

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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CASE NO. 04-0065-LOD

IN THE MATTER OF: DENISE A. FENRICK

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. Damschroder

I. Findings of Fact

A. Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on May 10, 2004, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division regarding Denise A. Fenrick Majstruk, an individual, because Denise A. Fenrick has not proven that she is honest, truthful and of good reputation, and that there is no basis in fact for believing that she will not commit another criminal offense involving passing bad checks or any criminal offense involving money or securities, that Ms. Fenrick has made substantial misrepresentations on her license application, made false or misleading statements of material fact, and engaged in conduct that constitutes improper, fraudulent, or dishonest dealing, and that Ms. Fenrick's character and general fitness do not command the confidence of the public and warrant the belief that she would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Anthony Siliciano. The Division did not present any witnesses. Denise A. Fenrick ("Respondent") did appear in person and was represented by counsel, Ronald S. Marshek, Esq., at the hearing. Respondent testified in her own behalf, as did Aliece Johnson-Hines, a friend of Respondent.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Respondent on January 22, 2004, and served it upon Respondent by certified mail. Respondent signed the certified mail receipt form on January 28, 2004. The certified mail receipt form was received by the Division on February 2, 2004. (State's Exhibit #7)

2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny Respondent a license. (State's Exhibit #8)
3. By letter of February 18, 2004, the Division notified Respondent that the requested hearing was to be held on February 27, 2004, and then, upon its own motion, continued the hearing and scheduled it for March 18, 2004. By subsequent letter of March 12, 2004, the Division notified Respondent that the hearing was to be held on April 8, 2004. By subsequent letter of April 8, 2004, the hearing was continued and rescheduled for May 10, 2004. The last two continuances and reschedulings were the result of continuance request of Respondent. (State's Exhibit #9, #11, #12)
4. Respondent attended the hearing and was represented by Ronald S. Marshak, Esq. (Tr. p. 6, State's Exhibit # 10)

**C. Respondent's Loan Officer Application and Criminal Convictions**

1. On or about April 22, 2002, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. In completing the application, Respondent indicated by answering "No" on question #5, that she had not ever been convicted of any criminal offense. (State's Exhibit #1)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. The Division obtained documentation from the Ohio Bureau of Criminal Identification & Investigation indicating that Respondent had an arrest record. (State's Exhibit #2)
5. Respondent submitted documentation that she had been convicted of Disorderly Conduct in Bedford Municipal Court on January 5, 1995. This conviction resulted from a plea bargain from an original charge of passing a bad check. Respondent was fined \$250 and full restitution was made. (State's Exhibit #4)
6. Respondent submitted documentation that she had been convicted of Passing a Bad Check in Bedford Municipal Court on September 25, 1998. Respondent was fined \$200 and full restitution was made. (State's Exhibit #4)
7. Respondent submitted documentation and testified that both of her legal difficulties arose from family problems she was experiencing at the time. In the describing the 1995 conviction, Respondent testified that she was in a relationship with a man who took her checkbook and wrote checks on her account without her knowledge,

overdrawing her account. In describing the 1998 offense, Respondent testified that she was suffering depression while caring for her dying mother, and wrote a check with insufficient funds at that time. (Respondent's Exhibit #I, Tr. pp. 19-21)

8. With respect to Respondent's answer of "no" to Loan Officer Application Question #5, Respondent testified that she did not mean to deceive anyone with her answer, that she did not read the question as closely as she should have, that she was sorry for answering the question incorrectly and that she accepts responsibility for her mistaken answer. (Tr. pp. 22-23, 35-36)
9. Respondent testified, and submitted documentation, that she has been employed in the mortgage business as a loan officer for the past nine years without incident. (Respondent's Exhibit #J)
10. Aliece Johnson-Hines, a licensed real estate agent, testified as a character witness on Respondent's behalf, indicating that she has both a personal friendship and professional relationship with Respondent. Ms. Johnson-Hines expressed the utmost confidence in Respondent's character, honesty and integrity, and in her ability to be an effective loan officer. (Tr. pp. 42-46)
11. Respondent submitted letters of support for her application from employers, industry peers, mortgage service providers, lending companies, and her pastor. All of the letter submitters described Respondent as being of high personal and professional character, and someone capable of functioning ethically in the mortgage lending industry. The Division objected to the admission of these letters, since they were unable to cross-examine the submitters, but the letters were admitted into the record over the Division's objection. (Respondent's Exhibit #B-H, Tr. pp. 28-29)
12. At time of hearing Respondent had a pending application for expungement of her record of conviction in the Bedford Municipal Court. Respondent's counsel indicated at hearing that no objection to the application had been expressed. (Respondent's Exhibit #A, Tr. p.39)
13. Respondent testified that there is no reason to believe the errors in her past will ever occur again, given her professional reputation and changes in her personal circumstances since her earlier legal problems. (Tr. p. 30)
14. Respondent testified that she is currently employed by Sunset Mortgage as branch manager, responsible for seven loan officers. (Tr. p. 21)

## **II. Conclusions of Law**

### **A. Jurisdictional and Procedural Matters**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of his right to request a hearing. The Division's notice to respondent was sent by certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.
2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. *Reed v. State Med. Bd.* (1988) 40 Ohio App. 3d 124, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

### **B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show she is entitled to a license.

4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
- (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, or, if the applicant has been convicted or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of 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.

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- (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.

5. R.C. Section 1322.031(A)(2) requires that an applicant provide to the Superintendent, among other things, "[a] statement as to whether the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities[.]"

6. The Division has proved that Respondent has been convicted of the offense of theft, which is, in normal circumstance, of legitimate concern to the Division. The circumstances surrounding Respondent's convictions, however, are not normal, and must lead to the conclusion that there is no basis for believing that the Respondent will commit such an act again. The evidence presented indicates that any her conviction in 1994 resulted from the unscrupulous actions of her then domestic partner, which lead to the overdrawn checking account. The 1998 conviction arose from Respondent's inattention to her personal affairs while caring for her dying mother, and dealing with the depression that resulted from her mother's death. While these are not excuses for her behavior, it does provide some level of explanation.
7. It is also troubling that Respondent answered "No" to the question about whether she had any prior convictions in her loan officer application. Respondent testified that her incorrect answer was the result of carelessness and confusion while reading the question, with no evidence being presented to the contrary. Since the question is inartfully worded, and does lend itself to confusion, without any additional evidence, Respondent's incorrect answer can be considered accidental or inadvertent, and not intentional.
8. The analysis of Respondent's prior difficulties is important because it must be considered in light of her long professional history in the mortgage industry. Respondent has worked for multiple mortgage companies, with no reported complaints or difficulties. Respondent presented evidence of her current professional responsibilities in the mortgage industry, and testimonial and documentary evidence supporting her personal and professional character. While it is true that the Division did not have an opportunity to cross examine the persons submitting letters in support of Respondent, the Division offered no cross examination of the one character witness who did testify on Respondent's behalf. The Division's case in chief consisted entirely of submitting proof that Respondent had convictions and answered a question on her loan officer application incorrectly. No effort was made to consider her explanations, or weigh her professional experience. I am persuaded, after reviewing all information presented, that her professionalism and character outweigh the questions raised by her legal difficulties. When coupled with the fact that Respondent has no legal problems subsequent to her convictions, the Superintendent has every to believe that Respondent is honest, truthful and of good reputation, and that her character and fitness command the confidence of the public. The Superintendent should have every reason to believe that Respondent will conduct her business affairs honestly and in compliance with all statutory requirements. For this reason, Respondent clearly meets the requirements for licensure, as set forth in R.C. 1322.041.

9. The Division has met its burden of proof of showing that Respondent has a criminal conviction.
10. Respondent has presented evidence of sufficient weight to meet her burden of proof that she is entitled to a license.

II. **Recommendation**

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that Denise A. Fenrick be found to have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions approve Ms. Fenrick's application for a Loan Officers License.

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William R. Damschroder, Esq.  
Hearing Officer

8/4/05  
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Date