

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0066-LOD  
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Sean E. Feighan : James J. Lawrence, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
May 27, 2005

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I. FINDINGS OF FACT

**A. Background**

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:00 p.m. on April 11, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Sean E. Feighan (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent failed to disclose a criminal conviction on his loan officer application filed in October of 2004. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. 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 as required by R.C. 1322.041(A)(5).
2. By failing to disclose his criminal conviction on his loan officer application, the Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

Timothy C. Loughry, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent did not appear at the hearing without explanation for his absence. At the hearing, State's Exhibits A through E were admitted into the record.

## **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on February 24, 2005 by certified mail, return receipt requested. (Exhibit C.) Respondent's hearing request was received by the Division on March 22, 2005. (Exhibit D.) The Division scheduled the hearing for April 4, 2005 but, on its own motion, continued the hearing to April 11, 2005. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit E.)

## **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on October 27, 2004. (Exhibit A.)
2. Question five of that application asked the following question:
  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 **any criminal offense**? Exclude minor misdemeanor traffic and parking offenses. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "No." (Exhibit A.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031 (B) which apparently revealed that the Respondent had been charged in 1998 with disorderly conduct and petty theft. (Exhibit B.) By letter dated November 17, 2004, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charges and a certified copy of the judgment entry evidencing his plea and the court's finding. (Exhibit B.)
5. The Respondent provided certified criminal case histories from the Cleveland Heights Municipal Court. The case history for Case No. CRB 9802185-A shows that on February 4, 1999 the Court dismissed the charge of petty theft. The case history for Case No. CRB 9802185-B shows that on May 17, 1999 the Court convicted the Respondent of disorderly conduct in violation of city ordinance 509.03A, a fourth degree misdemeanor. The Court sentenced the Respondent to thirty days in jail, suspending all thirty days, fined the Respondent \$250.00, suspending \$150.00 of the fine, and ordered him to pay costs of \$50.00. (Exhibit B.)
6. In a letter to the Division dated December 10, 2004, Respondent explained that the violation occurred when a store clerk accused him and a friend of stealing items that they had placed in bags in a grocery cart. An argument ensued and the police were called. The Respondent was arrested and charged with theft and disorderly conduct. In the same letter, the Respondent further explained that he did not disclose the conviction on his loan officer application because he understood the question to exclude misdemeanor convictions. (Exhibit B.)
7. No witnesses appeared, either personally or in writing, on the Respondent's behalf.

## II. CONCLUSIONS OF LAW

### A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

\* \* \*

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

\* \* \*

(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.

3. R.C. 1322.031(A)(4) requires that in an application for a license as a loan officer an applicant must provide any further information that the Superintendent requires. Pursuant to this provision, the Superintendent asks for information about convictions for any criminal offense, other than minor misdemeanor traffic and parking offenses, in question 5 of the application.
4. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the conviction shows that his 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 as required by R.C. 1322.041(A)(5).
5. The Respondent failed to disclose his criminal conviction on his loan officer application as required by the Superintendent pursuant to R.C. 1322.031(A)(4). When asked about his criminal record in Question 5 of the application, the Respondent answered "no" even though he had been convicted of disorderly conduct. The Respondent contends that he answered this question incorrectly because he misunderstood the question. This explanation is not credible. Question 5 itself is not long, only twenty-

seven words and just over one and a half lines on the application. It asks if the applicant has ever been convicted of any criminal offense. The two sentences of instructions that follow the question are also short. The first instructs the applicant to exclude minor misdemeanor traffic and parking offenses. The second reminds the applicant that DUIs and DWIs are criminal offenses. Nothing in the question or the instructions suggests, as the Respondent contends, that an applicant should not answer yes if convicted of a misdemeanor offense. Moreover, the Respondent presented no information to support his character and fitness. In the absence of any such evidence, the Respondent's failure to fully and frankly complete the loan officer application supports the Division's finding that his 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 as required by R.C. 1322.041(A) (5).

6. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
7. R.C. 1322.07 provides, in part, that no applicant for a loan officer license 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 any 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.

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8. The Respondent's failure to disclose the conviction constitutes an omission of a material fact required by state law and a substantial misrepresentation on a license application in violation of R.C. 1322.07(A), an omission of a statement required by state law in violation of R.C. 1322.07(B) and improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with R.C. 1322.01 through 1322.12 as required by R.C. 1322.041(A) (2).
9. As a result of the Respondent's failure to comply with R.C. 1322.041(A)(2) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing

conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license.

### III. RECOMMENDATION

The record in this case establishes that the Respondent failed to comply with the requirements R.C. 1322.01 to 1322.12 and that his 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,  
/

James J. Lawrence  
Hearing Officer  
May 27, 2005