

Bob Taft
Governor

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

Doug White
Director

| | | |
|-----------------------|---|---|
| In the matter of: |) | Case No. M2006-9992883 |
| |) | |
| JEROME E. TUFF |) | <u>DIVISION ORDER</u> |
| 1591 Ferris Road |) | Denial of Loan Officer License Application |
| Columbus, Ohio 43224 |) | & |
| |) | Notice of Appellate Rights |
| |) | |

Respondent, Jerome E. Tuff, submitted a loan officer license application ("Application") to the Division of Financial Institutions ("Division") on April 19, 2002, which was denied. The Respondent re-applied on May 23, 2006. On July 27, 2006, the Division notified Respondent that it intended to deny his Application because: (1) in or around 1995, in the Franklin County Municipal Court, Respondent was convicted of Soliciting Prostitution; (2) in or around 1999, in the U.S. District Court, Southern District of Ohio, Respondent was convicted of Issuing Postal Money Orders Without Paying Or Receiving Payment; (3) Respondent violated R.C. 1322.07(A) by failing to disclose the convictions on his Application; (4) Respondent violated R.C. 1322.07(B) by making a false statement of a material fact and by omitting a statement required on the licensing application; (5) Respondent violated R.C. 1322.07(C), by engaging in improper or dishonest conduct; (6) pursuant to R.C. 1322.031(A)(2) and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities; (7) because 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Furthermore, as it relates to Respondent's April 19, 2002 application, these same findings were affirmed on Respondent's appeal to the Franklin County Court of Common Pleas, in case number 05CVF-06-6549.

Respondent requested an administrative hearing in the present case, which was held on September 13, 2006. A Report and Recommendation ("Report") was filed with the Division on October 23, 2006, recommending that the Division deny Respondent's Application. Respondent submitted his objections to the Report on November 2, 2006.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, Respondent's objections, the transcript of testimony and exhibits as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Report is attached hereto.)

The Division disapproves paragraph 17 on page 7 of the Report.

The Report concludes that the Division cannot "recharge" Respondent with a violation of R.C. 1322.07, as the conduct in question was the subject of the previous case involving Respondent's April 19, 2002 application. However, pursuant to R.C. 1322.041(A)(2), the Division cannot issue a loan officer license to any applicant who has failed to comply with – or already violated – sections 1322.01 to 1322.12 of the Ohio Mortgage Broker Act, including R.C. 1322.07. As a result, the Division's previous finding that Respondent violated R.C. 1322.07 is relevant to the present case involving Respondent's re-application.

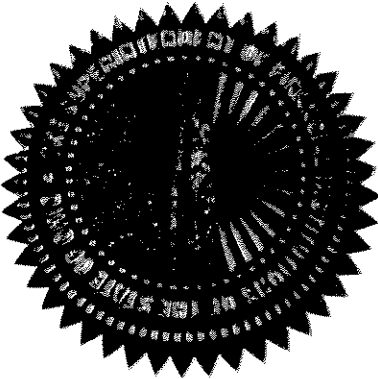
Upon consideration of the hearing officer's Report and the Respondent's objections, the Division confirms the Recommendation of the hearing officer. Accordingly, Respondent's Application is hereby denied.

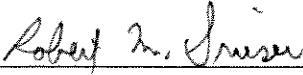
It is so ordered.

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, 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 13th day of December 2006.





ROBERT M. GRIESER
Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce

06 OCT 23 AM 8:09

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

COPY

IN THE MATTER OF:

JEROME E. TUFF

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. M2006-9992883

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

Issued October 19, 2006

I. FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed and weighed the demeanor and credibility of the witnesses, the following factual findings are made:

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 9:00 AM on September 13, 2006, at 77 South High Street, 23rd Floor, West Conference Room, Columbus, Ohio.

The hearing was held at the request of Respondent Jerome E. Tuff, of Columbus, 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 Solicitation and of Issuing Postal Money Orders without Paying or Receiving Payment, and, also, that in 2005 the Division found that Respondent failed to disclose the past criminal offenses on his 2002 sworn

Application, 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, Assistant Attorney General Todd A. Nist. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 8 were admitted into the record, as discussed in the transcript (hereinafter "Tr."). Respondent's Exhibits A and B were admitted into the record. Three witnesses appeared for Respondent, including Respondent.

B. JURISDICTION

The Division issued and mailed the NOH against Respondent on July 27, 2006. Respondent requested a hearing, which was received by the Division on August 16, 2006. On August 18, 2006, the Division scheduled the hearing for August 28, 2006, but continued the hearing to September 13, 2006, on its own motion, at which time the hearing went forward.

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.
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 4.)
3. Respondent previously conducted business in Ohio as a mortgage loan officer from about 1999 until 2005 when Respondent's 2002 Application was denied. (Tr. p. 44.)
4. Sometime prior to June 26, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "current Application"). (Exhibit 4.)
5. Respondent signed the current Application, attesting to his responses, on May 5, 2006. (Exhibit 4; Tr. pp. 19-21.)
6. Within the current Application, Question number 5 asks: "Have you ... ever been convicted of any criminal offense ... ? (Exhibit 4.)
7. Respondent answered "yes" to Question 5 in the current Application. (Exhibit 4; Tr. pp. 21-22.)

8. On, or about, May 26, 1995, Respondent pleaded guilty to, and was convicted of, one count of solicitation for sexual activity, in Franklin County Municipal Court. (Exhibit 5; Tr. p. 80.)
9. Respondent's explanation of the solicitation conviction was that he solicited an undercover officer and that resulted in the conviction. (Tr. p. 80.)
10. On, or about, February 4, 1999, Respondent pleaded guilty to, and was convicted of, Issuing Postal Money Orders without paying or receiving payment, in U. S. District Court, Southern District of Ohio. (Exhibit 6; Tr. pp. 33-34.)
11. Respondent's explanation of the Issuing Postal Money Orders without paying or receiving payment conviction was: Respondent had begun working in the Post Office and, after about five months, while working as a window clerk, \$7,000 came up missing out of his cash drawer. Because he was new, Respondent didn't know that he was entitled to request an immediate audit of the entire station to determine if the lost money could be found. It was a number of days later that the audit was performed and the money was not located. Respondent's wages were garnished for the missing money, which, for a new employee, amounted to a substantial portion of his paycheck. Later, inadvertently, Respondent had an unpaid-for money order which the customer decided she didn't want to purchase. Respondent cashed the money order and continued to cash money orders until he was confronted with his theft of \$9,094.06. Respondent states that the motivation was to recover the money the Post Office was, he felt wrongly, garnishing from his paycheck for the missing \$7,000. Respondent recognizes that the offense caused him to be humiliated as well as punished financially. (Tr. pp. 80-84, 87-88.)
12. Respondent acknowledges his commission of the offenses. (Tr. pp 80, 84.)
13. 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.)
14. On April 8, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "2002 Application"). (Exhibit 7.)
15. Respondent signed the 2002 Application, attesting to his responses, on March 20, 2002. (Exhibit 7.)

16. Respondent answered "No" to question 5 on the 2002 Application, which asked if Respondent had ever been convicted of a criminal offense. (Exhibit 7; Tr. p. 31.)
17. Respondent's explanation, at the hearing for the current Application, why he responded "No" to Question 5 on the 2002 Application when he, in fact, had two convictions, was: As far as the solicitation conviction, he was thinking that the question asked for felony convictions and he thought the solicitation was not a felony. Regarding the money orders, he was trying to block out the Post Office events because they were so painful and humiliating. In addition, Respondent was trying to move on with his life and didn't want to talk about his conviction at all. He didn't want the state to judge his 2002 Application on the basis of his Postal conviction. He now admits that he should not have failed to disclose the convictions and that he has learned from his mistake. (Tr. pp. 31-32, 36-37, 84-86.)
18. The Division issued a NOH against Respondent intending to deny his 2002 Application, on February 9, 2004. After a hearing, wherein Respondent represented himself, the hearing officer recommended granting the license. The Division issued a denial on June 1, 2005, which was upheld by the Franklin County Court of Common Pleas. (Exhibits 7, 8, B.)
19. Respondent's witness, Bourne, was credible in his thoughtful and articulate responses to questions. He presented himself as a mature, insightful, business owner with past dealings in the mortgage broker industry. (Tr. pp. 57-70.)
20. Respondent never worked for Bourne, although Bourne has worked in the industry and is cognizant of the effect on Bourne's reputation if Bourne recommended Respondent and Respondent acted in an unacceptable fashion. (Tr. pp. 60-61, 63, 65-66.)
21. Bourne believes Respondent to be truthful and honest, notwithstanding Respondent's convictions. Bourne characterizes the Post Office conviction of Respondent as out of character. Bourne believes Respondent continues to be honest, trustworthy and maintain a good reputation, and, in addition, has matured from the person who committed the offenses. (Tr. pp. 62-67, 69.)
22. Respondent's witness, Lymon, was quite passionate about his belief in Respondent's good character, but his relationship with Respondent was social rather than business. (Tr. pp. 73-74.)

23. No one who actually worked with, or supervised, Respondent appeared to testify.

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 two criminal offenses. The Theft offense is an offense specifically cited in sections 1322.041(A)(3) and (4), O.R.C. The solicitation is not an offense listed in those sections.
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 charged that Respondent was not honest, truthful and of good reputation because of the two convictions and because Respondent attested to a false statement in 2002.
5. The Division 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.
6. The Division seeks to bring 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 that Respondent attested to a false response to Question 5 on the 2002 Application.
7. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or

misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the 2002 Application "No"

8. The section 1322.07, O.R.C., charges in the NOH indicate that the Division alleges that "Respondent's actions in Paragraphs B and C" give rise to Respondent's substantial misrepresentation, making false or misleading statements of a material fact or omissions of statement, or fraudulent, or dishonest dealings. Paragraph B identifies the postal money order theft and Paragraph C refers to Respondent's attesting that the information in the 2002 Application was true and complete when it was not.
9. Respondent deliberately mislead the Division by responding to the 2002 Application's Question 5 in the negative. The Division acted on that 2002 Application and the misrepresentation by denying the license.
10. Respondent answered Question 5 on the current Application in the affirmative and correctly. If the Division seeks to hold against him that he responded incorrectly on the 2002 Application, then his positive response on the current Application should be recognized.
11. The Division's denial of Respondent's 2002 Application does not, of itself, provide direction how the current Application should be treated. However, the facts leading to that denial may be relevant.
12. There is nothing noted in Chapter 1322, O.R.C., which suggests Respondent should be held accountable indefinitely for any mistake made on an earlier Application. Since section 1322.041 indicates an applicant can receive a license, despite past criminal convictions, if he can demonstrate that he has paid his debt to society and redeemed himself, the logical conclusion is that the incorrect response to Question 5 on the 2002 Application should not be a permanent bar to obtaining a license.
13. Respondent committed a deliberately deceptive act within the 2002 Application, but Respondent now recognizes the error in trying to hide the convictions from the Division. The Division penalized Respondent for his omission by denying his 2002 license application. Over four years have passed since the omission; sufficient time has elapsed to allow Respondent to prove that he can meet the honesty requirements of Chapter 1322.

14. The theft conviction is significant, not only because of the amount of money involved but, also, the betrayal of trust. Respondent was an employee who was put in the position of safeguarding the money that he stole. Regardless that he felt he was wrongly punished for the missing cash-drawer \$7,000 and was seeking revenge or retribution, it was still a betrayal of trust. However, it has been seven years since the conviction and over eight years since the theft. Respondent has served the time and paid the penalty imposed after conviction and sufficient time has now lapsed that Respondent could have demonstrated that he does not intend to pursue further criminal activity.
15. The burden of proof is on Respondent, due to the theft conviction, 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." After carefully weighting the evidence and reviewing the statutes, Respondent has not been found to have met his burden. While it is a close decision, the statute is clear that Respondent has to provide sufficient evidence that demonstrates he is beyond his criminal past. While Respondent's witnesses were credible, more relevant testimony was needed to demonstrate Respondent's activities over the last few years, particularly within the mortgage brokerage industry and especially in light of his misrepresentation on the 2002 Application.
16. Respondent also failed to 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.
17. The Division already made a finding in its Final Order of June 1, 2005, that Respondent, by attesting to the false answer to Question 5 in the 2002 Application, violated section 1322.07(A), (B) and (C), O.R.C. That decision was ultimately upheld by the Court on appeal (Exhibit 8.). Now, in the action on the 2006 Application, the Division cannot charge Respondent, again, for violating the same statutes (section 1322.07) by the same 2002 actions used to previously find a violation. There is no new violation of section 1322.07, O.R.C. The doctrine of res judicata requires that "a valid final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." Grava v. Parkman Township, 73 Ohio St.3d 379, 382. The Division could have argued that the 2005 finding that there was a violation

of section 1322.07 demonstrates a lack of good character or dishonest behavior, but they do not need to reprove that the violation of section 1322.07 occurred because they already reached that final decision. Likewise, they cannot recharge Respondent with that violation.

C. DISCUSSION

Respondent felt wronged by the garnishment of his wages and retaliated by stealing the money orders. He stopped when he was caught. Respondent was embarrassed by the felony conviction and, to hide the fact, swore to a false statement in his 2002 Application. Respondent recognized his error after he was caught. Respondent did not provide sufficient evidence at this hearing to demonstrate his honesty.

III. RECOMMENDATION

The Division has proven the prior theft and other conviction. Respondent did not present sufficient evidence to prove that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO JEROME E. TUFF.**

Respectfully submitted,

D. Michael Quinn
Hearing Officer
October 19, 2006
Docket No. 06-DFI-174