

STATE OF OHIO
DEPARTMENT OF COMMERCE

OHIO DIVISION OF FINANCIAL
INSTITUTIONS
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IN THE MATTER OF:

DAVID L. ENGLE

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 04-0268-LOD

REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued July 27, 2005

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 2:00 PM on February 10, 2005, at 77 South High Street, 19th Floor, room 1908, Columbus, Ohio.

The hearing was held at the request of Respondent David L. Engle, of Mason, 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 to theft in 2000, and, also, that Respondent failed to disclose the theft conviction on his Loan Officer Application, and, for either reason, 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. Counsel of record for Respondent withdrew before the hearing.

At the hearing, State's Exhibits 1A, 1B, 2, 3, 4A, 4B, 5A, 5B, 5C, 6A, 6B, 6C, 7, 8A, 8B, 9A, 9B, 10A, 10B, 10C, and 10D were admitted into the record. One witness appeared for the Division. No exhibits or witnesses were offered for the Respondent.

B. JURISDICTION

The Division issued the NOH against Respondent on February 13, 2004. Respondent requested a hearing, received by the Division on March 1, 2004. On March 5, 2004, the Division scheduled the hearing for March 12, 2004, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to May 20, 2004. On May 13, 2004, Respondent's counsel requested a continuance, due to Respondent's medical condition, which continuance was granted to August 19, 2004. On August 11, 2004, Respondent's counsel, again, requested a continuance for medical reasons, which was granted to December 9, 2004. On December 8, 2004, Respondent's counsel requested a continuance, again related to Respondent's medical condition but also to allow Respondent to seek the services of an attorney because Respondent's counsel was withdrawing from representing Respondent. This request for a continuance was granted to February 10, 2005, at which time the hearing went forward without any further 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. (Exhibit 5B.)
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.") (Exhibits 1A, 2.)
3. A new statutory requirement became effective on May 2, 2002, which, for the first time, mandated that Mortgage Loan Officers become licensed. (2001 Senate Bill 76)
4. On or about November 25, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the Application). (Exhibit 1A.)

5. The Application was incomplete. By letter dated December 10, 2003, the Division notified Respondent that the Application was not notarized and, for the Application to be reviewed, a complete Application must be submitted. (Exhibits 1A, 1B.)
6. Respondent resubmitted a complete Application On December 17, 2003. (Exhibit 2.)
7. On both the incomplete and the complete Applications, Respondent responded "No" to Question 5, which asks if the applicant has been convicted of any criminal offense. (Exhibits 1A, 2.)
8. An investigation by the Division determined that, around November 3, 2000, Respondent pleaded No Contest to Petty Theft and a finding was made by the City of Springdale's Mayor's Court of guilty. (Exhibits 4B, 6C.)
9. 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 2000, Respondent was convicted of Petty Theft "a criminal offense involving theft ...", an offense specifically cited in section 1322.041(A)(3) O.R.C.
3. The theft 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 prove of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.
5. The Division demonstrated that, on or about September 18, 2002, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained false information, to wit: the "No" response to Question 5.
6. Because the Application submitted by Respondent contained a false response, Respondent was not able to demonstrate that his activities since the offenses show that the Respondent is honest or truthful.
7. The Division also charged that 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.
8. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail.
9. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application, "No."
10. The Division demonstrated that Respondent's response to Question 5 was a substantial misrepresentation or a false statement of a material fact required by law on the license application, in violation of section 1322.07(A), even though there was no evidence of intent. The mens rea standard must be one of negligence – knew or should have known – in Respondent's answering the questions on the license application.


C. DISCUSSION

The Division has proven that the theft offense occurred. The burden to prove, by a preponderance of the evidence, that he should receive a license now falls to the Respondent. As the Respondent did not appear, did not submit any written statements, other than Exhibit 4A, which was part of the application process, and did not present any evidence at all, there must be a finding for the Division in this case.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO DAVID L. ENGLE.**

Respectfully submitted,


D. Michael Quinn
Hearing Officer
July 27, 2005
Docket No. 04-DFI-059