

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS  
CONSUMER FINANCE

In re: Eugene Freeman

: Case No. 03-LO-D-110-111

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DIVISION OF FINANCIAL INSTITUTIONS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF  
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Eugene Freeman not be granted. The Division conducted an investigation and found:

- a. In or around 1976, Mr. Freeman pleaded guilty to misdemeanors of assault and no hand gun license in the Cleveland Heights Municipal Court, Cuyahoga County, Ohio.
- b. In or around 1980 in the Bedford Municipal Court, Cuyahoga County, Mr. Freeman was convicted of passing bad checks.
- c. In or around 1981, Mr. Freeman was convicted of passing bad checks, a misdemeanor of the first degree in the Cleveland Heights Municipal Court, Cuyahoga County.
- d. Mr. Freeman failed to disclose his criminal convictions on his license application. (Exhibit 1A).

2. As a result, the Division determined:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and,
- ii. that Mr. Freeman's character and general fitness do not command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act, as set forth in Section 1322.041(A)(5). (Exhibit 1A).

3. Mr. Freeman's address for service is 25908 Buckthorn Road, Bedford Heights, Ohio 44146. He is hereinafter referred to as the "Respondent". The Respondent is employed by Sunset Mortgage Co., L.P. (Exhibit 1A).

4. This matter was initiated by the Superintendent of the Division by the issuance on September 26, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 1A).

5. On October 16, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 1B).

6. On October 20, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for October 30, 2003 at 9:00 a.m. (Exhibit 1C). The hearing was simultaneously continued until a date to be determined. (Id).

7. On November 20, 2003, the Division wrote to the Respondent to schedule the hearing for December 16, 2003 at 10:30 a.m. in Room 1910 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio 43215. (Exhibit 1D).

8. On or about December 11, 2003, James Alexander, counsel for the Respondent faxed to the Division his Entry of Appearance together with a Motion for Continuance of Hearing. (Exhibit 1E).

9. On December 16, 2003, the Division wrote to Mr. Alexander indicating that the hearing would be continued until January 8, 2004 at 10:00 a.m. (Exhibit 1F).

10. On January 6, 2004, Mr. Alexander faxed the Division a Motion for Further Continuance of Hearing because of a death in Mr. Alexander's family. (Exhibit 1G).

11. The hearing was of course continued and rescheduled for 1:30 p.m. on February 12, 2004. (Exhibit 1H).

12. The hearing was held beginning at 1:30 p.m. on February 12, 2004 and was attended by: Martine Jean, Assistant Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio; James Alexander, Jr., Esq. and the Respondent. Also attending was Edward Haggoms, Esq., a witness for the Respondent.

13. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

#### FINDINGS OF FACT

1. On March 14, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 2).

2. Question 5 of the Application provides:

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 "No". (Id.).

4. Following submission of the Application, on August 2, 2002 the Division wrote to the Respondent seeking an explanation about the discrepancy between the Respondent's answers to Question 5 and his background check which disclosed the assault charge, the two charges of passing bad checks and the weapons charge. (Exhibit 3).

5. On August 30, 2002, the Respondent wrote to the Division as follows:

In regard to my application for a Loan Officer license and results of my back ground check.

From 1975 to 1981 was a very chaotic time in my marriage and life which in my opinion led to the first 4 charges on my background check.

During this period unknown to me at the time my wife was a substance abuser and to conceal her drug abuse from me led to a number of arguments and eventually physical confrontations.

On February 8, 1976 during one of these episodes I did twist her arm. She in turn called the police, and stated she feared for her physical safety because I also had a shotgun in the house which I used for rabbit hunting. I was not aware of the Cleveland Heights Ordinance of all firearms had to be registered with the city until after my arrest.

I was arrested, shotgun confiscated, pleaded guilty, fined and sentenced to probation spent the weekend in jail.

During this period of probation my marriage discord continued and actually escalated to the point where I was being abused by my wife and her drug abuse which no included her stealing money from my checking account and me covering checks she had written and signed my name to.

We eventually separated in March of 1980. Unknown to me at the time were these outstanding checks in Bedford and Cleveland Heights which were not brought to my attention until be stopped for traffic violations.

The Cleveland Hts. charge I pleaded No Contest, I was fined \$250.00 and spend 5 weekends in jail.

The Bedford Heights charge I pleaded guilty and was fined \$150.00 with no jail time.

On September 22, 1991 I was arrested and charged by South Euclid Police erroneously for felonious assault after stopping a physical confrontation between my sister and her ex-husband at the time.

I have contacted the South Euclid Clerk of courts office for a journalized entry showing that this charge was in error and never went before a judge and actually should not be matter of record.

South Euclid Clerk of Courts has no information on file in this matter they have referred me to the County Justice Center.

Thanking you in advance for your consideration in this matter.

(Respondent's Exhibit I).

6. Admitted into the record were copies of the Court's criminal dockets showing the Respondent having been found guilty of (1) assault and a weapons charge in the Cleveland Heights Municipal Court in 1976; (2) passing bad checks in the Bedford Heights Municipal Court in 1980; and (3) passing bad checks in the Cleveland Heights Municipal Court in 198. (Exhibits 4, 5 and 6).

### CONCLUSIONS OF LAW

1. Ohio Revised Code Section 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. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offense, the applicant has proven to the

superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

3. Ohio Revised Code Section 1322.07 provides in relevant part:

No Mortgage broker, registrant, licensee or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

- (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentations in any registration or license application;
- (B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

....

4. Because the Respondent has been convicted of the misdemeanor offense of passing bad checks (twice), the burden of proof shifted to the Respondent to show by a preponderance of the evidence that there is no basis in fact for believing that he will commit another 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. The failure to disclose the criminal convictions as well as the criminal conviction for assault also caused the burden of proof to shift to the Respondent to show by a preponderance of the evidence that his character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purpose of the Ohio Mortgage Broker Act.

5. Counsel for the Respondent has challenged this licensing application on the grounds that the Respondent's Application is dated March 19, 2002 and the Ohio Mortgage Brokers Act was not effective until May 22, 2002. This Hearing Officer has no jurisdiction to consider challenges to the effectiveness of the underlying legislation and therefore overruled at the hearing and again overrules in this Report and Recommendation the challenge to the Ohio Mortgage Brokers Act. The Hearing Officer however notes the language of 2001 S 76 § 4.

### DISCUSSION

1. The Hearing Officer finds and the Respondent does not dispute that he has been convicted of two offenses of passing bad checks. The first occurred in 1980 in the Bedford Heights Municipal Court and the second occurred in 1981 in the Cleveland Heights Municipal Court. The Hearing Officer also finds that the Respondent failed to disclose those two convictions in responding to question 5 of the Application.

2. When confronted with the issue of his failure to disclose the two convictions for passing bad checks, the Respondent said that:

In my opinion, it was because at the time I answered this, I was not aware of the offenses being what they call felonies. I was under the impression they may be first offense, maybe domestic discord, because all these were related to my past domestic discord, which I adapted in a letter to the Division. (Tr. 16)

The answer I gave, the reason I said no on my application is because I believe wholeheartedly that they were not felony offenses. (Tr. 18)

I said I was under the impression it was that they call at that time was domestic discord ... saying I didn't consider them to more or less be felonies. (Tr. 20)

Q. When you filled out that application in 19-- sorry 2002, 20 years later, did you believe that you had a criminal record?

A. No, I didn't.

Q. If asked that question today, what would be your response?

A. I still don't believe I have a criminal record.



Q. Well instead of calling it a criminal record, certified judgment of conviction?

A. I'll go with that, okay. (Tr. 67-68)

3. Respondent stated that he answered his question 5 in his Application the same way he answered questions on previous applications for different licenses. (Tr. 21). The Respondent provided a photocopy of a License to Engage in Real Estate Business issued by the Ohio Department of Commerce, Division of Real Estate on April 19, 1995. (Respondent's Exhibit E).

4. At the time of the hearing in this matter, the Respondent was 55 years of age. (Tr. 65). At the time of the convictions in this matter he was 24, 25 and 26 years of age. (Id.) Respondent has completed high school and two years of college. (Tr. 43) and served in the United States Navy for two years and was honorably discharged. (Tr. 43). He has been married since 1970. (Id.)

5. There is no doubt that the Respondent has had a long career in the real estate field. He started as a real estate salesman in the early 1970s. (Tr. 43). In 1985 or 1986 he became a real estate broker. (Tr. 43-44). He has never had a complaint brought against him. (Id.) Likewise there has never been an allegation of embezzlement or fraud. (Id.) In 1986, Unity First Mortgage Corporation was granted authority by the U.S. Department of Housing and Urban Development to serve as a "mortgagee". (Respondent's Exhibit B). The Respondent was a vice president and 25% owner of Unity First Mortgage Corp. (Tr. 45). In 1987, the Respondent successfully completed Direct Endorsement training for the U.S. Department of Housing and Urban Development. (Respondent's Exhibit C). In the late 1980's, the Respondent set up Fretron Mortgage Corporation and the Respondent provided the financial statements for Fretron Mortgage Corporation for December 31, 1988. (Respondent's Exhibit D). Respondent also provided exhibits showing that Alfred W. Rostofer and All Ohio Mortgage Banc have received mortgage broker licenses from the Ohio Department of Commerce. (Respondent's Exhibit F and H). Respondent provided the Net Branch Agreement between himself and A.B. Barrett Anderson, Inc. and/or All Ohio Mortgage Banc dated in 1999 establishing the Respondent relationship with a licensed mortgage broker. (Respondent's Exhibit G).

6. The Respondent also submitted an affidavit from his wife, Rudy J. Freeman, (Respondent's Exhibit A) in which she echoed the events surrounding her drug addiction during the late 1970s and the writing of checks from the Respondent's bank account. (Id.)

7. Testifying in support of the Respondent was Edward T. Haggins, Esq. (Tr. 26 *et seq.*) The Hearing Officer acknowledged and appreciates the time commitment of Mr. Haggins to travel to Columbus to appear as a live witness in this matter. Mr. Haggins has been an active member in the real estate industry during his career. He has never known the Respondent to be involved in any fraudulent activity and believes that the Respondent has a generally good reputation among his peers. (Tr. 30-31).

8. In this matter, the Respondent must establish that he is honest, truthful and of good reputation and that there is no basis to believe he will commit such an offense again. Likewise, the Respondent must establish that his character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In connection with the requirements of Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of a "disabling offense"; namely, two separate passing bad checks offenses. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again as set forth in the applicable statutes. In this case, the offenses occurred more than 22 years ago. Since 1981, the Respondent has had no further involvement with the criminal justice system. Moreover, the passing bad checks charges appear to have been related to his wife's drug addiction and Respondent's interest in resolving that matter within the boundaries of the criminal justice system as expeditiously as was possible. In this case, the Hearing Officer can conclude that there is no basis in fact to believe that the Respondent would commit such an offense again. The charges of assault and a gun violation happened nearly 30 years ago and appear similarly related to a then marital problem. The Hearing Officer does not consider these offenses to prevent the issuance of a license.

9. The Hearing Officer, however, is greatly troubled by the failure of the Respondent to answer Question 5 correctly. The failure to disclose a criminal offense on the Application is a false or fraudulent representation of a material fact. (See Ohio Revised Code Section 1322.07(A)). The failure to disclose also constitutes the making of a false or misleading statement required by Ohio Revised Code Section 1322.07(B). The Division has a reasonable and legitimate expectation that full, complete and truthful answers will be given to its Application questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market. Full, complete and truthful answers should be expected. Question 5 on the Application is unambiguous in its applicability to this Respondent. The Respondent was convicted of two offenses of having passed bad checks. The failure to answer Question 5 fully and truthfully is unacceptable.

10. The Hearing Officer cannot conclude that the Respondent'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 Ohio Mortgage Broker Act. It is not up to the Respondent to interpret the provisions of the Ohio Mortgage Broker Act. The Respondent should not be permitted to escape answering a question fully and truthfully in the spirit of full disclosure because his opinion is that Question 5 did not ask for felony convictions. The Hearing Officer is concerned that the Respondent may similarly attempt to interpret questions in the loan application market which could jeopardize the very fundamentals of that system, namely the full and complete transparency of all relevant financial data. For these reasons, the Hearing Officer cannot find that 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 complaint with the purposes of Section 1322.01 to 1322.12 of the Revised Code.

**RECOMMENDATION**

Based upon the above-findings of fact, conclusions of law and discussion herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson  
Hearing Officer  
March 24, 2004

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