

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

**FREDRICK N. TIMPE**

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DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. M2006-9992838

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

**November 27, 2006**

**I. FINDINGS OF FACT**

After having heard the testimony, considered the evidence, observed and weighed the demeanor and credibility of the witnesses, the following factual findings are made:

**A. BACKGROUND**

The above-captioned 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 scheduled for 10:00 AM on November 3, 2006, at 77 South High Street, 19<sup>th</sup> Floor, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Fredrick N. Timpe, of Canton, Ohio, formerly of Greentown, 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 had pleaded guilty to Theft in 2005 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 Todd A. Nist. Neither Respondent nor any representative appeared or submitted a written statement, even though the start of the hearing was delayed until 10:47 AM.

At the hearing, State's Exhibits A through E were admitted into the record. One witness appeared for the Division.

## B. JURISDICTION

The Division issued the NOH against Respondent on July 13, 2006. The NOH was sent to the address Respondent provided on the Loan Officer Application but was returned as undeliverable. Respondent then gave an alternative address to which the NOH was sent but the NOH was returned as unclaimed. The Division then sent the NOH to Respondent at his place of business and it was received on, or about, September 18, 2006. Respondent verbally requested a hearing on October 16, 2006, and then submitted a written request, received by the Division on October 17, 2006. On October 19, 2006, the Division scheduled the hearing for October 27, 2006, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to November 3, 2006, on its own motion, at which time the hearing went forward without any further communication from Respondent or anyone representing Respondent.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322.
2. Respondent is an individual previously conducted, and wishes, again, to conduct, business in Ohio as a Mortgage Loan Officer (hereinafter "Loan Officer.") (Exhibit D.)
3. On March 24, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"), signed by Respondent on March 14, 2006. (Exhibit D.)
4. On Question 6 on the Application, which asks if the applicant has been convicted of any criminal offense, Respondent responded "Yes" but did not provide any explanation either on the form or on a separate sheet. Respondent did provide a certified copy of two

pages of court records from the Massillon Municipal Court. (Exhibits D, E.)

5. On, or around, April 21, 2005, in Massillon Municipal Court, Respondent pleaded Guilty to Theft, a misdemeanor of the first degree, and a finding was made of guilty. Respondent was sentenced to be incarcerated for 180 days, with 175 suspended with five years probation and ordered to pay a fine of \$200. (Exhibit E.)
6. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and that there is no basis in fact for believing that he would not commit such offenses again.

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

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

### **B. LICENSE APPLICATION**

2. In 2005, Respondent was convicted of "a criminal offense involving theft", an offense specifically cited in section 1322. 041(A)(3) O.R.C.
3. The theft conviction 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. The Respondent must also demonstrate that that the Respondent's character and general fitness will command the confidence of the public and will 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. Sections 1322. 041(A)(3) and 1322. 041(A)(5), O.R.C.
4. Respondent did not offer any prove of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.

C. DISCUSSION

The Division has proven that the theft offense occurred. The burden to prove, by a preponderance of the evidence, that he should receive a license now falls to the Respondent. As the Respondent did not submit any written statements, did not present any evidence at all, and, in fact, did not appear, there must be a finding for the Division in this case.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO FREDRICK N. TIMPE.**

Respectfully submitted,

U. Michael Quinn  
Administrative Hearing Officer  
November 27, 2006  
Docket No. 06-DFI-203