

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

In the matter of:

DAVID McNEIL
2799 Oxford Lane
Akron, Ohio 44312

) Case No. 05-0044-LOD
)
) **DIVISION ORDER**
) **Denial of Loan Officer License Application**
) &
) **Notice of Appellate Rights**

David McNeil, (“Respondent”) first submitted a loan officer license application to the Division of Financial Institutions (“Division”) on April 23, 2002. On November 4, 2003, that application was denied due to Respondents criminal history and his failure to disclose his convictions. On April 7, 2005 Respondent submitted a second loan officer license application (“Application”) to the Division. On May 25, 2005, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1989 he was convicted of receiving stolen property, in the Court of Common Pleas, Cuyahoga County, Ohio; (2) in or around 1992 he was convicted of petty theft in Mentor Municipal Court, Lake County, Ohio; (3) he has also been convicted of violating the terms of his probation and has been convicted of domestic violence on two separate occasions; (4) In November 2003, the Division found that Respondent violated R.C. 1322.07, due to Respondent’s ‘omission of material fact’ on his 2002 loan officer license application; (5) Respondent’s actions show that he has not proven 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 or receiving stolen property or any criminal offense involving money or securities; and (6) because 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.

Respondent requested an administrative hearing which was held on July 15, 2005. A Report and Recommendation (“Report”) was filed with the Division on December 6, 2005, recommending that the Division approve Respondent’s Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits as well as all applicable laws. As a result, the

Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Report is attached).

Under Section II “Conclusions of Law” of the Report, beginning on page 5, the Division rejects the following: (1) the last sentence of paragraph 5; (2) the second and third sentence of paragraph 6; (3) paragraph 7; (4) paragraph 10; (5) the third and fourth sentence of paragraph 11; (6) paragraph 12; (7) paragraph 14; (8) the last sentence of paragraph 15; (9) paragraph 17 as it relates to any positive aspects of Respondent’s character; and (10) the second sentence of paragraph 18.

The Division has proven that Respondent has been convicted of five separate crimes between 1989 and 1998 and was also dishonest on his 2002 loan officer application. The Report states that the Division did not present evidence as to why Respondent's convictions and dishonesty over a 13 year period demonstrate 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. A 9 year period of criminal activity and dishonesty that ended only 3 years prior to Respondent's Application, in and of itself, clearly illustrates a lack of character and fitness. Additionally, the convictions for theft and receiving stolen property are specifically enumerated in the Ohio Mortgage Broker Act and go to the heart of the integrity needed to adequately and fairly represent the interest of mortgage clients.

Regarding paragraph 17, accurately disclosing one’s criminal record on a licensing application submitted to a state agency, which the individual knows will review the results of his criminal background check, does not establish that the individual is honest and has the requisite character and general fitness to be a loan officer. This is especially true in this case where Respondent was already denied a loan officer license in the past for not disclosing the same exact criminal history. For the Report to state that the disclosure of the convictions on the (second) Application should be a positive demonstration of character is akin to not convicting a bank robber because after he was arrested he said he was going to return the money.

Respondent testified that that he did not disclose his criminal history on his 2002 Loan Officer Application because he thought he only had to disclose felony convictions. The inability to understand a direct question evidences a lack of the requisite fitness needed of a loan officer.

On a daily basis loan originators deal with consumers' personal financial information and counsel them on what is most often their largest financial investment. Being able to comprehend and evaluate complicated mortgage documents is an important part of the job, and reading out operative terms or phrases within a document can have serious consequences for the loan officer's customer. Moreover, the application form is an important document for any prospective loan officer, and question number 5 is an important question for any applicant with a criminal record. Taken within its proper context, Respondent's inability to understand and truthfully respond to an important question, even if unintentional, demonstrates to the Division that Respondent does not hold the requisite fitness needed to be a loan officer.

The facts of this case do not establish that the Respondent has proven by the preponderance of the evidence that her activities and employment record since the conviction show that he is honest, truthful, and of good reputation. Furthermore, the facts of this case do not establish by a preponderance of the evidence that there is no basis in fact for believing that he will commit such an offense again.

Furthermore, the Division finds that Respondent's convictions justify a finding that Respondent's character and general fitness do not command the confidence of the public, or warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, pursuant to R.C. 1322.041(A) (5).

Upon consideration of the record, the Division rejects the Hearing Officer's recommendation. Respondent's Application is denied.

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 April 2007.

RICHARD F. KECK

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