

**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

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DIVISION OF FINANCIAL  
INSTITUTIONS  
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IN THE MATTER OF:

**KEVIN T. RAINEY**

DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. 04-0261-LOD

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**REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

**Issued March 23, 2005**

**I. FINDINGS OF FACT**

**A. BACKGROUND**

The above-captioned 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 3:00 PM on May 20, 2004, at 77 South High Street, 31<sup>st</sup> Floor Conference Room, East B, Columbus, Ohio.

The hearing was held at the request of Respondent Kevin T. Rainey, of Lyndhurst, 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 was convicted of a theft offense in 1996 and various alcohol or controlled-substances related offenses between 1997 and 2001, and 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, Deputy Attorney General Paula L. Paoletti. Respondent appeared pro se.

At the hearing, State's Exhibits 1, through 13 were admitted into the record. No witnesses appeared to testify other than Respondent. Respondent was afforded an opportunity to keep the record open until June 11 so that he might submit such Exhibits (See Transcript (hereinafter "Tr.") pp. 60-65). As a result, Respondent's Exhibits A through E were admitted into the record on June 11, over potential hearsay objections, and all subject to the weight deemed appropriate to afford the documents.

## B. JURISDICTION

The Division issued the NOH against Respondent on February 12, 2004. Respondent requested a hearing, which was received by the Division on February 26, 2004. On March 2, 2004, the Division scheduled the hearing for March 8, 2004, but continued the hearing to May 20, 2004 on its own motion, at which time the hearing went forward. The record was kept open until 5:00 PM on June 11, 2004, as noted above.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

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 13.)
2. Respondent is an individual who wishes to be licensed to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1, Respondent's Exhibit 1; Tr. p. 13.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. On or about December 29, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1.)
5. Respondent signed the Application on, or about, December 22, 2003. (Exhibit 1.)
6. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (highlighted in original) (Exhibit 1; Tr. p. 14.)
7. In conjunction with Respondent's submission of the Application, he sent Exhibits 2 through 9 to provide a full explanation of the

convictions which caused him to respond "Yes" to Question 5. (Tr. p. 53.)

8. On, or about, September 13, 1996, Respondent was convicted of a first degree misdemeanor theft offense in Portage County Municipal Court, Kent Branch. (Exhibit 3.)
9. Respondent's explanation of the facts leading to the theft conviction was: he was 19 and at a party at Kent State University, drinking and smoking marijuana. Respondent decided to steal around 50 CDs from the party. He took them out to his vehicle and returned to the party, but, when the CDs were discovered missing and found in his car, Respondent was arrested. (Tr. pp. 20-22.)
10. On, or about, April 17, 1997, Respondent was convicted of Speeding, Expired Plates, Driving in Marked Lanes, OMVI, and Possession of Controlled Substance in Cuyahoga Heights Mayor's Court. (Exhibit 4; Tr. p. 15.)
11. On, or about, September 18, 1997, Respondent was convicted of Possession of Marijuana, Possession of Drug Paraphernalia, DWUI and Driving with a Suspended License, in Lyndhurst Municipal Court. (Exhibit 5; Tr. p. 15-16.)
12. On, or about, March 21, 1997, Respondent was convicted of Operating a Motor Vehicle with License Plates that Belong to Another Vehicle and Possession of Drug Paraphernalia in the Portage County Municipal Court. (Exhibit 6; Tr. pp. 16-17.)
13. On, or about, March 6, 1998, Respondent was convicted of Drug Abuse: Marijuana, in Cleveland Municipal Court. (Exhibit 7; Tr. p. 17.)
14. On, or about, May 11, 1999, Respondent was convicted of Operating a Motor Vehicle while under the Influence, in the Cuyahoga County Common Pleas Court. (Exhibit 8; Tr. pp. 17-18.)
15. On, or about, December 20, 2001, Respondent was convicted of Driving under the influence of Alcohol or Drugs, in the Lake County Common Pleas Court. (Exhibit 9; Tr. p. 18.)
16. Respondent's explanation of the various alcohol offenses was that he began drinking alcohol and smoking marijuana around age 15 and, by ages 19 to 22 he constantly drank and used marijuana with friends and was reckless afterward behind the wheel of his car. "I

kind of lived a carefree life and really just didn't think of it as a big deal at the time." (Tr. pp. 20-21, 22-35.)

17. Respondent acknowledges his commission of the offenses and takes responsibility for his past actions. (Exhibits 1, 2; Tr. pp. 22-35, 51, 58.)
18. Respondent testified that after his last arrest for OMVI his lifestyle has changed. During the time he was 19 to 22 years old, he was unaffected by the results of his drinking and smoking, but, since the last arrest, he decided he wanted to change his life so that alcohol is not a part of his life. (Exhibit 2; Tr. pp. 22, 24, 26-27, 29-30, 32-34, 35.)
19. Respondent testified that he has received, and continues to receive, treatment for substance abuse. Respondent was required to attend NEOCAP alcohol counseling after his last OMVI conviction. (Tr. pp. 31-34, 35.)
20. Respondent attends continuing counseling through AA. (Exhibits A, B; Tr. pp. 31-34, 35, 48-50.)
21. Respondent successfully completed the NEOCAP residency treatment program. Insofar as a program of this type may come to such a conclusion, Respondent shows a reduced risk of recidivism. (Exhibit E.)
22. Respondent has been urine screened weekly, and then monthly, after his release from his last incarceration, about May of 2002, and has been clean at each testing. (Exhibits A, E; Tr. p. 52.)
23. Prior to the sentence of the court, Respondent entered treatment, on or about June 5, 2001, at Laurelwood facility in Willoughby, Ohio. Respondent has not used alcohol or marijuana since that date. (Tr. pp. 34-35.)
24. Respondent's repentant, candid, straight-forward responses and attitude throughout the hearing gave significant weight to the credibility of his testimony.
25. Respondent's demeanor was far more mature than his background would suggest.
26. Respondent's co-workers and AA sponsor believe Respondent to be honest, trustworthy and of good reputation since he during the two years preceding the hearing. (Exhibits B, C, D.)

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119.

### **B. LICENSE APPLICATION**

2. Respondent has been proven to have been convicted of a misdemeanor theft offense in 1996 and multiple criminal offenses involving drugs and alcohol between 1997 and 2001. The drugs and alcohol related offenses are not offenses specifically cited in sections 1322.041(A)(3) or (4), O.R.C., or on the Application, however, the theft offense is specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.
3. The theft offense is in the category which automatically requires the Respondent to 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." Section 1322.041(A)(3), O.R.C.
4. 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.
5. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's pattern of convictions.
6. Respondent's Exhibits A through E are letters from Respondent's current employment supervisor and fellow employees, his Lake County Probation Officer, his case manager at the NEOCAP treatment facility and his AA Sponsor, all of whom were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial,

Respondent's Exhibits were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, Respondent's Exhibits have been afforded reduced weight. However, the letters were generally notarized statements of some specificity, and three of the five letters were written by persons involved with his rehabilitation, which caused the weight given the statements to be enhanced.

7. The alcohol convictions began when Respondent was still immature but still demonstrate that, at the time, Respondent had a disregard for the law.
8. Respondent's treatment efforts, his demeanor during the hearing, the written statements he supplied and the absence of a new offense during the two years preceding the hearing support his contention that he has the general fitness to command the confidence of the public and gives rise to a belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
9. In eliciting evidence whether Respondent's character is honest, the Division demonstrated that, on or about December 22, 2003 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 truthful information, to wit: the "Yes" response to Question 5 and, also, that Respondent supplied sufficient documentation to fully show those convictions.
10. Filing an accurate Application is demonstrative of an applicant's character and general fitness and that the business will be operated honestly and fairly in compliance with law.
11. Respondent did provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.

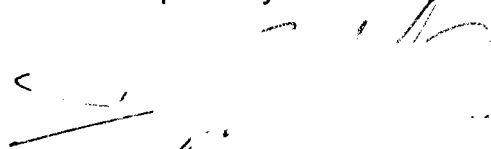
### C. DISCUSSION

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Respondent's criminal convictions were not greatly removed in time or of a limited number, and that the theft was induced by a drug or alcohol state does not make it excusable. However, Respondent's contrite behavior during the hearing and his continued treatment of substance abuse has demonstrated, buttressed by the submission of numerous detailed letters on his behalf, that he has moved to change his behavior and seeks a fresh start. In addition to Respondent's age at the time of the crimes, a tendency toward leniency for the non-financial nature of the crimes would be appropriate, but only because he has undertaken, and continues, treatment for substance abuse. Also, because Respondent did answer Question 5 on the Application honestly, even including the court records to provide the Division with specific information regarding the convictions, he shows that he is taking responsibility for his past actions and it goes to demonstrate honesty and truthfulness, and that his 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 the Ohio Mortgage Broker Act. Respondent has proven, by a preponderance of the evidence, that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again.

### III. RECOMMENDATION

The Division has proven the prior criminal convictions. Respondent did present sufficient evidence to prove that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO KEVIN T. RAINEY.**

Respectfully submitted,



D. Michael Quinn  
Hearing Officer  
March 23, 2005  
Docket No. 04-DFI-053