

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

04 MAY 11 AM 11:31

In re: Debra A. Fiorilli

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Case No. 04-0067-LOD

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 Debra A. Fiorilli not be granted. The Division conducted an investigation and found:

- a. In or around 1976, in the Garfield Heights Municipal Court, Cuyahoga County, Ohio, Ms. Fiorilli was convicted of petty theft, a misdemeanor;
- b. On or about March 28, 2002, Ms. Fiorilli attested in a sworn statement that the information she provided on the licensing application was truthful, knowing that the information she provided was false; and
- c. On or around April 4, 2002, Ms. Fiorilli provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Ms. Fiorilli has not proven that she is honest, truthful and of good reputation and that there is no basis in fact for believing that she will commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Ms. Fiorilli's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly, fairly and in compliance with the purposes of the Ohio Mortgage Broker Act as set forth in Revised Code Section 1322.041(A)(5);
- c. Ms. Fiorilli violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Ms. Fiorilli violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and

- e. Ms. Fiorilli violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Ms. Fiorilli's address for service is 5207a Cline Road, Kent, Ohio, 44240. She is hereinafter referred to as the "Respondent." The Respondent is employed by North Coast Capital Funding, One Park Center, Wadsworth, Ohio, 44281.

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 Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 8).

5. The Respondent signed a certified mail receipt for that document. (*Id.*).

6. On February 2, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 9).

7. On February 3, 2004, the Division wrote to the Respondent acknowledging receipt of the Request for a Hearing and scheduling the hearing for 9:00 a.m. on February 12, 2004. The Division simultaneously on its own motion continued the hearing until March 3, 2004, at 1:00 p.m. in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio (Exhibit 10).

8. The hearing was held beginning at 1:00 p.m. on Wednesday, March 3, 2004, in Room 1918 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. The Hearing was attended by Paula Luna Paoletti, Deputy Attorney General of the State of Ohio, Executive Agencies Section, Luther L. Liggett, Esq. of Bricker & Eckler on behalf of the Respondent and the Respondent.

9. 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 March 28, 2002, 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 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? If answer is yes, furnish details.

Yes ☐ No ☐

3. In response to Question 5, the Respondent answered "No".

4. On June 25, 2002, the Division wrote to the Respondent indicating that the Division was unable to make a decision as to whether to issue a license because of insufficient evidence upon which to base a decision. The Division, through a background check, had determined that in 1976 the Respondent was charged with petty theft by the Maple Heights Police Department. (Exhibit 2).

5. In response to that letter, the Respondent submitted a written explanation as follows:

This is in regards to your letter dated June 25, 2002 pertaining to my application for a loan officer's license. I am terribly sorry for not disclosing this incident. Honestly, I had completely forgotten about my stupidity at age nineteen. That was twenty six years ago and I can't even believe it happened. That was the first and last time I had ever done anything like that. I was caught shoplifting a \$10.00 item from a clothing store. It scared me to death and taught me a very valuable lesson. I have contacted the police department and the courthouse and neither one have records from twenty-six years ago. I can tell you I paid a fine of approximately \$200.00, but there are no records from which I can obtain a copy.

I have maintained a good reputation in my career in finance. I've been a loan officer for three and one half years and I was a finance manager at a car dealership for eight and one half years before that. I am a single mom and have raised two wonderful sons with exceptional character. I hope this letter can help you with your decision regarding my application.

6. On November 5, 2002, the Division wrote to the Respondent insisting that the Respondent provide information from the Clerk of Court responsible for the criminal conviction records. (Exhibit 4).

7. In response, on November 20, 2002, the Respondent provided a copy of a 1976 Judgment Entry showing that the Respondent had been convicted of petty theft. (Exhibit 5).

8. On April 16, 2003, the Division sent the Respondent a Warning of Disqualification indicating that the theft conviction would automatically disqualify the Respondent from receiving a loan officer license unless the Applicant could prove to the Superintendent, by a preponderance of the evidence, that the Applicant's activities and employment record since the conviction showed the applicant is honest, truthful and of good reputation and that there is no basis in fact for believing that the Applicant will commit such an offense again. (Exhibit 6).

9. On April 19, 2003, the Respondent wrote to the Division as follows:

This letter is in response to your letter dated April 16, 2003. I appreciate this opportunity to establish that despite my conviction, I believe I should be granted a loan officer license. As I stated in my previous correspondence to you, I made this stupid mistake when I was very young. And, although that is no excuse, I have never done anything like that since and would never commit such an offense again.

I have raised two wonderful sons and have been involved in all aspects of their lives. They are, Doug, eighteen years old and Dan, twenty-two years old and they are both in college. They do not drink or smoke or take drugs, and have never been in any trouble, except a speeding ticket. My sons have been involved in sports since they were five years old. I was president of the Field Youth Football organization for three years. My son, Dan attended Walsh Jesuit High School, I was very involved and organized all the parent activities for the football team. I now head up the Jacket Backers, a booster club for the parents, at Baldwin Wallace College where my older son, Dan is the quarterback. I have paid for tuition for my son, Dan's education in high school and college by myself. I was divorced in 1995 and my ex-husband would not contribute toward any tuition. He is now contributing toward Doug's college education at Kent State University.

I worked at a car dealership, Don Joseph Chevrolet, as the finance manager for eight years from September 1990 – December 1998. The hours were long, but I was able to support my children by doing so. I received minimal child support from their father. While there, I organized many charitable functions during the Christmas seasons. We sponsored families, fed the community members who were in need, and sponsored food and clothing drives. In December of 1998, I left the dealership and went to work for a mortgage broker. I have a very good reputation in the automobile and mortgage business. I have been very honest and truthful with my customers, fellow employees and supervisors. I continue to organize the annual holiday charity donations, as well as sending packages to the servicemen in Iraq and Kuwait. I have always believed in helping those less fortunate. And by sending the packages, I hope we are letting the soldiers know we are not forgetting them and what they are doing for us back in America.

Two years ago, I was in the process of adopting a little girl from China, but during that process, single parent adoptions in China were halted. I am including a copy of a letter of reference for you to read. I have tried to supply you with the insight needed to get to know me. I've had a great life and I hope this information can help you to see that I am a different person today than I was all those years ago. There is no basis in fact for believing that I will commit such an offense again.

## 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 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 offenses, 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 Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under Sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

- (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentations in any registration or license application;
- (B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

- (C) Engage in conduct that constitutes improper, fraudulent or dishonest dealings[.]

4. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that her activities and employment record since her conviction show that she is honest, truthful and of good reputation and that there is no basis for believing she will commit such an offense again. The Division has the burden to show that the Respondent's character and fitness do not command the confidence of the public and warrant the belief that the business will be operated fairly in compliance with the purposes of the Ohio Mortgage Broker Act as well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

### DISCUSSION

1. The Respondent has stipulated through her counsel that she was, in fact, found guilty under a city ordinance for petty theft in November, 1976, that she was fined \$250 for that offense and that the offense occurred twenty-eight years prior to the hearing in this matter. (Tr. 12). The Respondent, through her counsel, also stipulated that Question 5 was answered incorrectly (*Id.*).

2. The Respondent has been working as a loan officer for more than five years. (Tr. 34). This is not her first position with financial implications. She worked as the finance and insurance manager for Don Joseph Chevrolet, a car dealership in Canton, Ohio. (Tr. 34). In that position, she handled money and worked with customers on loan applications for car loans. (Tr. 34). She has never been disciplined for improper behavior with such customers. (Tr. 35).

3. Respondent also worked for a small mortgage broker called Cleveland Mortgage in Cuyahoga Falls for six months, and after that worked for North Coast Capital Funding, Hudson Executive Mortgage and North Coast Capital Funding. (Tr. 35). She is presently the Branch Manager for the Wadsworth Office of the North Coast Capital Funding. (Tr. 35). In that capacity she has worked with customers to prepare their loan applications. (Tr. 34-35).

4. The Respondent is dependent on her position as a mortgage officer for her financial income. (Tr. 36).

5. The Respondent submitted documentation as follows:

I would like to take this opportunity to present my appeal to your denial of my loan officer's license.

Twenty eight years ago, when I was nineteen years old, I was caught shoplifting a \$10.00 pair of pajamas from a store in Maple Heights, Ohio. The charge was petty theft. When I did not disclose this felony on my application, it was not intentional. I honestly didn't even think about the arrest, maybe because it happened so long ago, I don't know.

*With my deepest regret, since the moment it happened, I have always felt so stupid and childish for committing such an unlawful act. I prayed to God for forgiveness. I am sorry for not disclosing it on my application and more sorry that it ever happened. I never did anything like that again, nor would I ever in the future.*

I have been a loan officer/branch manager for the past five and one half years. I have worked for North Coast Capital Funding for four of those years and for my brother's company, Hudson Executive Mortgage in Hudson, Ohio for a little over one year. At each company, I have formed relationships with my customers and have serviced their mortgage needs as I would family. I try to be fair with everyone and always make time for them when they call with questions regarding their mortgage. Because of this, I have very loyal customers that have closed multiple loans with me and have sent me many referrals of their family and friends. I truly believe that wouldn't happen if I was not doing my job honestly. Repeat business and referral business is the most rewarding because it means I did something right the first time. I always teach this to the loan officers that work with me. I have letters of recommendation from numerous customers, as well as letters from people I have worked with over the past fifteen years for your consideration. Before the mortgage business, I was employed at Don Joseph Chevrolet in Kent, Ohio for eight and one half years as the Finance and Insurance Manager. I am loyal to my employers trying to commit to more than what is expected of me.

There is nothing I can say to explain what I did all those years ago, I don't even know why I did it. I was young and stupid. But, I can tell you that today I am much older and wiser. I am proud of my reputation in the mortgage business and have worked very hard to be able to say that. I understand the monitoring of the loan officer license procedure in the State of Ohio. There may be others in the business for which it is necessary and I appreciate the system that can rid the Ohio Association of Mortgage Brokers of those people. But, I can honestly say that I am not a loan officer that should be denied her license. You do not know me and I can understand your hesitation in granting me a license.

I hope this letter and the letters of recommendation will help to change your mind. This is the career I have chosen and have loved for the past five years. This is how I have supported my family as a single mom. I was divorced in 1995 and raised my two sons, now ages 22 and 19, with little help financially from their father. I, alone, paid for tuition for my older son, Dan's, high school and college education. This is my livelihood and I would like to continue in the mortgage business.

I anxiously look forward to your decision. (Respondent's Exhibit A, emphasis supplied).

6. The Respondent also submitted a letter from Donna Ford, the Respondent's sister. The Respondent helped train her sister in her employment with Hudson Executive Mortgage

Corporation, which is owned by the Respondent's brother. (Tr. 37-38). The Respondent also submitted a letter from Maryellen E. Griffin, (Respondent's Exhibit A). Ms. Griffin wrote of her fifteen years of knowledge of the Respondent including having worked with her at the Chevrolet dealership for ten years. (*Id.*).

7. The Respondent also submitted a letter from Andy Laudato of K.T.G. Investment Group, LLC, (Respondent's Exhibit A), with whom the Respondent has a business relationship. (Tr. 39).

8. The Respondent also submitted letters of support from Kevin and Julie Dieckman, Joseph and Deborah Laudato, Gary & Beatrice Bickel, and Gary and Tamara Procop (Respondent's Exhibit A). (*See*, Transcript 39, et seq.)

9. The Respondent states that in responding to Question 5, she simply did not think about a conviction that occurred twenty-eight years ago. (Tr. 43). The Respondent spent only a few minutes filling out the form. (Tr. 45). The Respondent is, obviously, remorseful about her involvement in a minor criminal matter nearly three decades old. She was, in her own words, young, obviously stupid. (Tr. 46). At the time of the shoplifting incident, the Respondent was nineteen years of age and at the time of the hearing in this matter, she was 46 years of age. (Tr. 48). Respondent has made a point in her life of not discussing her petty theft conviction with her children or others. (*See* Tr. 49).

10. Testifying in support of the Respondent was Buck Mosley. (Tr. 51, et seq.). Mr. Mosley is employed by North Coast Capital Funding as the President. (Tr. 51-52). He has known the Respondent for five years. (Tr. 52). Respondent has a staff of loan officers that work directly for her in her capacity as manager. (Tr. 52-53). The Respondent has considerable experience in the mortgage industry and he has the highest degree of confidence in her abilities. (Tr. 53-54). He considers the Respondent to be truthful and of good reputation and honest. (Tr. 54-55). He has not had an occasion to discipline her for matters involving customers or finance. (Tr. 55). He does not believe that there is any likelihood that another criminal offense will occur again. (Tr. 55).

11. The Hearing Officer finds that the Respondent has had an exemplary record of employment and community life since the conviction for a single, isolated, misdemeanor offense twenty-eight years ago, that she is honest, truthful and of good reputation, and that there is no basis in fact for believing that she will commit such an offense again. The Respondent was a teenager at the time of the offense. The amount taken was small. Nearly three decades have elapsed since the criminal offense. The Respondent has had no further involvement whatsoever in the criminal justice system. The Respondent has had a lengthy employment career in the financial industry, both at a car dealership and in the mortgage business. There is no evidence in the record to support any finding that she has mismanaged financial matters. Further, there is adequate testimony in the record of her honesty, truthfulness, her activities since her conviction and her good reputation. Likewise, there is no basis in fact for believing that another criminal offense will be committed by this Respondent. In that regard, the Respondent has met her burden of proof.



12. It is up to the Division to establish that the Applicant's character and general fitness command the confidence of the public and warrant the belief that the business will not be operated honestly and fairly in compliance with the purposes of the Revised Code. In this instance, the Applicant's character and general fitness over the prior twenty-eight years, appear, based on the testimony and documents in the record, to be exemplary. She has had active employment in the financial services business, both at a car dealership and the mortgage business. There is no evidence in the record to suggest that she has been disciplined for misuse of her position or the information to which she has had access. The Hearing Officer concludes that there is substantial evidence in the record, by more than a preponderance, that the Respondent's character and general fitness do indeed 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 Revised Code.

13. The Division applies Ohio Revised Code Section 1322.07(A), (B) and (C) strictly. Failure to disclose on the Application is, in the eyes of the Division, a violation of Section 1322.07(A), (B) and (C). The failure to disclose a conviction on the application, in the eyes of the Division, is recent history of dishonesty, which constitutes evidence that the Respondent does not possess the 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. These are strictly interpreted standards on the part of the Division.

14. The Hearing Officer has had an opportunity to observe the Respondent, her demeanor, as well as the record in this matter. The Hearing Officer is impressed with the honesty and truthfulness and good reputation of the Respondent. The Hearing Officer also finds the Respondent's character and general fitness to be superlative. The failure to disclose a conviction for a misdemeanor theft offense, while a teenager, nearly twenty-eight years ago, is evidence of recent dishonesty. However, the Hearing Officer, has been accorded the opportunity to see and observe the Respondent testify on this topic. The Hearing Officer is impressed by the lifetime of honest behavior on the part of the Respondent while employed in a career involving financial matters. The Hearing Officer does not believe that the Respondent's failure to disclose her 1976 conviction had the motive of hiding it from disclosure. Clearly, however, the conviction should have been disclosed. However, the lack of disclosure, when weighed against the substantial credibility and honesty of this Respondent, has not convinced the Hearing Officer that the failure to disclose alone is sufficient basis to deny the Respondent a Loan Officer License. Compared to the record in this matter, the events of the single, isolated incident while the Respondent was a teenager, balanced against the overwhelming record supporting the Respondent's character, fitness, reputation, honesty and other laudable attributes, does not support the denial of a license. In this case, the lack of "honesty" that the Division asserts against the Respondent is tempered by the facts in this case to an equal if not greater amount of lack of attention to detail in answering Question 5 of the Application. There is no evidence in the record of any intent on the part of the Respondent to deceive the Division when she failed to disclose the conviction.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth 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  
May 7, 2004