

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

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In re: Donald E. Meeks and  
Ace Financial Services

Case No. 03-LO-R-98-99 and  
03-MB-D-01

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 of Donald E. Meeks be revoked. The basis for the proposed action is as follows:

- a. Mr. Meeks provided untruthful information on his Application.
- b. During the course of an investigation and as part of his loan officer license application, Mr. Meeks supplied the Division with false and/or misleading statements and documents concerning the disposition of his 1994 charge of aggravated trafficking in drugs.
- c. In or around 1995, in the Court of Common Pleas, Franklin County, Ohio, Mr. Meeks pleaded guilty to and was convicted of attempted trafficking in marijuana and attempted possession of criminal tools.
- d. In or around 1986, in the Municipal Court of Franklin County, Ohio, Mr. Meeks was convicted of drug abuse.

2. As a result, the Division determined:

- a. Mr. Meeks has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving drug trafficking. See Ohio Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Meeks' actions as listed above show that his character and general fitness do not command the confidence of the public to warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in Ohio Revised Code Section 1322.041(A)(5);
- c. Mr. Meeks' actions as listed above in paragraph 1b, show that his character and general fitness do not command the confidence of

the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. See Ohio Revised Code Section 1322.041(A)(5);

- d. Mr. Meeks' actions as listed above in paragraph 1c, show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. See Ohio Revised Code Section 1322.041(A)(5);
- e. Mr. Meeks' actions as listed above in paragraph 1d, show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. See Ohio Revised Code Section 1322.041(A)(5);
- f. Mr. Meeks' actions as listed above in paragraph 1a, violate Ohio Revised Code Section 1322.07(A) which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application[.]";
- g. Mr. Meeks' actions as listed above in paragraph 1b, violate Ohio Revised Code Section 1322.07(A) which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application[.]";
- h. Mr. Meeks' actions as listed above in paragraph 1a, violate Ohio Revised Code Section 1322.07(B) which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, omissions of statements required by State law[.]";
- i. Mr. Meeks' actions as listed above in paragraph 1b, violate Ohio Revised Code Section 1322.07(B) which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, omissions of statements required by State law[.]";
- j. Mr. Meeks' actions as listed above in paragraph 1a, violate Ohio 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";
- k. Mr. Meeks' actions as listed above in paragraph 1b, violate Ohio 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";

1. Mr. Meeks' actions as stated above in paragraph 1b, violate Ohio Revised Code Section 1322.072(A) which prohibits any "person, in connection with any application or investigation conducted by the [Division]" to "knowingly [c]ircumvent, interfere with, obstruct, or fail to cooperate, including making a false or misleading statement, failure to produce records[.]".

(Exhibit 1A.)

3. The Division also proposes that the application of Ace Financial Services, LLC, (hereinafter referred to as "Ace Financial") be denied. The Division's basis for its proposed action are:

- a. Ace Financial's principal owner and operations manager, Mr. Meeks, provided untruthful information to the Division on a loan officer license application, in violation of Ohio Revised Code Section 1322.07(A), (B) and (C).
- b. During the course of an investigation and as part of his loan officer license application, Ace Financial's principal owner and operations manager, Mr. Meeks, supplied the Division with false and/or misleading statements and documents concerning the disposition of his 1994 charge of aggravated trafficking in drugs, contrary to Ohio Revised Code 1322.07(A), (B) and (C) as well as Ohio Revised Code Section 1322.072(A).
- c. On or about 1995 in the Court of Common Pleas of Franklin County, Ohio, Ace Financial's principal owner and operations manager, Mr. Meeks, pleaded guilty to and was convicted of attempted trafficking in marijuana and attempted possession of criminal tools.
- d. In or around 1986 in the Municipal Court of Franklin County, Ohio Ace Financial's principal owner and operations manager, Mr. Meeks was convicted of drug abuse.

4. As a result, the Division determined that:

- a. Ace Financial has not proven that its principal owner and operations manager, Mr. Meeks, is honest, truthful and of good reputation and that there is no basis, in fact, for believing that he will not commit another criminal offense involving drug trafficking. See Ohio Revised Code Sections 1322.04(A)(7) and 1322.10(A)(1)(b);
- b. Ace Financial's character and general fitness do not commend the confidence of the public and warrant to believe that its business will be operated honestly and fairly in compliance with the

purposes of the Ohio Mortgage Broker Act. See Ohio Revised Code Section 1322.04(A)(10).

(Exhibit 11A.)

5. Mr. Meeks' address for service is 3200 Strathburn Court, Dublin, Ohio 43017. (Tr. 25). He will, hereinafter, be referred to as the "Respondent". Ace Financial will, hereinafter, be referred to as "Ace Financial". The Respondent is a loan officer for Reliant Mortgage Corporation and is the sole owner of Ace Financial. (Tr. 25).

6. The proceedings involving the proposed revocation of the Respondent's loan officer license were initiated by the Division on September 29, 2003 when the Division issued a Notice of Intent to Revoke Loan Officer License and Notice of Opportunity for Hearing (Exhibit 1A).

7. On October 24, 2003, the Division received a Request for Hearing from John G. Neal, counsel for the Respondent (Exhibit 1B).

8. On October 27, 2003, the Division wrote to the Respondent indicating that the hearing on the revocation of the Loan Officer License and the denial of Ace Financial's Mortgage Broker, Certificate of Registration would be held on Tuesday, November 4, 2003 at 10:00 a.m. (Exhibit 1C). Simultaneously, however, the Division continued both hearings to a later date. *Id.*

9. On January 16, 2004, the Division wrote to Attorney John G. Neal to state that the hearing on the Respondent's loan officer license revocation would be scheduled for 9:30 a.m. on Thursday, February 5, 2004 and the hearing on the proposed denial of Ace Financial's Mortgage Broker Certificate of Registration would be held at 12:30 p.m. on Thursday, February 5, 2004 (Exhibit 1D). On or about January 20, 2004, Attorney John Neal filed a Respondent's Motion for Continuance due to Mr. Neal's trial schedule in other matters (Exhibit 1E).

10. Thereafter, Attorney Neal, together with Assistant Attorney General John A. Izzo submitted a small stipulation in both matters consolidating the matters for hearing and agreeing that the matters would be heard on Tuesday, February 17, 2004 at 9:00 a.m. (Exhibit 1F).

11. On January 29, 2003, the Division wrote to Attorney Neal indicating formally that the hearing would be held on February 17 (Exhibit 1G).

12. With regard to the proposed denial of Ace Financial's Mortgage Broker's Certificate of Registration, the matter was initiated on September 29, 2003 by the issuance of a Notice of Intent to Deny Mortgage Broker Certificate of Registration & Notice of Opportunity for Hearing (Exhibit 11A). On October 27, 2003, Attorney John Neal filed a request for a hearing (Exhibit 11B). On October 27, 2003, the Division wrote to Ace Financial indicating that the hearing in this matter would be conducted on Tuesday, November 4, 2003 (Exhibit 11C). However, the Division simultaneously continued that Hearing until a future date. *Id.*

13. On January 16, 2004 the Division wrote to Attorney John Neal to state that the hearing would be conducted on Thursday, February 5, 2004 (Exhibit 11D).

14. Thereafter, Attorney Neal, together with Assistant Attorney General John Izzo, submitted a small stipulation agreeing that the hearing would be conducted on Tuesday, February 17, 2004 at 9:00 a.m. (Exhibit 11F).

15. On January 29, 2003, the Division wrote to Attorney Neal to state that the hearing would be conducted on February 17, 2004 at 9:00 a.m.

16. The consolidated hearing in both matters was conducted on February 17, 2004 at 9:00 a.m. in Room 1924 of the Vern Rife Center, located at 77 South High Street, Columbus, Ohio beginning at 9:00 a.m. The hearing was attended by John A. Izzo and James M. Evans, Assistant Attorneys General of the Executive Agency Section, John G. Neal, Attorney for the Respondent and the Respondent. Appearing as witnesses were Christopher W. Clucus, Brett Hively, Michael VanMeter, Richard Banco, John William Robinson and Richard Randall. 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 ("Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322 (Exhibit 3). He was provided with the Standard Explanation Instructions (Exhibit 2).

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?

(Exhibit 3).

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

4. On April 23, 2002, the Division wrote to the Respondent indicating that it was unable to make a decision as to whether to issue a Mortgage Loan Officer License (Exhibit 4). The background check found a 1986 arrest for assault, disorderly conduct, resisting arrest, and possession of marijuana (subsequently, determined to be an inaccurate representation of the charge filed). The background check also found a 1994 drug charge (Exhibit 4).

5. In response, the Applicant wrote to the Division and stated as follows:

Regarding the 1986 incident:

"I was at St. Michael's Church at 'Casino Night' and a high school acquaintance and I were at a table playing craps and the 'pot' doubled 3 consecutive times when the house lost. However, a new 'dealer' stepped in and claimed that it was an illegal because one die hadn't hit the end of the table. Upon the re-roll the 'house' won. Everyone grumbled and left, except my high school acquaintance (Kevin) that argued and raised a stink emphatically.

I saw a problem brewing and exited the building to go home with another female friend. Suddenly Kevin comes running by me yelling run, Don't, run! I looked back as I instinctively (stupidly) took off. I was running behind Kevin and saw 3 guys in chase who were wearing normal clothes. One guy tackled me as the other 2 kept chasing Kevin. The guy that tackled me and myself began to wrestle. After scuffling with me for a good 20 - 30 seconds he said he was a police officer. Upon my arrest, I resisted due to my sincere belief that I had done nothing wrong after all he had attacked me.

I was young (21) and very naïve about the legal system. In hindsight, I would have fought this case to the death at trial. But, instead, I plea-bargained. I pleaded guilty to assault and possession of Marijuana which were both misdemeanors. I had to pay a fine and court costs and was on probation for 2 years. I also had to serve 2 weekends incarcerated. This was simply a case of being in the wrong place at the wrong time. If I had an opportunity to change this part of my life I would."

Regarding the 1994 incident:

"In April of 1999 a search warrant was executed against my house under my former roommate's name. He had some small Marijuana plants growing in my house unbeknownst to me. I was working 50 hours a week and was not at the house that often. It was apparently hidden out of sight in a crawl space of the house. Someone else told me that he had a falling out with one of his friends because of a girl. So this 'friend' of his called the police and told on him. Due to my ownership of the property I also was charged.

Under advice from my attorney the case was plea-bargained to attempted possession of Marijuana and attempted possession of criminal tools. I paid a fine and courts costs and was on probation for 2 years.

I have learned from these experience about how sometimes life can be unfair. These two things in my life I am not proud of at all. I wish they never would have happened but they did. I have learned to investigate things much more thoroughly that I used to. I never am going to be put in a situation like either one of these incidents again. One of these items is over 15 years old and the other nearly 10 years old. I have grown up a lot since then. I just hope this does not affect my ability to get a mortgage license. I have worked very hard at this business and hope that you will give me an opportunity to continue doing it. Thank you for letting me explain what happened in my own words."

(Exhibit 5).

6. Respondent submitted records from the Franklin County Municipal Court in connection with those matters (Exhibits 6, 7 and 8).

7. On or about May 20, 2003 Ace Financial, by actions taken by the Respondent, submitted to the Division a Certificate of Registration Application as a Mortgage Broker (Exhibit 13). The materials included a standard explanation and instructions (Exhibit 12). Question 16 of that Certificate of Registration Application asks:

Has the applicant ever been convicted of **any criminal offense?**  
Exclude minor misdemeanor traffic and parking offenses paid  
(DUI's and DWT's are criminal offenses.)

(Exhibit 13).

8. In response to that Ace Financial by the signature of Respondent answered, "Yes" (Exhibit 13).

9. The Respondent submitted the following information regarding those incidents:

Regarding the 1986 incident:

"I was at St. Michael's Church at 'Casino Night' and a high school acquaintance and I were at a table playing craps and the 'pot' doubled 3 consecutive times when the house lost. However, a new 'dealer' stepped in and claimed that it was an illegal because one die hadn't hit the end of the table. Upon the re-roll the 'house' won. Everyone grumbled and left, except my high school acquaintance (Kevin) that argued and raised a stink emphatically.

I saw a problem brewing and exited the building to go home with another female friend. Suddenly Kevin comes running by me yelling run, Don, run! I looked back as I instinctively (stupidly) took off. I was running behind Kevin and saw 3 guys in chase who were wearing normal clothes. One guy tackled me as the other 2

kept chasing Kevin. The guy that tackled me and myself began to wrestle. After scuffling with me for a good 20 - 30 seconds he said he was a police officer. Upon my arrest, I resisted due to my sincere belief that I had done nothing wrong after all he had attacked me.

I was young (21) and very naïve about the legal system. In hindsight, I would have fought this case to the death at trial. But, instead, I plea-bargained. I pleaded guilty to assault and possession of Marijuana which were both misdemeanors. I had to pay a fine and court costs and was on probation for 2 years. I also had to serve 2 weekends incarcerated. This was simply a case of being in the wrong place at the wrong time. If I had an opportunity to change this part of my life I would."

Regarding the 1994 incident:

"In April of 1994 a search warrant was executed against my house under my former roommate's name. He had some small Marijuana plants growing in my house unbeknownst to me. I was working 50 hours a week and was not at the house that often. It was apparently hidden out of sight in a crawl space of the house. Someone else told me that he had a falling out with one of his friends because of a girl. So this 'friend' of his called the police and told on him. Due to my ownership of the property I also was charged.

Under advice from my attorney the case was plea-bargained to attempted possession of Marijuana and attempted possession of criminal tools. I paid a fine and courts costs and was on probation for 2 years.

I have learned from these experience about how sometimes life can be unfair. These two things in my life I am not proud of at all. I wish they never would have happened but they did. I have learned to investigate things much more thoroughly that I used to. I never am going to be put in a situation like either one of these incidents again. One of these items is over 15 years old and the other nearly 10 years old. I have grown up a lot since then. I just hope this does not affect my ability to get a mortgage license. I have worked very hard at this business and hope that you will give me an opportunity to continue doing it. Thank you for letting me explain what happened in my own words."

(Exhibit 14).



10. The Respondent also submitted records from the Franklin County Municipal Court regarding the 1994 drug charges which resulted in a conviction in the Franklin County Court of Common Pleas by entry of guilty pleas to attempted trafficking in marijuana and attempted possession of criminal tools. Exhibit 15. Respondent also submitted, on behalf of Ace Financial records from the Franklin County Municipal Court, regarding a 1986 OMVI matter, which is not at issue in that matter as well as a 1986 assault conviction (Exhibits 16, 17).

11. The parties agree that in the 1986 OMVI matter, count 4 of that matter did not involve marijuana or drug abuse but rather involved a registration violation (see joint Exhibit 1).

### **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 ever pleaded guilty of 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 issue a loan office 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 offense, 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 sections 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;

....

4. The Respondent has been convicted of a drug trafficking offense. The Respondent has also been convicted of assault. The offense of attempted drug trafficking is a "disabling offense". Ohio Revised Code Section 1322.041(A), provides that if an applicant has been convicted of an offense set forth in subdivision B, of Section 1322.031 (which includes the offense of attempted drug trafficking), the burden of proof shifts to the applicant to show by a preponderance of the evidence that the Respondent's activities and employment records since the conviction show that the Respondent is honest, truthful and of good reputation and that there is no basis, in fact, for believing that the Respondent will commit such offense again. Likewise, the failure on the part of the Respondent to disclose his criminal convictions also cause the burden of proof to shift to the Respondent to show by a preponderance of the evidence that his character and fitness commend confidence of the public to warrant the belief that the business would be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

5. Ohio Revised Code Section 1322.07(A) prohibits any applicant from making substantial misrepresentations in any registration or license application, subsection B prohibits the making of false or misleading statements of the material fact, omissions of statements required by law, and subsection C prohibits engaging in conduct that constitutes improper fraudulent or dishonest dealings. Section 1322.072(A) prohibits any person in connection with an examination or investigation being conducted by the Division from knowingly circumventing, interfering with, obstructing or failing to cooperate including making a false or misleading statement or failing to produce records.

6. With regard to the Mortgage Broker Certificate of Registration, Ohio Revised Code Section 1322.04(A)(7) provides as follows:

Neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has pleaded guilty to or been convicted of any criminal offense described in

division (A)(7) of section 1322.03 of the Revised Code or, if the applicant or any of those persons has pleaded guilty to or been convicted of such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again.

7. Section 1322.03(A)(7) requires, in an application for a certificate of registration:

A statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant has been convicted of or pleaded guilty to any criminal offense, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

8. Section 1322.10(A)(1)(b) permits the superintendent to suspend, revoke, or refuse to issue or renew a certificate of registration or license if the superintendent finds:

A conviction of or guilty plea 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.

9. Section 1322.04(A)(10) provides that upon conclusion of the required investigation, the superintendent shall issue a certificate of registration to an applicant if the superintendent finds that the following conditions are met:

....

(10) The applicant's financial responsibility, experience, 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 provisions of sections 1322.01 to 1322.12 of the Revised Code.

### **DISCUSSION**

1. The Hearing Officer notes at the outset that the Division is not proceeding with regard to basis four of Exhibit 1A and basis four of Exhibit 11A, both of which allege that in 1986 the Respondent was convicted of drug abuse. (Tr. 42).

2. At the time of the hearing in this matter, the Respondent was 39 years of age. (Tr. 110). He was graduated from Whetstone High School and attended the Ohio State University. He has 80 or 90 credit hours toward an economics degree. (Tr. 111). At the time of the 1986 episode at the casino night, the Respondent was 21 years of age. (Tr. 111). At the time of the marijuana incident the Respondent was 29 years of age. He has a two year old daughter. (Tr. 111). The facts surrounding both of the Respondent's misdemeanor convictions are unquestioned. In 1986 the Respondent was convicted of assault arising from the casino night episode. In 1995, the Respondent was convicted of drug trafficking in marijuana and attempted possession of criminal tools. All of those convictions are misdemeanors of the first degree.

3. The Respondent is the owner of Ace Financial Services. (Tr. 25). He has been employed at Reliant Mortgage Corporation for approximately 30 days. (Tr. 25). Before that he worked at AccuFirst Mortgage. (Tr. 25). He began writing loans there in January of 2003. Prior to that, the Respondent sold cars for Acura (Tr. 27) from 1988 through 1997.

4. The Respondent frankly admits that he made a mistake in answering Question 5 of the Loan Officer Application. (Tr. 28). He deliberated over the question before answering it. (Tr. 28). He confides that he probably should have gotten legal counsel involved before he answered it. (Tr. 28). In responding to the Division's inquiry, with regard to the 1994-95 conviction, the Respondent wrote in relevant part "under advise from my attorney, the case was plea-bargained to attempted possession of marijuana and attempted possession of criminal tools (Exhibit 5). In fact, the Respondent was convicted of attempted trafficking in marijuana. Subsequently, after Ace Financial had applied for it's mortgage broker certificate, the Respondent wrote the same thing (Exhibit 14). Again, the Respondent miss-stated his conviction. (See transcript 32.)

5. Testifying in support of the Respondent was Christopher Clucus, a neighbor who lives across the street from the Respondent (Tr. 46 *et seq.*). He has known the Respondent for 10 years (Tr. 46). Respondent has helped Mr. Clucus refinance his mortgage twice. *Id.* He has had no bad experiences with the Respondent (Tr. 47). He has referred other customers to Respondent. *Id.* Mr. Clucus socializes with Mr. Meeks regularly, including watching boxing and other matters (Tr. 47). Respondent was always truthful with Mr. Clucus including about the drug events (Tr. 48). Mr. Clucus observed the drug arrest and the television coverage from his house across the street (Tr. 49-50). Mr. Clucus is a plumber and pipe fitter. He has been engaged in that craft for more than four years (Tr. 48).

6. Also testifying in support of the Respondent was Brett Hively. Mr. Hively has lived in the central Ohio area for 3-1/2 years and is a bank sales executive (Tr. 52). His job is to track loans for brokers and loan officers (Tr. 53). He looks at between 100 and 250 loan applications per month and closes between 45 and 60. *Id.* Mr. Hively has been accepting loans from the Respondent for three to four years (Tr. 55). He receives between two and four loans from the Respondent per month (Tr. 56). Mr. Hively described the Respondent as forthright (Tr. 56). Mr. Hively was positive about the Respondent's reputation in the community (Tr. 57).

7. Michael VanMeter testified in support of the Respondent (Tr. 65 *et seq.*). He has known the Respondent since junior high school (Tr. 65). They socialize together including watching boxing matches (Tr. 66). He has referred customers to the Respondent. *Id.*

8. Richard Banco, the office manager for Chelsea Title, testified in support of the Respondent (Tr. 73). He has known the Respondent for 5 years (Tr. 73). Mr. Banco found the Respondent's loan materials to be detailed and that he was always enormously helpful with Mr. Banco's staff (Tr. 74). Mr. Banco noted that the Respondent's loans were rescinded, an important economic fact to the loan processors and servers (Tr. 77).

9. The next to testify in support of the Respondent was John William Robinson, a real estate appraiser, who lives in Dublin (Tr. 80 *et seq.*). Mr. Robinson has never heard any of the Respondent's customers complaining about services (Tr. 84). Mr. Robinson was uncertain of the details of the Respondent's criminal matters involved with drugs (Tr. 85).

10. Richard Randall testified in support of the Respondent (Tr. 89 *et seq.*). He is an account executive with First Franklin (Tr. 89). He has found the quality of the Respondent's files to be fairly good (Tr. 90). Most months, Mr. Randall closes one or two loans originated by the Respondent (Tr. 90). He has known the Respondent for six years. (*Id.*)

11. The issues in this case revolve around first, the failure of the Respondent to answer Question 5 of his Loan Officer Application truthfully. Second, we are concerned that the Respondent failed to accurately disclose his marijuana conviction. In particular, the Respondent indicated that he had been convicted of possession of marijuana, when he was in fact convicted of attempted trafficking marijuana. Respondent, in part, attempts to justify the confusion about his records by describing the process by which he collected copies of the convictions from the Franklin County Municipal Court. He went to the Franklin County Municipal Court rather than also having gone to the Franklin County Court of Common Pleas in an adjacent building. It was in the Franklin County Court of Common Pleas that the Respondent entered his plea to the charges of attempted trafficking in marijuana. (See Transcript 101-105.)

12. The Respondent claims that in answering Questions 5 of his Loan Officer Application, he believed that the question called for an answer dealing with convictions of "white collar crime." (See Tr. 113). In fact, the Respondent submitted an Exhibit which is a blank copy of the Loan Officer Application with the words "white collar crime" handwritten above Question 5 (Respondent's Exhibit A).

13. The record discloses that the Respondent had no complaints to the Division from any of his customers about loans that he has made. (Tr. 105-106).

14. In this matter, the Respondent must establish that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such an offense

again. Likewise, the Respondent must establish that his character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In connection with the requirements of Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of a "disabling offense"; namely, attempted trafficking in marijuana. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again as set forth in the applicable statutes. The 1986 misdemeanor conviction for assault happened approximately 18 years ago, at the time the Respondent was youthful. It arose from a "casino night" at a local church. An offense of this age and relatively minor magnitude can be viewed by the Hearing Officer as not disabling to the Respondent in connection with his process of seeking a loan officer license or a mortgage broker certificate.

15. The conviction for attempted trafficking in marijuana and attempted possession of criminal tools happened nine years ago. At the time, the Respondent was 29 years of age. These were apparently serious offenses in that marijuana was growing at a house that the Respondent owned (Exhibit 5). It is difficult for the Hearing Officer to find in the record sufficient discussion from the Respondent as to how he was able to overlook what was going on at his property during this period. There is certainly evidence in the record from the witnesses present at the hearing indicating that the Respondent is of good reputation within the lender community and that he works diligently on his loan applications. The Hearing Officer, however, is not convinced that he has met his burden to demonstrate that he is honest, truthful and that there is no basis in fact to believe he will commit such an offense again.

16. The Hearing Officer is greatly troubled by the failure of the Respondent to answer Questions 5 correctly. The failure to disclose the criminal offense on the Loan Officer Application is a false, fraudulent representation of material fact. See Ohio Revised Code Section 1322.07(A). The failure to disclose also constitutes the making of a false or misleading statement required by Ohio Revised Code Section 1322.07(B). The Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to its application questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market. Full, complete and truthful answers should be expected. Question 5 on the Application is unambiguous in its applicability to this Respondent. The failure to answer Question 5 fully and truthfully is unacceptable.

17. Further, the Hearing Officer is troubled by the Court records delivered by the Respondent to the Division in connection with the Application. The records could easily be construed to suggest that the Respondent was convicted of a lesser offense of attempted possession of marijuana or that the charges were dismissed in Municipal Court when in fact he was convicted in Common Pleas Court of the first degree misdemeanor of attempted trafficking of marijuana. The Hearing Officer is also convinced that the Respondent has not shown that his 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. While the Respondent has brought in several witnesses to testify to the exactness with which he pursues mortgage loan applications, it is difficult to hold such testimony in juxtaposition to the casualness with which the Respondent answered Question 5 of the Loan Officer Application (Exhibit 1A).

18. The Hearing Officer has had an opportunity to observe the Respondent and finds that he has not met his burden. The Application contained substantial misrepresentations in violation of Revised Code Section 1322.07(A), had false or misleading statements of material fact in violation of Revised Code Section 1322.07(B). The Applicant engaged in conduct which was at best improper or dishonest in connection with his Application. The Hearing Officer does not find that the actions of the Applicant were fraudulent in connection with his Application. The Hearing Officer finds that Applicant's character and general fitness do not command the confidence of the public to warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

19. Finally, in connection with the Application the Hearing Officer finds that false and misleading statements made the Respondent violated the Revised Code Section 1322.07(A), (B) and (C).

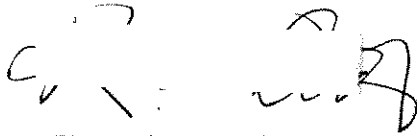
20. With regard to the Mortgage Broker Certificate of Registration, based on the evidence presented at the hearing, the Hearing Officer finds that the Respondent has not satisfied the requirements of Revised Code Section 1322.04(A)(7) and 1322.10(A) in that the Applicant as its principal owner and operating manager has not established that he is honest, truthful and that there is no basis in fact to believe that he will not commit another criminal offense involving drug trafficking.

21. The Hearing Officer finds that in connection with the Mortgage Broker Certificate of Registration, Ace Financial has not established that the Respondent has shown that his 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. Ohio Revised Code Section 1322.04(A)(10).

### RECOMMENDATION

Based upon the above-findings of fact, conclusions of law and discussion herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Mortgage Broker Certificate of Registration to Ace Financial and that the Loan Officer License of the Respondent be revoked.

Respectfully submitted,



Kenneth R. Cookson  
Hearing Officer  
March 26, 2004

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