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**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION**
September 16, 2004

A. Background

The Division alleges that Respondent was convicted of two counts of aggravated robbery, one count of robbery, and one count of forgery in 1992. As a result of these convictions, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322 for the following reasons:

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2. 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.

Anthony D. Siciliano, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared without counsel. At the hearing, State's Exhibits 1 through 8 and Respondent's Exhibits A through I were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on June 16, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on June 23, 2004. The Division scheduled the hearing for July 2, 2004 but, on its own motion, continued the hearing to July 12, 2004. This hearing was continued at the Respondent's request to July 26, 2004. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to same address as the NOH.

C. Respondent's Loan Officer Application

1. The Respondent filed a loan officer application on November 1, 2002. (Exhibit 1.)
2. Question five of that application asked the following question:
 5. 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.
3. In response to Question 5, the Respondent answered "yes." He explained that he was convicted of aggravated robbery, robbery and forgery in the Lake County Court of Common Pleas on July 1, 1992 and served over ten years in prison. (Exhibit 1.)
4. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).
5. The background check on Respondent's application revealed several arrests on a number of charges by the Willoughby and Eastlake Ohio Police Departments. (Exhibit 2.)

6. By letter dated January 27, 2003, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge or case and a certified copy of the journal entry evidencing the disposition and sentence resulting from each charge or case. (Exhibit 3.)
7. The Respondent provided a Journal Entry from the Lake County Court of Common Pleas for Case No. 92-CR-000131. It shows that on July 1, 1992, the Court convicted the Respondent of two counts of aggravated robbery in violation of R.C. 2911.01, felonies of the first degree, one count of robbery in violation of R.C. 2911.02, a felony of the second degree, and one count of forgery in violation of R.C. 2913.31, a felony of the fourth degree. The Respondent was sentenced to serve five to twenty-five years at the Lorain Correctional Institution in Grafton, Ohio. (Exhibit 4.)
8. The Respondent explained that the convictions arose out of two different incidents. In each incident, he tricked his way into a residence by asking the occupant if he could use their telephone. In one incident, he bound the occupants with towels and then stole about \$300.00. In the other, he took the occupant from the home, drove to her bank, filled out one of her checks, which she signed and cashed, and then drove her home. (TR at 31 – 33.)

D. Respondent's Reputation and Character.

1. The Respondent regrets greatly and gravely what he did. (TR at 24.) However, he believes that he has paid his debt to society (Exhibit A.) While he was incarcerated he earned an Associates of Arts Degree, Cum Laude, from the University of Findlay. (Exhibit E.) Since his release from incarceration, he has worked continuously for Capital Home Mortgage (Exhibit B; TR at 36 - 37), established credit (Exhibit C; TR at 25), bought a residence which he rents out (TR at 25) and registered to vote (Exhibit G; TR at 40 - 41.) He has closed a lot of loans and now most of his work is referrals from past customers. (TR at 28.)
2. Deanna Hodge, who has worked for America's Choice Title Agency for two and a half years, has known the Respondent for two years. In her position, she works closely with loan officers including the Respondent. She testified that the Respondent is knowledgeable, nice, courteous and genuine. She trusts him and does not believe that he would commit any offense again. (TR at 49 – 52.)
3. Donna Williams, who has worked for Capital Home Mortgage for five years, has known the Respondent for two years. As a loan officer and now operational manager, she works closely with the Respondent. It is her

responsibility to ensure that loan officers comply with the law and to take corrective action including dismissal when they do not comply with the law. She testified that the Respondent is a very honest person who follows directions and does everything in accordance with the law and rules. By his actions he has shown that he is willing to do things in the way that the state requires. (TR at 53 – 56.)

4. Christopher Woodin, who is employed by the Lake County Engineer and is also a real estate investor, is the Respondent's brother. He testified that during his teenage years, the Respondent was a father figure to him. He was a very responsible person who made one mistake and has paid his debt to society. He has observed that the Respondent has a strong work ethic and if given a chance, he will prove to be an asset for years come. (TR at 56 – 60.)
5. Stacy Rentz, who owns Rentz & Associates Appraisal Services, does appraisal work for Capital Home Mortgage. She testified that she often appraises homes for the Respondent's clients and that they make only positive comments about the Respondent. She financed her own home with the Respondent and has referred others to the Respondent. She describes the Respondent as very honest. (TR at 61 – 64.)
6. The Respondent also presented letters from eight other individuals including the president of Capital Home Mortgage and others who either work with the Respondent or have been clients of the Respondent. Some letters addressed his reputation for honesty and integrity. Others addressed his commitment to helping others. Letters from past customers indicated their satisfaction with his services and their willingness to refer their friends and family to him. (Exhibit H.)

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer Application.

1. R.C. 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 of 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. R.C. 1322.041(A) provides that a loan officer license shall be issued if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

* * *

(3) The applicant has not been convicted of or pleaded 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 an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant'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.

* * *

(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.

4. R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license if he finds:

* * *

(b) 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.

C. DISCUSSION

1. The Division determined that Respondent's loan officer application should be denied because the Respondent did not prove that he is honest, truthful and of good reputation, and that there is no basis in fact for believing that he will

commit another criminal offense involving theft or any criminal offense involving money or securities as required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). The Respondent was convicted in the Lake County Court of Common Pleas of aggravated robbery in violation of R.C. 2911.01, robbery in violation of R.C. 2911.02 and forgery in violation of R.C. 2913.31. (R.C. 2913.01(K)(1) provides that a theft offense includes, among other offenses, the offenses of aggravated robbery and robbery.) R.C. 1322.041(A)(3) requires that an applicant for a loan officer license who has been convicted of an offense involving theft or forgery show, by the preponderance of the evidence, that his activities and employment since the conviction prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another criminal offense involving theft or any criminal offense involving money or securities.

2. The seriousness of the Respondent's criminal record makes him an unlikely candidate for a position of trust such as a loan officer who works with the financial matters of the general public. The nature of and the circumstances surrounding the offenses show a profound disregard for the personal safety and personal property of others. Such convictions are evidence of an applicant's lack of honesty and trustworthiness and are evidence of an applicant's propensity to commit a similar offense again. However, the strength of the past behavior as evidence diminishes as time passes without the applicant committing another offense. In this case, more than twelve years have passed since the Respondent committed any criminal offense.
3. The Ohio Revised Code does not make conviction of even the most heinous offense an automatic or permanent disqualifier for a loan officer license. The General Assembly through its enactment of R.C. 1322.041(A)(3) allowed for the possibility that people change for the better. In this case, the record contains significant evidence to show that the Respondent's activities and employment since the conviction satisfy the conditions of R.C. 1322.041(A)(3). The testimony of the witnesses tends to show that the Respondent is honest and truthful. The letters, while they cannot be given much weight because of the lack of opportunity to observe the demeanor of their authors and benefit from responses elicited during cross examination, do at the least corroborate the testimony of the witnesses. Most importantly, the Respondent has performed the functions of a loan officer for nearly two years without any complaint or adverse comment in the record. These facts tend to show that his life has changed in ways that make it unlikely that he will commit a criminal offense again. Accordingly, the Respondent has shown by a preponderance of the evidence that his activities and employment since the convictions prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing

that he will commit another criminal offense involving theft or any criminal offense involving money or securities.

5. The Division also determined that the Respondent's loan officer application should be denied because the 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 as required by R.C. 1322.041(A)(5). This determination was based solely upon the Respondent's criminal record. As found above, the Respondent has shown by a preponderance of the evidence that his activities and employment since the convictions proves that that he is honest and truthful and that he will not commit a similar offense again. Accordingly, the record in this case does not support the Division's determination that the Respondent's loan officer application should be denied because the 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.

III. RECOMMENDATION

The Respondent has met all of the prerequisites for receiving a loan officer license set forth in R.C. 1322.041. Therefore, I respectfully recommend that the Superintendent of Financial Institutions grant the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

James J. Lawrence
Hearing Officer
September 16, 2004