

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

In the matter of:)	Case No. 03-LO-D-103-104
)	
GREGORY A. SMART)	<u>DIVISION ORDER</u>
2947 East 123 rd Street)	Denial of loan officer license application
Cleveland, Ohio 44120)	&
)	Notice of Appellate Rights

Respondent, Gregory A. Smart, submitted a loan officer license application to the Division of Financial Institutions (“Division”) on September 24, 2002. On October 28, 2003, the Division issued its notice of intent to deny Smart’s loan officer license application. On October 29, 2003, the Division notified Smart by an amended notice that it intended to deny his loan officer license application because: (1) in 1994 he was convicted of receiving stolen property, and he had not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact that for believing that he will not commit another offense involving receiving stolen property; and (2) 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.

Smart requested a hearing and an administrative hearing was held on December 16, 2003. A Report and Recommendation was filed with the Division on February 13, 2004, recommending that the Division approve Smart’s application and grant him a loan officer license. No objections were filed.

In accordance with R.C. §119.09, 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 makes the following findings and conclusions.

Paragraph 3 on page 4 of the Report and Recommendation reads:

The crime of Receiving Stolen Property is an “automatic disqualification” for those who apply for a Loan Officer License. Revised Code Section 1322.041. Because the Respondent’s conviction, the burden of proof shifted to the Respondent to employment records since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will 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 that his character and general fitness command the confidence of the public to warrant the belief the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.**

The burden was on the state to show that Smart's 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 the Ohio Mortgage Broker. Accordingly, paragraph 3 is modified to reflect the accurate legal burdens.

Paragraph 8 and the recommendation on page 6 of the Report and Recommendation are disapproved. The record reflects that the Division proved that Smart was convicted of a third-degree felony, namely receiving stolen property in 1994, thus shifting the burden to Smart to prove that since his conviction, his employment record and activities show that he is honest, truthful, and of good reputation and there is no basis in fact for believing he will commit an offense involving receiving stolen property. (See R.C. §§ 1322.031(A)(2) and 1322.041(A)(3), Exhibit 8, and Transcript pp. 8, 16.) To this end, the only evidence Smart offered was his own self-serving testimony and a copy of his resume. (Exhibit A.) The Division finds that the record does not show, by preponderance of the evidence, that since Smart's conviction his employment record and activities show that he is honest, truthful, and of good reputation. Further, because Smart was convicted of a third-degree felony, namely receiving stolen property, the Division finds that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated in compliance with the Ohio Mortgage Broker Act.

Accordingly, the September 24, 2002 loan officer license application submitted by Gregory A. Smart is hereby 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 9th day of September 2005.

ROBERT M. GRIESER

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

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