

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

2010 JAN 19 AM 9:47

IN RE:	:	CASE NO. M2009-457
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MICHAEL A. PARKS,	:	DELORES EVANS
	:	HEARING OFFICER
RESPONDENT	:	

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued January 19, 2010

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I. FINDINGS OF FACT

A. Background

This matter came before Delores Evans, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as the Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act and Ohio Revised Code ("R.C.") Chapter 119. The Division held the hearing on December 22, 2009 at 77 South High Street, Room 1936, in Columbus, Ohio, 43215.

The Division held the hearing to consider the May 26, 2009 Notice of Intent to Deny Loan Officer License Renewal & Notice of Opportunity for a Hearing ("NOH"). The Division alleged that Michael A. Parks ("Respondent") is ineligible to receive a loan officer license pursuant to R.C. §1322.041(A)(3) and (B)(3) because he had been convicted of breaking and entering, which the Division determined to be a theft offense.

Jennifer Croskey, Esq., an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Lori Massey, Esq., testified on behalf of the Division. Mark E. Porter, Esq., represented Respondent at the hearing. State's Exhibits 1 through 9 and Respondent's Exhibits A through C were introduced and admitted into the record. The record was closed at the conclusion of the hearing on December 22, 2009.

B. Jurisdiction and Procedural Matters

1. On May 26, 2009, the Division sent the NOH to Respondent by certified mail, return receipt requested. The NOH indicated that Respondent had 30 days to request a hearing. Service was completed on May 28, 2009. *State's Exhibit 1; State's Exhibit 2; State's Exhibit 3*

2. On June 3, 2009, the Division received Respondent's hearing request. *State's Exhibit 4*
3. On June 4, 2009, the Division sent a hearing notice letter to Respondent by ordinary mail informing him that a hearing had been scheduled for July 30, 2009. *State's Exhibit 5*
4. On August 19, 2009, the Hearing Officer continued the matter to October 28, 2009 to allow Respondent the opportunity to retain legal counsel. *State's Exhibit 8*
5. On October 29, 2009, the Hearing Officer continued the matter to December 22, 2009 to allow Respondent's recently retained counsel time to prepare for the hearing. *State's Exhibit 9*
6. On December 22, 2009, the hearing commenced with all parties in attendance.

**C. Respondent's 2009 Loan Officer License Application**

7. Lori Massey, an attorney with the Division, reviews licensing applications of loan officers and mortgage brokers to verify their compliance with the Ohio Mortgage Broker Act. Ms. Massey reviewed Respondent's loan officer file. *Testimony of Ms. Massey*
8. In 1984, Respondent was convicted of breaking and entering, R.C. § 2911.13. At the hearing, the Division introduced certified copies of journal entries in the case captioned, *State v. Parks*, Cuyahoga County Court of Common Pleas, Case No. CR193062. Respondent received a 6-month suspended sentence and was placed on probation for one year. On April 22, 1985, the Court terminated Respondent's probation. *State's Exhibit 7*
9. Respondent has held a loan officer license (# 011401) since 2004. *State's Exhibit 6*
10. Respondent had informed the Division about his breaking and entering conviction prior to the Division issuing him a 2004 loan officer license. *Testimony of Ms. Massey*
11. On April 13, 2009, the Division received Respondent's 2009 loan officer license renewal application. *State's Exhibit 6*
12. The Division contends that the offense of breaking and entering is a theft offense, which is a permanent bar to Respondent holding a loan officer license pursuant to R.C. §1322.041. *Testimony of Ms. Massey*

13. Respondent has had no new criminal convictions or incidents since the 1984 breaking and entering conviction. *Testimony of Respondent*
14. The Division presented no evidence to challenge Respondent's character and fitness.

## II. CONCLUSIONS OF LAW

### A. Jurisdiction and Procedural Matters

15. The Division has procedurally complied with R.C. Chapter 119 and has established jurisdiction over this matter.

### B. Respondent's 2009 Loan Officer License Renewal Application

16. The Division is responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
17. At all times relevant to this matter, Respondent held a loan officer license and was subject to the laws in R.C. Chapter 1322 and the rules promulgated pursuant to that Chapter.
18. Administrative agencies have a duty to base their conclusions on competent evidence. *State ex rel. Chrysler Plastic Products Corp. v. Industrial Comm. (1987), 39 Ohio App.3d 15*
19. Pursuant to R.C. §119.12, in an administrative appeal, the trial court reviews administrative orders to determine whether such orders are supported by reliable, probative, and substantial evidence and are in accordance with law. *Huffman v. Hair Surgeon, Inc. (1985), 19 Ohio St. 3d 83, 87.*
20. Reliable evidence is dependable and trustworthy. Probative evidence tends to prove the issue in question. Substantial evidence has weight, importance, and value. *Our Place Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571.*
21. S.B. 185, which became effective January 1, 2007, amended certain provisions of the Ohio Mortgage Broker Act. R.C. §1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions 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 of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code** and the applicant has not pleaded guilty or been convicted of a violation of an existing or former law of this state, any other state, or the United States that substantially is equivalent to a criminal offense described in that division. **However, if the applicant has been convicted of or pleaded guilty to any such offense other than theft, the superintendent shall not consider the offense** if the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant'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.

\* \* \*

*R.C. §1322.041(A)(2) and (3). (Emphasis added)*

22. Pursuant to R.C. §1322.031(A)(2), the application form for a loan officer license, whether an initial application or a renewal, requires an applicant to include a statement as to whether he “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.” (Emphasis added). This requirement was not changed by S.B. 185. *R.C. §1322.031(A)(2)*
23. In *Holtz v. Ohio Dept. of Commerce*, Cuyahoga App. No. 92403, 2009-Ohio-6304, the Eighth District Court of Appeals interpreted R.C. §1322.041 and held that breaking and entering is not a theft offense.
24. The Division failed to establish that breaking and entering constitutes “theft” for the purposes of interpreting R.C. §1322. 041.<sup>1</sup>
25. The Division previously granted Respondent numerous loan officer licenses over the years, despite his breaking and entering conviction. Respondent has practiced as a loan officer for many years without incident.
26. The Division failed to establish that Respondent’s 2009 loan officer license renewal application should be denied.

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<sup>1</sup> This Hearing Officer did not address the second part of the R.C. §1322.041(A)(3) because the Division did not raise the issue of character and fitness in the NOH. R.C. §1322.041(A) was amended on January 1, 2010. The Division did not raise the issue of character and fitness under the amended version of R.C. §1322.041(A).

### III. RECOMMENDATION

Based upon the evidence submitted into the record in this case, the Division has failed to establish that Respondent's 2009 loan officer license renewal application should be denied. Consequently, the Hearing Officer respectfully recommends that the Superintendent of the Division Financial Institutions grant Respondent's 2009 loan officer license renewal application.

Respectfully submitted,

Delores Evans  
Hearing Officer  
January 19, 2010