

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

In re: Stephen T. Keller

: Case No. 04-0029-LOD

04-0029-LOD 04-03-08

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

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

- a. In or around 1995, in the Elyria Municipal Court, Lorain County, Mr. Keller was convicted of theft;
- b. In or around 1996, in the Wayne Superior Court No. 1, Wayne County, Mr. Keller pleaded guilty and was convicted of possession of Marijuana, a misdemeanor of the fourth degree.
- c. In or around 1996, Mr. Keller was convicted of unauthorized use of property, a misdemeanor of the fourth degree in the Franklin County Municipal Court.

(Exhibit 9).

2. As a result, the Division determined:

- i. that Mr. Keller 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 an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and,
- ii. that Mr. Keller'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).

3. Mr. Keller's address for service is 822 Langston Avenue, Elyria, Ohio 44035. He is hereinafter referred to as the "Respondent". The Respondent is employed by Resource Mortgage, Ltd. (Exhibit 9).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter (Exhibit 9). On that

same date, the Division wrote to the Respondent enclosing a form for the Respondent to use to request a hearing (Exhibit 10).

5. On January 28, 2004, the Division received a Request for Hearing from the Respondent (Exhibit 11).

6. On February 2, 2004, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for February 9, 2004 at 9:00 a.m. (Exhibit 13). The hearing was simultaneously continued until March 1, 2004 at 1:00 p.m. in Room 1909 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio 43215. (*Id.*)

7. The hearing was held beginning at 1:00 p.m. on March 1, 2004 and was attended by: Daniel P. James, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; and the Respondent, pro se. Also attending was Nancy Keller, a witness for the Respondent.

8. 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. On July 31, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322 (Exhibit 1).

2. Question 5 of the 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 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.

3. In response to Question 5, the Respondent answered "Yes" and added "In 1994, at college, received minor misdemeanors for unauthorized use of property, possession of Marijuana." (*Id.*)

4. On August 22, 2003, the Division wrote to the Respondent to indicate that the Division could not make a decision about the issuance of a license and asked for more information (Exhibit 3).

5. On September 3, 2003, the Division sent a copy of the *Multi-State Offender Questionnaire* to the Respondent (Exhibit 4).

6. In answering the *Multi-State Offender Questionnaire*, the Respondent disclosed that he had had four convictions:

- (a) January 24, 1996 in Indiana for Marijuana possession;
- (b) December 27, 1995 in Ohio for theft;
- (c) April 8, 1996 in Ohio for unauthorized use of property; and
- (d) March 2, 1995 in Ohio for Marijuana possession.

(Exhibit 5).

The Division is not proceeding on the basis of the March 2, 1995 Marijuana possession matter. (Tr.25).

7. The Respondent also wrote:

"A. INDIANA

In June 1995, me and a few friends were pulled over for speeding and were then searched for Marijuana and I was found in possession of Marijuana. I cooperated with the trouper in all aspects of the arrest, and plead guilty to the charge.

B. OHIO

In Dec. of 1995, I had attempted to steal a compact disc collection from a neighbor's car. The defendant was a kid I went to school with and only wanted his stuff back. I cooperated and paid court fines.

C. OHIO

- Unauthorized Use of Property.

I walked out of Lazarus with 2 shopping bags full of paid for merchandise. However, I did have a wallet in the bag that wasn't paid for and after the security notified me, I cooperated completely and was let go with unauthorized use of property.

D. OHIO

While in college dormitory some friends of mine were in my dorm room and we decided to smoke Marijuana and were caught for doing so. I answered to the dormitory Hall manager and I continued school, no suspensions, only a fine at Franklin County Courthouse."

8. The Respondent provided copies of Ohio Court journal entries for his convictions (Exhibit 6).

9. The Respondent also submitted *Loan Officer License Transfer Application* on November 18, 2003 to transfer his license from Family Home Mortgage to 1st Resource Mortgage, Ltd. (Exhibit 7). The Respondent also presented to the Division a Request for Loan Officer License status (Exhibit 8).

10. The Respondent also submitted to the Division a copy of his diploma from The Ohio State University, a letter of support from the president of 1st Resource Mortgage and the following writing:

"I am writing in response to the notice of denial letter I received from the Department of Commerce in regards to my Loan Officer License. It is my desire, at this point, to proceed with a hearing and have the opportunity to represent myself and prove my honesty, truthfulness and reputation to the counsel.

These offenses all occurred within a small 1 year period of my life when I was young and basically stupid. I lived on my own at college for the first time and met new people and got a little carried away. However, the court records should reflect that I have not been in any trouble since early 1996, which is over 8 years ago. Surely, you could agree that people can change over time. I have since earned my college degree in finance, and have maintained strong employment history, having worked for Don Pablo's restaurant for over 5 years and in 3 different states. I proved my leadership and value to that company in our community and did not disappoint or fail the trusting public.

Moreover, I also have ambitions in my life. I have paid for and earned a college degree in financial planning, but was unaware that my criminal past could hurt my opportunity for employment. I have the education to help people with their personal finances, and I have proven over the past 8 years that that 1 year in 1996 was just a bad year. I currently hold 2 jobs and work over 50 hours per week in the community.

Please accept my request to have a formal hearing and explain my character to be different than those court records indicate."

(Exhibit 12)

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(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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. Because the Respondent has been convicted of misdemeanor offenses involving theft, the burden of proof shifted to the Respondent to show by a preponderance of the evidence 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. The other criminal convictions caused the burden of proof to shift to the Respondent to show by a preponderance of the evidence 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 Hearing Officer notes that the Respondent has been involved in three distinct misdemeanor criminal matters that are the basis of the Division's proceedings (See Exhibits 5, 6, and 9). All of them occurred in 1995 and 1996, during an approximately one year long period of time.

2. The Respondent testified that he left home to go to college in 1993 and 1994. (Tr.27). He lived in a dormitory in 1994 and 1995. *Id.* While in that dormitory, he began to get into trouble. *Id.* With regard to the Indiana Marijuana possession, the Respondent was traveling from Ohio to Indiana in an automobile when the car was pulled over by state police and searched. (Tr.27-28). That episode, according to the Respondent, turned his life around. (Tr.28-29). The Respondent "realized that I wanted to do a little bit more with my life." (Tr.29).

3. The Respondent asserts that the other criminal offenses were minor and were the result of bad decisions on his part. (Tr.30). In connection with the theft offense, he stated that a neighbor had at one point dated the same girl in high school. Respondent decided one night to break into the neighbor's car and take a pouch containing recorded music. (Tr.30). Respondent was caught the next morning and the recordings were returned. *Id.*

4. The unauthorized use of property charge arises from an incident at the Lazarus store. Respondent had decided to buy a wallet and selected one. (Tr.30). He went to two or three different check-outs to pay for it but could not apparently get service. (Tr.31). It was then that he decided to leave the store. He was arrested 2 steps outside of the front door. *Id.*

5. The Respondent concedes and the Hearing Officer acknowledges that it has been eight years since the last of these misdemeanor episodes involving the Respondent. (Tr.31). The Respondent asserts that his lifestyles and personalities have changed. (Tr.32). He was "young and impressionable" at the time of the criminal offenses. *Id.*

6. After the Indiana arrest for Marijuana, the Respondent took a restaurant job at Don Pablo's and was promoted to a managerial position. (Tr.29). In that management position, the Respondent realized that he needed to go back to school to finish. *Id.*

7. The Respondent works between 50 and 60 hours per week. (Tr.37). He has a part-time job, aside from the mortgage job as a processor, at a country club. (Tr.37). At the time of the hearing in this matter he was 29 years of age. (Tr.38). The Respondent asserts that he has learned valuable lessons about temptation and the risk/reward balance (Tr.38).

8. Testifying in support of the Respondent was his mother, Nancy Keller. She noted the positive changes she has seen in her son. (Tr.50). She reiterated that the incident in Indiana involving Marijuana was a real turning point for him and indeed for the entire family. (Tr.50). She feels that her son is an honest man. (Tr.52).

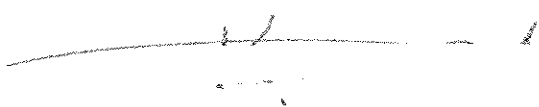
9. In this matter, the Hearing Officer is pleased that the Respondent answered Question 5 of the Application correctly. The offenses for which the Respondent has been convicted appear to be attributable to his then relative youth and inexperience. Having had an opportunity to observe the Respondent in the Hearing Room, the Hearing Officer finds that he has matured markedly.

In this instance, the Hearing Officer can conclude that the Respondent has met his burden of proof in this matter. Respondent has established to the satisfaction of the Hearing Officer that, by a preponderance of the evidence, the Respondent's activities and employment records since the convictions show that the Respondent is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit such an offense of theft again. Further, the Hearing Officer finds that the Respondent'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 Section 1322.01 to 1322.12 of the Revised Code.

RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion herein, 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
March 29, 2004

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