

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 03-LO-D-25-26
)	
BERTRAM E. HOCKENBERRY)	<u>DIVISION ORDER-ON REMAND</u>
297 East Whittier Street)	Approval of Loan Officer License Application
Columbus, Ohio 43206)	&
)	Notice of Appellate Rights

Respondent, Bertram E. Hockenberry, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on May 1, 2002. On April 30, 2003, the Division notified Hockenberry that it intended to deny his loan officer license application because: (1) he was convicted of unauthorized use of property in 1992¹; (2) he violated R.C. 1322.07(A) and (B) by failing to disclose his criminal conviction to the Division; (3) pursuant to R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3), he had not proven to the Division that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another 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; and (4) his 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 purposes of R.C. 1322.01 to 1322.12—the Ohio Mortgage Broker Act.²

Hockenberry requested a hearing and an administrative hearing was held on June 25, 2003. A Report and Recommendation was filed with the Division on August 11, 2003, recommending that the Division approve Hockenberry’s application and grant him a loan officer license. A copy of the Report and Recommendation is attached to this Order. No objections were filed by Respondent.

On July 29, 2005, the Division issued a Division Order disapproving and modifying, in part, the Report and Recommendation. In denying Respondent’s loan officer license application, the Division Order found as follows:

¹ The Franklin County Municipal Court sealed the records of Respondent’s criminal conviction on November 20, 2002.

² The Division’s allegations in the Notice concerning R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3) were dismissed on the record at the June 25, 2003 administrative hearing. (Tr., pp. 12-13).

Hockenberry's failure to disclose his criminal conviction to the Division and his resulting violations of R.C. 1322.07(A) and (B) show that Hockenberry's character and 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 purposes of the Ohio Mortgage Broker Act.

In accordance with R.C. 119.12, Respondent timely filed a Notice of Appeal of Division Order with the Division and a copy to the Franklin County Court of Common Pleas. On September 25, 2006, the Common Pleas Court issued a Decision and Entry reversing the Division Order finding that the Division improperly interpreted and applied R.C. 1322.041(A)(5). In its Decision and Entry, the Common Pleas Court ordered the Division to grant Respondent a loan officer license. The Division filed an appeal from the Common Pleas Court's Decision and Entry to the Tenth District Court of Appeals. On October 18, 2007, the Tenth Appellate District affirmed in part and reversed in part the Common Pleas Court's Decision. Specifically, the Tenth Appellate District remanded the case to the Common Pleas Court "with instructions to return the matter to [the Division] for a determination, after weighing the evidence, of whether [Respondent's] character and general fitness warrant the issuance of a loan officer's license." *Hockenberry v. Ohio Dept. of Commerce*, 2007-Ohio-5555 at ¶21.³ With these instructions, the matter was remanded to the Division by the Common Pleas Court on May 23, 2008.

In accordance with R.C. 119.09 and the instructions on remand from the Tenth Appellate District and Franklin County Court of Common Pleas, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division adopts the Report and Recommendation with one exception noted below.

The Division disapproves and modifies an interpretation of law found in paragraph 4 on page 4 of the Report and Recommendation, which reads:

Because the Respondent failed to answer Question 5 of the Application truthfully, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

³ The Tenth Appellate District found that the Common Pleas Court abused its discretion when it ordered the Division to issue Respondent a loan officer license. Rather, the Appellate Court found that the Common Pleas Court should have reversed the Division Order and remanded the matter to the Division so that it could "weigh the evidence and determine [Respondent's] fitness for a loan officer's license." *Hockenberry*, 2007-Ohio-5555 at ¶20.

Under R.C. 1322.041(A)(5), the Division had the burden to show 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 Ohio Mortgage Broker Act. Accordingly, Paragraph 4 on page 4 of the Report and Recommendation is modified to reflect the accurate legal burden.

In accordance with the foregoing, the loan officer license application of Bertram E. Hockenberry is hereby approved.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 4th day of November, 2008.

LEIGH A. WILLIS

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce