

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 04-0451-LOD  
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Daniel L. Davis : James J. Lawrence, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
February 28, 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 10:30 a.m. on November 23, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Daniel L. Davis (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 was convicted of the offense of domestic violence on two separate occasions in 1997 and that he failed to disclose these convictions on his loan officer application filed on May 13, 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. Respondent violated R.C. 1322.07 (A), (B) and (C) by failing to disclose criminal convictions on his loan officer application filed in May of 2004.

Emily A. Smith, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. At the hearing, State's Exhibits 1 through 9 were admitted into the record. The Respondent did not appear at the hearing without explanation for his absence.

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

The Division issued the NOH to Respondent on October 5, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on October 19, 2004. The Division scheduled the hearing for October 29, 2004 but, on its own motion, continued the hearing to November 15, 2004. The Hearing Officer subsequently continued the hearing to November 23, 2004 at the Respondent's request. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH.

#### **C. Respondent's 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. The Respondent filed a loan officer application on May 13, 2004. (Exhibit 1; TR at 9.)
3. 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.)
4. In response to Question 5, the Respondent answered "No." (Exhibit 1; TR at 9.)
5. The criminal background check conducted pursuant to R.C. 1322.031 (B) revealed two convictions for domestic violence. (TR at 10.) By letter dated July 14, 2004, the Division required the Respondent to submit certified copies of judgment entries evidencing the disposition and sentence in two criminal cases. (Exhibit 2; TR at 10.)

6. The Respondent provided two judgment entries from the Canton, Ohio Municipal Court. The Entry for Case No. 97-CRB-00784 showed that on March 25, 1997 the Court convicted the Respondent of Domestic Violence in violation of R.C. 2919.25, a first degree misdemeanor. The Court fined the Respondent \$100.00 and sentenced him to 180 days in jail with all but seven days suspended. The Entry for Case No. 97-CRB-01908 showed that on May 19, 1997 the Court convicted the Respondent of Domestic Violence in violation of R.C. 2919.25(C), a third degree misdemeanor. The Court fined the Respondent \$75.00 and sentenced him to 60 days in jail with all but 15 days suspended. (Exhibits 3 & 4; TR at 11 - 12.)
7. The Respondent did not explain why he did not disclose the convictions on his loan officer application.

## **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. R.C. 1322.041(A) provides that upon the conclusion of the investigation required under R.C. 1322.031 (B), 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:

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(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.

2. 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.

3. 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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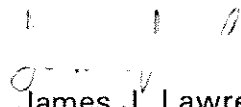
4. The Respondent had two criminal convictions which he failed to disclose on his loan officer application as required by R.C. 1322.031 (A) (4). The Respondent has not offered any explanation for his failure to comply with the requirement. There is no information in the record suggesting that the Respondent's failure to disclose the convictions was an inadvertent omission done without any intent to conceal the convictions from the Division or the Superintendent. Accordingly, his failure to disclose the convictions constitutes a misrepresentation of a material fact, an omission of a statement required by state law and improper dealings with the Superintendent in violation of R.C. 1322.07(A), (B) and (C). By violating R.C. 1322.07 (A), (B) and (C), the Respondent failed to comply with the requirement of R.C. 1322.041 (A) (2).
5. Moreover, in the absence of any other evidence, the Respondent's failure to disclose the convictions establishes 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. 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. 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 if he finds a violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12.

### **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. The record in this case is devoid of any information that would support the issuance of a loan officer license to the Respondent. 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  
February 28, 2005