

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

DIVISION OF FINANCIAL  
INSTITUTIONS

**IN RE:** : **CASE #: M2006-9992815** NOV 28 AM 9:21  
:   
: **ROY DANIEL NICHOLS** : **ADMINISTRATIVE HEARING**  
**(the "Applicant")** : **OFFICER**  
: **MARK J. BALLENGER, ESQ.**  
**(Application for Loan Officer** :   
**License)** :

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**ADMINISTRATIVE HEARING OFFICER'S  
REPORT & RECOMMENDATION  
Issued November 28, 2006**

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**BACKGROUND**

On or about July 27, 2006, the Ohio Division of Financial Institutions ("the State") served the Applicant with notice that it intended to deny a loan officer license to the Applicant. The Applicant then requested a hearing about the matter. In turn, the request was honored.

This case was heard on October 5, 2006, beginning at approximately 10:00 a.m. at 77 S. High Street, Columbus, Ohio, Rm. 1910. A stenographic record was made of the proceeding, and on November 02, 2006, it was provided for preparation of this report.

The Applicant did not attend the hearing. Assistant Attorney General Todd A. Nist presented the case on behalf of 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**

<b>Exhibit #</b>	<b>Description of Exhibit</b>
<b>STATE'S EXHIBITS</b>	
1.	Notice of Hearing
2.	Hearing Request Form
3.	July 27, 2006, Loan Officer License Application Denial letter with notice of reasons for denial and an opportunity for hearing and confirmation of delivery by certified mail
4.	April 2006 Loan Officer Application ("Application")
5.	May 24, 2006, State's letter seeking more information from the Applicant about his arrests
6.	Information provided by the Applicant about his arrests
7.	Court document
8.	Multi-State Offender Questionnaire
9.	Court docket

**TESTIMONY GIVEN BY**

- The State's witness, Carrie V. Moore, Consumer Finance Associate Counsel

### **FINDINGS OF FACT**

1. The State advised the Applicant of the reasons for its intent to deny him a loan officer license. (See the attached two pages, marked "Copy.")
2. The Applicant, in answering a question in a list of questions, checked the "yes" box in the Application thereby indicating that he had been arrested and convicted of "*any* criminal offense." (Emphasis Added.) (Exhs. #4, Question #6, and Tr.<sup>1</sup> pp. 9-10.) In explanation of his answer, he indicated the charges were dropped related to one arrest in the year 2001. (Exhs. #4 and #6 and Tr. pp. 14-15.) No where was he asked to provide information about all his prior arrests and convictions, rather he was asked to provide information about "any." Phrased another way, the grammatical determiner "*any*" was used. That word is used to speak about indefinite numbers and quantities, when the exact numbers and quantities one is thinking about are not important.
3. Documents ultimately provided by the Applicant indicated he had been convicted of other criminal offenses. The Applicant had been found guilty in the year 1992 of theft for stealing baseball cards at the age of 19 or 20 and in the year 2000 for passing bad checks. (Exhs. #6-#9, and Tr. pp. 11-14.)
4. The Applicant did not submit any evidence, at hearing or otherwise, of his activities and employment record since the convictions or give any indication of how he would operate a loan officer business, other than his self-serving assertions. (Exh. #6.)

### **CONCLUSIONS OF LAW**

The Applicant did not knowingly attest to false information and submit it as a part of his loan officer application. (Findings of Fact #2.) Therefore, 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 a material fact), and R.C. 1322.07(C) (prohibition against engaging in conduct that constitutes improper, fraudulent, or dishonest dealings).

Nonetheless, the Applicant, having been convicted of a theft offense and of passing back checks, has not proven by a preponderance of the evidence that his activities and employment record since the convictions show he is honest, truthful, and of good reputation and that he will not commit such an offense again. (See R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). (Findings of Fact #3 and #4.) In addition, there has been no showing that he has the character to command the confidence of the public and would operate a loan officer business honestly – another requirement for licensure under R.C. 1322.041(A)(5). (Ibid.)

### **RECOMMENDATION OF ACTION**

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

Respectfully submitted,

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Mark J. Ballenger  
Administrative Hearing Officer

<sup>1</sup> "Tr." refers to the transcript of the subject hearing.