

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

IN RE: : CASE #: M2006-999982
: :
NEIL HAIRSTON : ADMINISTRATIVE HEARING
(the "Applicant") : OFFICER
: MARK J. BALLENGER, ESQ.
(Loan Officer :
License Application) :

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**ADMINISTRATIVE HEARING OFFICER'S
REPORT & RECOMMENDATION
Issued January 10, 2007**

BACKGROUND

On or about May 24, 2006, the Ohio Division of Financial Institutions ("the State") served the Applicant with notice that it intended to deny the Applicant a loan officer license. On June 7, 2006, the Applicant requested a hearing about the matter. In turn, the Applicant's request was honored.

This case was heard on November 2, 2006, beginning at approximately 9:30 a.m. at 77 S. High Street, Columbus, Ohio, Rm. 1936. A stenographic record was made of the proceeding. On December 21, 2006, a transcript was received for preparation of this report.

The Applicant attended the hearing, but was unrepresented by counsel. Assistant Attorney General Ted L. Klecker represented the State.

This report is hereby filed with the Superintendent of the Division of Financial Institutions and the Applicant.

INDEX OF EXHIBITS ADMITTED TO RECORD

Exhibit #/Document I.D. Description of Exhibit

STATE'S EXHIBITS

- | | |
|-----------|---|
| 1. Exh. A | Notice of Intent to Deny Loan Officer License Application & Notice of Opportunity for Hearing with certified mail receipt |
| 2. Exh. B | Hearing Request Form, and envelope |
| 3. Exh. C | 6-12-06, notice of hearing |
| 4. Exh. D | 8-30-06, notice of hearing |
| 5. Exh. E | Applicant's January 2006, Loan Officer Application ("Application") |
| 6. Exh. F | 1-20-06, request for more information from the Applicant |
| 7. Exh. G | 8-20-01, Entry of Guilty Plea for Nonsupport of Dependents in Franklin County Common Pleas Court No. 00CR-12-7147 |
| 8. Exh. H | Judgment Entry – Community Control in Franklin County Common Pleas Court No. 00CR-12-7147 |

- 9. Exh. I Judgment Entry – Prison in Franklin County Common Pleas Court No. 00CR-12-7147
- 10. Exh. J Franklin County Municipal Court Record, Case No. 2003-CRB-000056
- 11. Exh. K Detailed Explanation of Facts provided by Applicant
- 12. Exh. L Franklin County Municipal Court Record, Case No. 2003-CRB-020831

TESTIMONY GIVEN BY: The Applicant

FINDINGS OF FACT

1. The State advised the Applicant of the reasons for its intent to deny the Applicant a loan officer license. (See the attached two pages, marked "Copy.")
2. In the Application, the Applicant, in answering a question in a list of questions, checked the "no" box; thereby indicating, inter alia, that he had never been convicted of any "criminal offense involving money or securities." (Exh. #5, Question #6 and Tr.¹ pp. 27-28.) While the State has argued that this question was phrased as such in order to inquire about even family dependent support matters, no definition was offered with the question to explain what was meant by a "criminal offense involving money." (Exhs. #1 and #5.)
3. At the time he answered Question #6, he was aware that he had an August 2001, fifth degree felony conviction for nonsupport of dependents, as a result of a guilty plea. (Tr. pp. 28-30 and Exhs. #7 and #9.) However the Applicant had not understood Question #6; he had thought that a "criminal offense involving money" must be related to a white collar crime involving the taking of money, rather than merely a failure to pay support to a family member. (Tr. pp. 19-22 and 46-48.)
4. The Applicant, 40 years old, has been working at Great Day Lending.com. (Tr. p. 34-35 and 41.) Also, he is working on reducing the child support arrearage he owes. (Tr. pp. 39-40.)
5. Since a last conviction in 2003, the Applicant has not been convicted of any other criminal offenses. (Applicant's Testimony, Tr. p. 44.) And, since that time, he has been employed in the mortgage business. (Tr. pp. 42-44.)
6. The Applicant's testimony has been found to be credible. (Applicant's Testimony, Tr. pp. 42-43 and 48-49.) He understood there would be a background check. (Tr. pp. 35-36 and 45 and Exh. #11.)

CONCLUSIONS OF LAW

Question #6 did not make clear what was meant by a "criminal offense involving money." (Findings of Fact #2 and #3.) There was no qualifying language advising the applicant that this was meant to encompass an offense against a family member, i.e., for nonsupport. (Ibid.) As it stands, a "criminal offense involving money" is open to broad interpretation, and is not generally understood to encompass nonsupport matters. This ambiguity could result in this question's application to a host of crimes, ad infinitum, as well as ad ridiculum. As it stood, more specificity was needed to clearly apprise applicants of what the State was asking them to provide in answer to this ambiguous question. (Ibid.)

¹ "Tr." refers to the transcript of the subject hearing.

Thus, it has not been proven that the applicant was convicted of, or pled guilty to, any criminal offense described in R.C. 1322.031(A)(2). (Ibid.) So, he was not required to prove, pursuant to R.C. 1322.041(A)(3) that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such an offense again.

Thereeto, the Applicant did not violate: R.C. 1322.07(A) (prohibition against making any substantial misrepresentation in a license application); R.C. 1322.07(B) (prohibition against making a false or misleading statement of material fact), and R.C. 1322.07(C) (prohibition against engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.) (Ibid.)

Finally, in accord with R.C. 1322.041(A)(5), the applicant's character and general fitness command the confidence of the public and warrant the belief that he would do business honestly and fairly, in compliance with the purposes of R.C. 1322.01 to R.C. 1322.12. (Findings of Fact #4 - #6.)

RECOMMENDATION OF ACTION

Therefore it is recommended that the Superintendent of the Division of Financial Institutions grant the Applicant's request for the issuance of a loan officer license.

Respectfully submitted,

Mark J. Ballenger
Administrative Hearing Officer