.C. 1322.041 (A)(5).

19. In assessing Mr. Palmer’s character and general fitness to receive a license, the nature of his offenses must be considered. The circumstances surrounding his criminal damages conviction seem to be rather benign. Indeed, at the hearing, the State did not explore the circumstances of the conviction in any great detail, or challenge Mr. Palmer’s assertions that the crime was a relatively minor one. That he committed the crime seven years ago also lessens its probative value on the issue of his character today.

20. However, Mr. Palmer’s failure to disclose that conviction, as well as his three convictions for driving under the influence of alcohol, does raise serious questions about his character and general fitness to command the confidence of the public.

21. His explanation that he misread the question on the loan officer application, and that he forgot he had a conviction for criminal damaging, was not persuasive. His criminal record is extensive enough (criminal damaging, three DUI’s, underage drinking) that he should have been particularly sensitive to any questions the State was asking about his criminal record. To simply check the box indicating he had no convictions at all was irresponsible.

22. Further, his testimony that he was unaware his most recent DUI conviction is characterized as a felony is also revealing. While that testimony may be truthful, the fact that he took no

actions to confirm or clarify this information also raises questions about his fitness for a license. This is especially true in light of his testimony that he understood his supervisor to mean that the Division was very concerned with felony convictions.

23. Also troubling was Mr. Palmer's admission at the hearing that he "had a DUI," when in fact he has accumulated three such convictions. Only upon further cross-examination by the State did he acknowledge these other two convictions.

24. As to "general fitness," the work of a loan officer requires paperwork to be filled out diligently and accurately. The public trusts that its loan officers handle this work with a great degree of care. In making these omissions on his loan officer application, Mr. Palmer demonstrated less than reasonable care. This suggests he does not appreciate the importance of such tasks.

25. Mr. Palmer did offer testimony to his own character and general fitness. However, this was self-serving in nature, and never corroborated by testimony, or even letters, from his colleagues or other business associates. Further, he has only worked in this industry for two years. This relatively brief tenure in the industry also makes it more difficult for the hearing Examiner to make a finding that his business will be operated honestly and fairly.

26. By failing to make the required disclosures to the very agency responsible for regulating his industry, or offering a credible and reasonable explanation for not doing so, he has made impossible the task of certifying that he would run his business in compliance with the law.

27. Finally, O.R.C. 1322.07, also cited in the Division's Notice of Intent to Deny Mr. Palmer a license, states that:

"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 license through any 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...”

28. Mr. Palmer did not disclose his convictions for criminal damaging, as well as his three convictions for DUI, the most recent being a felony, or his underage drinking conviction.

He offered no credible, reasonable explanation for this omission.

29. The Hearing Examiner finds he made critical omissions of material facts, as well as substantial misrepresentations in his application in violation of this section.

#### B. RECOMMENDATION

30. The Hearing Examiner finds that Mr. Palmer’s 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 intent of O.R.C. 1322.01 to 1322.12. Further, the Hearing Examiner finds that he knowingly omitted material facts on his loan officer application and made a substantial misrepresentation in violation of law.

31. Therefore, in accordance with the above Findings of Fact and Conclusions of Law, the Hearing Examiner recommends to the Superintendent that Mr. Palmer be denied a loan officer’s license pursuant to Ohio Revised Code 1322.041.

3/15/05  
Date

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Terrence O'Donnell  
Hearing Examiner