

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE

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INSTITUTIONS

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In re: Gregory A. Smart

: Case No. 03-LO-D-103-104

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF
THE HEARING OFFICER

The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License Application of Gregory A. Smart not be granted. The Division conducted an investigation and found:

1. In or around 1994, Mr. Smart was convicted of Receiving Stolen Property, a third degree felony.
2. As a result, the Division determined:
 - i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such 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 again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and
 - ii. that Mr. Smart's character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in Section 1322.041(A)(5).

Mr. Smart's address for service is 19580 Euclid Avenue, #210, Euclid, Ohio 44117. He is hereinafter referred to as the "Respondent". The Respondent is employed by H & R Block Mortgage. (Exhibit 2B).

This matter was initiated by the Superintendent of the Division by the issuance on September 28, 2003 (incorrectly) of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 1).

The Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing (Exhibit 1) contained two typographical errors. First, the correct date should have been October 28, 2003 rather than September 30, 2003 and second, the correct name of the Respondent's employer was H & R Block Mortgage, rather than Wholesale Mortgage Group. (See Exhibit 2). The Division acknowledges these errata in Exhibits 1A, 2 and 2A. It issued an Amended Notice of Intent to Deny Loan Officer License

Application and Notice of Opportunity for a hearing on October 29, 2003. (Exhibit 2B). It is that document on which this proceeding takes place.

On November 10, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 3). On November 10, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for Thursday, November 20, 2003 at 10:00 a.m. (Exhibit 4). The hearing was simultaneously continued and rescheduled for a later date. (*Id.*). On November 25, 2003, the Division wrote to the Respondent's counsel scheduling the hearing for Tuesday, December 16, 2003 at 2:30 a.m. in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 5).

The hearing was held beginning at 2:40 p.m. on December 16, 2003 and was attended by: John A. Izzo and Martine Jean, Assistant Attorneys General of the Executive Agencies Section of the Attorney General's Office of Ohio; the Respondent, and Diane Wagenbrenner, Staff Attorney for the Division.

The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

FINDINGS OF FACT

1. The Respondent has submitted two signed Loan Officer Applications to the Department. On September 24, 2002, while the Respondent was employed by Access Mortgage & Finance, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 6, Tr. 15).

2. Question 5 of the Exhibit 6 Application provides:

Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

3. In response to Question 5, the Respondent answered "Yes".

4. On July 16, 2003, the Respondent signed a Loan Officer Application while employed by H & R Block Mortgage Corporation. (Exhibit 7, Tr. 15).

5. Question 5 of the July 16th Application read:

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. (DUIs and
DWI's are criminal offenses.) Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and
circumstances, which gave rise to each charge and a
certified copy of the journal entry evidencing the
disposition of each charge.

6. In response to Question 5, the Respondent answers "Yes" and wrote:
"1994 Receiving Stolen Property = 1 year probation". (Exhibit 7).

7. Also admitted into the record in this matter is the Journal Entry from the
Cuyahoga County Court of Common Pleas dated September 8, 1994 showing the
Respondent as having been convicted of Receiving Stolen Property, a third degree felony.
(Exhibit 8).

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an
Application for a license as a loan officer, an applicant must submit a statement as to
whether the applicant has been convicted of or pleaded guilty to any 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.

2. Ohio Revised Code Section 1322.041 provides that the Superintendent of
the Division shall issue a Loan Officer License if the Superintendent finds that certain
conditions are met including:

- (2) The applicant complies with Sections 1322.01 to
1322.12 of the Revised Code.
- (3) The applicant has not been convicted or pleaded
guilty to any criminal offense described in division
(A)(2) of section 1322.031 of the Revised Code, or,
if the applicant has been convicted of or pleaded
guilty to such offense, the applicant has proven to
the superintendent, by a preponderance of the
evidence, that the applicant's activities and
employment records 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.

...

- (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.

3. 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 show by a preponderance of the evidence that the Respondent's activities and 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 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.

DISCUSSION

1. The Respondent was convicted on September 7, 1994, of the offense of Receiving Stolen Property. The property in question was a 1994 Grand Cherokee Limited Edition. The Respondent was arrested on April 4, 1994. His testimony was as follows:

I had met a friend of mine at a club who was home from the service who I went to high school with and who we were pretty good friends in high school. So we decided to meet. He said he would be back home a week later from leave and that we would get together and go out.

And by doing so, we waited about a week, gave him my number, he gave me his, and the week went by, gave him a call. He came home. And we met, went and had a couple of drinks, talked and then he went home and I went home.

He called me later that afternoon, and I came over, and I told him I had some things to do and that he had a couple of places to run errands he needed to do and we would meet back up at his house probably around 9:00. At that point in time I had a '92 Chevy Camaro which had a kit on it, brand new paint job and rims and everything else on it. And he had this Jeep and we switched cars. He wanted to drive my Camaro. I wanted to drive his Jeep.

His jeep had keys. The license plates were back and front. There was nothing for me to expect there was nothing wrong with this vehicle.

I mean, I knew he was from the service, and being in the service for almost two-and-a-half years, you can acquire enough money to purchase a Jeep. Most people I know who have been in the service, they come home, they have nice cars. They buy them from wherever they get them from. I didn't bother to ask him where he got the vehicle come. I just assumed that it was his and that he had purchased it.

About an hour after the point in time, I leave out, and I go over to my mother's house. I think I went to the mall. I purchased something to wear for that evening. And on my way back to his apartment, I get pulled over. I get pulled over because they say my music is too loud.

Then the fact them pulling me over, they run the VIN number on the car. They run the plate to the car. Plates match a Jeep, just not the Jeep I was driving. The VIN number was stolen from Brethard Auto Mall.

They arrested, and the police officers were pretty nice to me. They actually tried to call Willie Graham. That's the guy's name. They actually tried to give him a call. He never responded to the call, and they actually charged me with grand theft and that was dropped down to receiving stolen property.

(Tr. 18-20).

2. In the course of the criminal matter, the Respondent testified in support of the Jeep dealership in connection with a salesman at the dealership who was involved in the theft. (Tr. 20).

3. The Respondent acknowledges his guilt in this matter. (Tr. 23). It was a mistake on his part that he has been dealing with since 1994. (Tr. 24). At the time of this incident, he was 21 years of age. (Tr. 24). At the time of the hearing in this matter, he was 30 years of age. (Tr. 24).

4. The Respondent graduated from John Hay High School in 1991 and attended Cuyahoga Community College for two-and-a-half years. (Tr. 24-25).

5. Respondent's Exhibit A is a resume. Respondent's Exhibit A shows that the Respondent has been working at H & R Block Financial and Mortgage (subject to receiving a Loan Officer License) since July, 2003. Between October, 2002 and July, 2003, he was an Account Executive with Ameriquest Mortgage Company. For 6 months in 2002, he was a Loan Officer with Access Mortgage & Financial, for a year-and-a-half he was a Sales Advisor with Motor Cars Toyota, for two years he was a Regional Account Manager with Aaron Rental & Purchase and before that had positions with AGA Gas, The Cleveland Clinic Foundation (as a Billing Supervisor), and as a Customer

Service Coordinator with Cable Vision Corporation. The Respondent's work record seems to be favorable. (See Tr. 27-28).

6. The Respondent is a single parent raising an 8-year old daughter. (Tr. 31-32).


7. The Hearing Officer is impressed that in two Loan Officer Applications, the Respondent truthfully answered Question 5. The Hearing Officer notes that the conviction occurred nearly 10 years prior to the hearing in this matter and that the Respondent has no further involvement in the criminal justice system. Moreover, the Respondent has had an uninterrupted work history in jobs that show a rising level of responsibility on the part of the Respondent. It appears that the Respondent made a mistake when he agreed to exchange cars with his acquaintance. The Hearing Officer notes that the conviction took place when the Respondent was only 21 years of age and that he appeared mature and responsible at the hearing in this matter. Indeed the Hearing Officer is impressed with the truthfulness and honesty of the Respondent.

8. Based on the evidence and the Exhibits and the Transcript, the Hearing Officer concludes that by a preponderance of the evidence, the Respondent has established 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, likewise, 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 and in compliance with the purposes of the Ohio Mortgage Broker Act.

RECOMMENDATION

Based on the above-findings of fact, conclusions of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division grant a Loan Officer License to the Respondent.

Respectfully submitted,


Kenneth R. Cookson
Hearing Officer
February 11, 2004

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