

IN THE MATTER OF: : CASE NO. 04-0135-L0D  
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**London R. Margerum** : James J. Lawrence, Hearing Officer

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).

Martine Jean, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. At the hearing, State's Exhibits 1 through 4 – I (Exhibit 4 – D omitted) were admitted into the record. The Respondent did not appear at the hearing faxing a message to the Division late on the morning of the hearing stating that he would not appear.

**B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on January 22, 2004 by certified mail, return receipt requested. Respondent's hearing request was received by the Division on February 20, 2004. The Division scheduled the hearing for March 4, 2004 but, on its own motion, continued the hearing to a later date. The Division subsequently scheduled the hearing for May 4, 2004, but it was continued at the Respondent's request to June 15, 2004. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to the address of the applicant's attorney with a copy to the Respondent.

**C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on January 6, 2003. (Exhibit 2.)
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 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?
3. In response to Question 5, the Respondent answered "yes." However, he provided no details concerning the nature of the offenses or the circumstances that gave rise to the offenses. (Exhibit 2.)
4. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).
6. The background check on Respondent's application revealed sixteen separate criminal charges by local police agencies. (Exhibit 3; TR at 18.)

7. By letter dated March 13, 2003, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the journal entry evidencing the disposition and sentence resulting from each charge. (Exhibit 3; TR at 17-18.)
8. The Respondent provided journal or judgement entries from the City of Bedford Municipal Court and the Cuyahoga County Court of Common Pleas detailing eight criminal convictions. (TR at 18.)
9. A judgement entry from the City of Bedford Municipal Court shows that the Respondent was convicted of disorderly conduct in violation of city ordinance 537.03(a)(1) in Case No. 91 CRB 02419 on December 19, 1991. (Exhibit 4-A; TR at 19.)
10. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of unauthorized use of a motor vehicle in violation of R.C. 2913.03 in Case No. CR-276236 on June 5, 1992. (Exhibit 4-B; TR at 19.)
11. A judgement entry from the City of Bedford Municipal Court shows that the Respondent was convicted of trespassing in violation of city ordinance 541.05(a)(3) in Case No. 92 CRB 00267 on February 27, 1992. (Exhibit 4-C; TR at 20.)
12. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of attempted drug abuse in violation of R.C. 2923.02 and 2925.11 and possession of criminal tools in violation of R.C. 2923.24 in Case No. CR-307221 on June 22, 1994. (Exhibit 4-E; TR at 20.)
13. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of drug abuse in violation of R.C. 2925.11 in Case No. CR-315351 on April 12, 1995. (Exhibit 4-F; TR at 21.)
14. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of drug abuse in violation of R.C. 2925.11 in Case No. CR-317312 on April 12, 1995. (Exhibit 4-G; TR at 22.)
15. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of assault with peace officer specification in violation of R.C. 2903.13 and carrying a concealed weapon

in violation of R.C. 2923.12 in Case No. CR-362372 on August 18, 1998. (Exhibit 4-H; TR at 22.)

16. A journal entry from the Cuyahoga County Court of Common Pleas shows that the Respondent was convicted of possession of drugs in violation of R.C. 2925.11 in Case No. CR-365730 on August 18, 1998. (Exhibit 4-I; TR at 23.)

**D. Respondent's Reputation and Character.**

1. The Respondent did not submit any evidence or testimony to rebut the Division's determination that his 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 purposed of the Ohio Mortgage Broker Act.
2. The Respondent did not submit any evidence or testimony to prove that his activities and employment record since the conviction show that he 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.
3. No witnesses appeared to testify on the Respondent's behalf.

**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. 1322.031(A)(4) requires that in an application for a loan officer license, an applicant must furnish, in addition to other information required by law, any further information that the Superintendent of Financial Institutions (Superintendent) requires. In question 5 of the loan officer application, the Superintendent requires that an applicant indicate whether or not he or she

has ever been convicted of a criminal offense, excluding minor misdemeanor traffic and parking offenses, and if the applicant answers yes, submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

3. 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:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(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 either of the following:

(a) A violation of or failure to comply with any provision of R.C. 1322.01 to 1322.12 ...

(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**

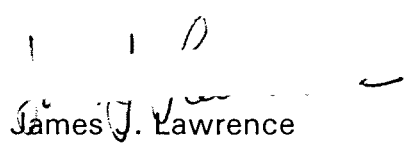
1. The Division's determined that Respondent's loan officer application should be denied because the Respondent did not prove that he is honest truthful and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities as required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). The record shows that Respondent was convicted in the Cuyahoga County Court of Common Pleas of the offense of unauthorized use of a motor vehicle in violation of R.C. 2913.03. R.C. 2913.01(K)(1) provides that a theft offense includes, among other offenses, the offense of unauthorized use of a motor vehicle. R.C. 1322.041(A)(3) requires that an applicant for a loan officer license who has been convicted of an offense involving theft must show that his actions 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 not commit another criminal offense involving theft or any criminal offense involving money or securities. The applicant has submitted no evidence to meet the requirement of R.C. 1322.041(A)(3).
2. 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). The record in this case establishes that Respondent has a substantial criminal record that includes offenses that show that Respondent may behave in ways that disregard the property rights of others. In the absence of any information that supports the Respondent's character and general fitness, the record in this case supports 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's 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 theft or any criminal offense involving money or securities as required by R.C. 1322.041(A)(3) and the nature and extent of his criminal record support a determination that his 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

  
James J. Lawrence  
Hearing Officer  
August 24, 2004