

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

EC-3 11/11/03

IN THE MATTER OF:

SHELLY HERSHEY

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DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 05-0090-LOD

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

Issued December 7, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above 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 3:45 PM on July 28, 2005, at 77 South High Street, room 1924, Columbus, Ohio.

The hearing was held at the request of Respondent Shelly Hershey, of Grafton, 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 submitted false information on the license 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 Martine Jean. Respondent did not appear but had requested a hearing.

At the hearing, State's Exhibits 1A through 1F, 2, 3, 4A, 4B and 4C were admitted into the record (Transcript (hereinafter "Tr.") p. 15). One witness appeared and gave testimony on behalf of the Division. The hearing was delayed by one hour to allow Respondent sufficient time to appear, but no one representing themselves as associated with Respondent came forward despite a search of the hallways in the area of the hearing. Neither did the Respondent contact the Hearing Officer or the Division to advise of attendance issues.

B. JURISDICTION

The Division issued the NOH against Respondent on April 20, 2005. Respondent timely requested a hearing on May 16, 2005 (Tr. p. 9), that the Division scheduled for May 26, 2005, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to June 16, 2005. As a result of the matter being assigned to a new hearing officer after the originally assigned hearing officer was no longer available, the hearing was continued, again, to July 28, 2005, on which date the hearing went forward. (Exhibits 1A-1F.)

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 1A.)
2. Respondent is an individual who wishes to continue to conduct business in Ohio as a mortgage loan officer. (Exhibits 1A, 1C, 4B.)
3. On or about August 16, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "Application") which was signed, under oath, by Respondent on, or about, August 10, 2004. (Exhibit 2.)
4. Within the Application Respondent answered "No" to Question number 5, which asked: "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 DWIs are criminal offenses)." (Exhibit 2.)

5. On August 15, 2003, one year before submission of the Application, Respondent was found guilty of OMVI in Medina Municipal Court, Medina County, Ohio. (Exhibit 4C.)
6. Respondent's written explanation of the facts leading to the OMVI was that, shortly after her father passed away, Respondent, her brother and sister and friends were "out talking of old times." (Exhibit 4B.)
7. Respondent did not explain why she responded "No" to Question 5 on the Application.
8. Respondent did not submit any evidence into the hearing record. However, the letter received from Respondent by the Division as part of the investigation, introduced by the Division as part of the Application, was treated as Respondent's written statement. (Exhibit 4B.)

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

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

B. LICENSE APPLICATION

2. The Division has proven that Respondent was found guilty of OMVI in 2003, an offense not listed in O.R.C. section 1322.041(A)(3), but an offense not disclosed on the Application.
3. The Division has proven that in the 2004 Application, Respondent failed to disclose the 2003 OMVI conviction.
4. By virtue of the failure to disclose the conviction, the Division has raised the issue of Respondent's honesty, truthfulness and reputation being such that a license may not issue. Because Respondent has not presented any defense, the Division's allegation must prevail.
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 August 10, 2004, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained inaccurate information, to wit: the “No” response to Question 5.

6. Respondent did not present evidence of her honesty, truthfulness or good reputation.
7. Because the Application submitted by Respondent contained an inaccurate response, the Division was able to demonstrate that Respondent's activities since the offenses show that the Respondent has not been honest or truthful. Respondent knew, or should have known, that she had been convicted of a crime.
8. 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.
9. The Division sought to bring 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.
10. Respondent did not offer any evidence contradicting the allegation by the Division that the failure to disclose was intentional and, therefore, dishonest. The Application specifically asks for any criminal convictions and does not limit the response to felonies.
11. 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.
12. Because Respondent has not submitted any evidence into the record it cannot be concluded that Respondent has refuted the Division's assertions that Respondent's character and general fitness do not command the confidence of the public nor warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Section 1322.041(A)(5).
13. 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."

14. Because Respondent has not submitted any evidence into the record it cannot be concluded that Respondent has refuted the Division's assertions that Respondent's response to Question 5 was intentional and a substantial misrepresentation or a false statement of a material fact in violation of sections 1322.07(A), (B) or (C).

III. RECOMMENDATION

The Division has proven the Respondent has a criminal conviction which was not disclosed. Respondent did not submit any evidence to prove that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again or that 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 the Ohio Mortgage Broker Act. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO SHELLY HERSHEY.**

Respectfully submitted,


D. Michael Quinn
Hearing Officer
December 7, 2005
Docket No. 05-DFI-090