

STATE OF OHIO  
DEPARTMENT OF COMMERCE SEP -1 AM 11:00

IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

DELTON R. RUCKER

CASE NO. 04-0148-LOD

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REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued AUGUST 30, 2004

I. FINDINGS OF FACT

A. BACKGROUND

The above matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 3:00 PM on April 6, 2004, at 77 South High Street, 19<sup>th</sup> Floor, room 1908, Columbus, Ohio.

The hearing was held at the request of Respondent Delton R. Rucker, of Wauseon, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent pleaded guilty in 1996, in Lucas County, Ohio, to Petty Theft and to Falsification of Insurance Claim, both misdemeanors, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Anthony D. Siciliano. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 9 were admitted into the record. Respondent introduced Exhibits A through E, evidence of his sworn testimony and the testimony of two witnesses, as noted in the transcript (hereinafter "Tr.").

## B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent requested a hearing, on a Division Hearing Request Form, which was received by the Division February 18, 2004. On February 25, 2004, the Division scheduled the hearing for March 3, 2004, but continued the hearing, on its own motion, to March 16, 2004, at 10:30 AM. The hearing was, again, continued to April 6, 2004, at 3:00 PM, at which time the hearing went forward.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 6.)
2. Respondent is an individual who wishes to be licensed to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1; Tr. p. 27.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. On or about May 6, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1.)
5. On or about April 26, 2002, Respondent signed the Application and the signature was notarized. (Exhibit 1.)
6. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense." (Exhibit 1.)
7. As part of the application process, the Division conducted a background check and determined that Respondent had been arrested on November 22, 1995, on charges of falsifying an insurance claim and falsifying a police report. (Exhibit 2.)
8. Respondent pleaded guilty on March 26, 1996, in Lucas County, Ohio, to Petty Theft and to Falsification of Insurance Claim, both misdemeanors of the first degree. (Exhibit 5.)

9. No evidence of additional convictions was brought forth.
10. Respondent's explanation of the conviction for petty theft and filing a false insurance claim was as follows: Shortly after Respondent and his first wife began divorce proceedings, Respondent arranged to have his car taken by someone when the debts were becoming too great. Respondent then filed a claim with the insurance company and a police report. Three months later the car was recovered and the other two individuals in the scheme identified Respondent. Respondent received suspended jail time and ordered to pay restitution. (Exhibit 5; Tr. pp. 22-24, 42-46.)
11. Respondent served a significant amount of community service and made full restitution of a significant amount of money prior to being released from probation. (Exhibits 5, 9; Tr. pp. 34-37.)
12. Respondent generally was employed during the six years between the conviction and Application, and also thereafter. (Tr. pp. 39-42.)
13. Respondent was a salesman at Matthews Ford before, during and after his conviction, for a total of seven years. (Tr. pp. 37-39.)
14. In 2000, Respondent worked as general manager at Yark Ford for about one year, during which time he was in charge of, inter alia, financing and insurance for the cars and loans. (Tr. p. 40.)
15. Respondent strove to better himself after his conviction in an effort to demonstrate he had reformed. (Exhibits D, E; Tr. pp. 25-26.)
16. Respondent maintains a reputation of honesty and truthfulness with, and at, his current employer, Faith Mortgage. (Exhibit B; Tr. pp. 51-54, 62, 67.)
17. Respondent demonstrated remorse and embarrassment over the events subsequent to his conviction. Respondent demonstrated remorse over his criminal acts. (Tr. pp. 22-24, 27, 46, 47, 53.)

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 1996 Respondent pleaded guilty to charges of Petty Theft and Falsification of Insurance Claim.
3. O.R.C. section 1322.041 states, inter alia, that, if Respondent has been convicted of any criminal offense involving theft or any criminal offense involving money, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
4. The 1996 convictions cited are far enough removed in time to allow sufficient demonstration of Respondent's reputation and character. Respondent's explanation and demeanor during the hearing, in combination with the testimony of witnesses and lack of further convictions, is sufficient to show there is no basis in fact for believing that he will commit such offenses again.
5. The testimony of Respondent's two credible witnesses, Respondent's truthful answer to Question 5, and Respondent's genuine expressions of remorse and contrition – for the offending act as well as the punishment – provided sufficient evidence to prove by a preponderance of the evidence that, since the conviction, he enjoys a good reputation in his business, that since the conviction he has been honest and truthful, and that there is no basis in fact for believing that he will commit such offenses again.
6. The Division also charged that 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.
7. Filing an accurate Application does favorably go to the question of Respondent's character, general fitness and whether the business will be operated honestly and fairly in compliance with law.
8. Respondent did provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

### C. DISCUSSION


Respondent's criminal convictions do fall within the offenses listed in section 1322.041(A)(4), O.R.C., whereby the burden shifts to the Respondent to present evidence, as indicated in those statutes. Based on the record available, it must be concluded that the Respondent proved by a preponderance of the evidence that, since the conviction, Respondent's activities and employment record since the conviction show that the Respondent is honest, truthful and of good reputation, there is no basis in fact for believing that he will commit such an offense again and that Respondent's character and general fitness do 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.

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. While Respondent's criminal convictions were of a nature that even Respondent recognizes that careful consideration must be given to his Application, Respondent's subsequent behavior, including making full restitution of a significant sum and no other criminal record, demonstrate that the convictions should not, after seven years, be sufficient to bar Respondent from obtaining a license.

### III. RECOMMENDATION

The Division has proven the prior criminal convictions. Respondent did prove by a preponderance of the evidence that his activities since the convictions show that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO DELTON R. RUCKER.**

Respectfully submitted,

  
D. Michael Quinn  
Hearing Officer  
August 30, 2004  
Docket No. 04-DFI-042