



## Ohio Department of Commerce

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April 13, 2004

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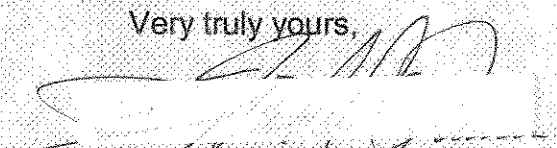
Superintendent F. Scott O'Donnell  
Division of Financial Institutions  
77 South High Street, 21<sup>st</sup> Floor  
Columbus, OH 43215

In The Matter Of: Eric Jermaine Williams  
Loan Officer License Denial  
Case No. 03-LO-D-70-71

Dear Superintendent O'Donnell:

Attached hereto please find my Report and Recommendation as Hearing Officer in the above-captioned matter. Also attached is the original hearing file, containing the transcript and exhibits.

Very truly yours,

  
D. Michael Quinn  
Hearing Officer  
Docket No. 03-DFI-065

**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**ERIC JERMAINE WILLIAMS**

CASE NO. 03-LO-D-70-71

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

Issued April 13, 2004

**I. FINDINGS OF FACT**

**A. BACKGROUND**

This 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 2:30 PM on September 3, 2003, at 77 South High Street, 19<sup>th</sup> Floor, room 1910, Columbus, Ohio.

The hearing was held at the request of Respondent Eric Jermaine Williams (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: pleaded guilty in 1993 to Attempted Felonious Assault, a felony; pleaded guilty in 1995 to two counts of Drug Trafficking, both felonies; and in 1996 was convicted of Petty Theft, a misdemeanor; and, also, that Respondent failed to disclose the past criminal offenses; and, as a result of each and all of those activities, 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 and was represented by Jeffery D. Sammons, Esq., of Westerville, Ohio.

At the hearing, State's Exhibits 1 through 10 were admitted into the record.

## B. JURISDICTION

The Division issued the NOH against Respondent on April 30, 2003. Respondent requested a hearing, which was received by the Division on May 29, 2003. On June 4, 2003, the Division scheduled the hearing for June 11, 2003. The hearing was then continued to July 10, 2003. Respondent requested a continuance to August 7, 2003, and, again, to September 3, 2003, 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. (Exhibit 5.)
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 1; Tr. pp. 16, 19-21.)
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. Respondent filled out and signed a Loan Officer Application (hereinafter the "Application") on, or about, April 29, 2002. (Exhibit 1; Tr. pp. 20-21.)
5. On or about May 2, 2002, Respondent submitted to the Division the Application. (Exhibit 1.)
6. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, ... or drug trafficking ..." (Exhibit 1; Tr. p. 15.)

7. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or for those offenses for which there exists a record, but asks if the applicant has ever been convicted of or pleaded guilty to *any* criminal offense, including, but not limited to, certain named offenses. (Exhibit 1; Tr. 14.)
8. Respondent had the Application given to him some time prior to the day he filled it out. (Tr. pp. 19-21, 43, 45-46.)
9. Respondent did not give the completion of the Application his serious attention but, rather, "breezed through it." (Tr. p. 14.)
10. In 1993, nine years prior to the submission of the Application, Respondent pleaded guilty, in Cuyahoga County, to one count of Attempted Felonious Assault an aggravated felony of the third degree. (Exhibit 3; Tr. pp. 24-27.)
11. Respondent's explanation of the Attempted Felonious Assault conviction was that the offense involved an older friend who got in a fight over a woman and Respondent was somehow involved. However, Respondent was significantly less than forthcoming when questioned repeatedly about his participation and why he was arrested. (Tr. pp. 24-27.)
12. In 1995, seven years prior to the submission of the Application, Respondent pleaded guilty, in Cuyahoga County, to two counts of Drug Trafficking, both felonies of the third degree. (Exhibit 4; Tr. pp. 27-29.)
13. Respondent's explanation of the Drug Trafficking convictions was that he made a bad choice by selling cocaine to pay his way through school. Respondent stated that the only time he did drugs was to smoke marijuana "a couple of times" while he was in college, around 1993 or 1994. (Tr. pp. 27-29.)
14. Respondent served approximately two to four months incarceration in late 1995 to early 1996, as a result of a probation violation by failing a urine test during the probation period after his conviction for drug trafficking. After that two to four month incarceration, Respondent received shock parole. (Tr. pp. 29-30, 39.)
15. In 1996, six years prior to the submission of the Application, Respondent was found guilty, in Garfield Heights Municipal Court, of Petty Theft, a misdemeanor of the first degree. (Exhibit 5; Tr. p. 29.)

16. Respondent's explanation of the Petty Theft conviction was that he was falsely accused of not returning two rented video tapes and the judge believed him to be guilty because of Respondent's recent drug charges. (Tr. p. 29.)
17. Respondent was in his young- to mid-twenties when he committed the offenses. (Exhibits 1, 3, 4, 5.)
18. Respondent knew he had criminal convictions on his record at the time he filled out the Application. (Tr. pp. 12-16, 22-23.)
19. Respondent's explanation of why he answered Question 5 on the Application as "no" when he knew he had felony convictions on his record was that he was rushed by his employer at the time he filled out the application. Respondent's employer told him, and other loan officers, that they would not have a job the next day if they didn't get the application filled out that day and Respondent made a mistake. (Tr. pp. 21-24.)
20. Respondent's alternatively explanation was he did not read the question carefully, even though he knew that it was an application to obtain licensure. (Tr. pp. 12, 14-15, 38.)
21. Respondent's second alternatively explanation was he thought that since most other applications for employment only wanted to know about activities during the previous seven years that the Application only needed to know about felonies during the last seven years. (Tr. pp. 39-41.)
22. Respondent's testimony concerning Question 5 was not credible because he offered different explanations that were mutually exclusive. These conflicting alternative explanations served to undermine the credibility of all explanations and partially demonstrate, in conjunction with the Respondent's general demeanor, why the Respondent's testimony is deemed unreliable.
23. Respondent's testimony in response to questions regarding his prior offenses was evasive, unresponsive and demonstrated a failure to take responsibility for his actions. As a result, Respondent's self-serving statements were not credible. (Tr. pp. 24-31.)



## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

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

### B. LICENSE APPLICATION

2. In 1995, Respondent pleaded guilty to a "criminal offense involving drug trafficking ...", an offense specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.
3. In 1996, Respondent was found guilty of a "criminal offense involving theft ...", an offense specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.
4. The theft and drug trafficking offenses being proven by the Division, the Respondent must now 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" in order to obtain a license. Section 1322.041(A)(3), O.R.C.
5. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about April 29, 2002, Respondent signed and filed an application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained false information.
6. Because the Application submitted by Respondent contained a false response, Respondent was not able to demonstrate that his activities since the offenses show that the Respondent is honest or truthful.
7. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities and employment record since the convictions show that he has been honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such offenses again and that a license should be issued.

8. In 1993, Respondent pleaded guilty to attempted felonious assault, an offense not specifically cited in section 1322.041(A)(3), O.R.C., but inquired about in Question 5 on the Application in the language "any criminal offense".
9. 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.
10. The Division brought into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's inaccurate response to Question 5 and Respondent's lack of credibility while testifying.
11. Even if one of Respondent's many explanations of his response to Question 5 could be accepted at face value, it demonstrates a lack of attention to detail necessary to be a licensed Loan Officer. It also demonstrates a lack of recognition of the seriousness of the Application process and the State's interest in making a determination of Respondent's fitness to hold such a license.
12. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail. If the false information was submitted intentionally, it demonstrates lack of truthfulness and honesty.
13. Respondent 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.
14. 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 Application "No."
15. The Division demonstrated that Respondent's sworn response to Question 5 was a false statement of a material fact required by law. The mens rea standard must be one of negligence – knew or

should have known – in Respondent's answering the questions on the license application. Respondent not only could have learned the true nature of the facts to which he was attesting but he should have learned those facts, if he was not already in possession of that knowledge. Respondent knew those events occurred in his past and it was incumbent on him to determine if those events were in the categories of activities which he was required to report. In addition, Respondent's testimony at the hearing was less than truthful. The Division has proven violations of the Ohio Mortgage Broker Act sections 1322.07(A), (B), and (C).

### C. DISCUSSION

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Concepts of duty to customer and veracity are integral to the licensee's obligations.

The criminal convictions not only fall within the statutorily designated crimes for which Respondent must respond but demonstrate with their repetitive nature that Respondent could be likely to engage in the criminal activity again. Respondent presented insufficient evidence to indicate that his activities and employment record since the convictions show that he has a good reputation and his demeanor and evasive testimony call into question his honesty and truthfulness. Respondent's obscure description of the conviction of attempted felonious assault never explained how the May 1993 charges of kidnapping with specifications, aggravated robbery with specifications and possession of criminal tools were involved in the incident. Respondent claimed to have only smoked marijuana a couple of times during the period of 1993 and 1994, but his incarceration for failing a urine test for drugs was in late 1995. Respondent also indicated that he was arrested for an additional offense, after release from jail on the Petty Theft, after testifying that he had no knowledge of any arrest. In addition, Respondent untruthfully answered Question 5 on the Application. The evidence establishes he cannot show that he is honest and truthful.

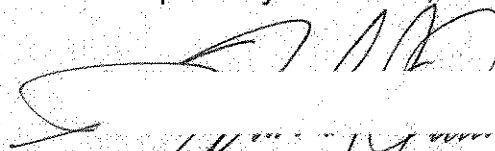
The facts that Respondent made light of the Application process and, knowing he was required to provide urine samples, failed a drug test both indicate that Respondent will not regard either the law or the regulatory system seriously.



### III. RECOMMENDATION

The Division has proven the three prior criminal convictions. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities and employment record since the convictions show that he has been honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such offenses again and that a license should be issued. The Division proved the 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 sections 1322.01 to 1322.12 of the Revised Code. The Division has proven violations of the Ohio Mortgage Broker Act sections 1322.07(A), (B), and (C). Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO ERIC JERMAINE WILLIAMS.**

Respectfully submitted,



D. Michael Quinn  
Hearing Officer

April 13, 2004

Docket No. 03-DFI-065