

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

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INSTITUTIONS
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In re: Craig A. Bronkhorst

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Case No. 04-0169-LOD

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 Craig A. Bronkhorst not be granted. The Division conducted an investigation and found:

- a. In or around 1996, in the Hamilton County Municipal Court, Hamilton County, Ohio, Mr. Bronkhorst pleaded guilty to and was convicted of theft, a first-degree misdemeanor;
- b. On or about October 21, 2002, Mr. Bronkhorst attested in a sworn statement that information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- c. On or around November 1, 2002, Mr. Bronkhorst provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Bronkhorst 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 commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Bronkhorst'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 set forth in Revised Code Section 1322.041(A)(5);
- c. Mr. Bronkhorst violated Revised Code Section 1322.07(A), which prohibits a loan officer applicant from "mak[ing] any substantial misrepresentation in any registration or license application";
- d. Mr. Bronkhorst violated Revised Code Section 1322.07(B), which prohibits a loan officer applicant from "[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law"; and

- e. Mr. Bronkhorst violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from "[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings.

3. Mr. Bronkhorst's address for service is 2050 August Boulevard, Cincinnati, Ohio, 45014. He is hereinafter referred to as the "Respondent." The Respondent is employed by MBB Mortgage, LLC, 2708 Observatory Avenue, Cincinnati, Ohio, 45208.

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer Application & Notice of Opportunity for a Hearing, together with a covering letter (Exhibit 6).

5. The Respondent signed a certified mail receipt for that document. (Exhibit 6).

6. On February 19, 2004, the Division received a Hearing Request Form from the Respondent (Exhibit 7).

7. On February 20, 2004, the Division wrote to the Respondent acknowledging receipt of the Request for a Hearing and scheduling the hearing for Wednesday, March 31, 2004, at 3:00 p.m. in Room 1936 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 8).

8. The Hearing was conducted beginning at 3:45 p.m. on March 31, 2004, in Room 1936 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. Attending were Paula Luna Paoletti, Deputy Attorney General of Ohio in the Executive Agencies Section, Jeff Shafer, Esq., counsel to the Respondent and the Respondent. Also attending were Brandon Wheatley and Christopher S. Sterwerf, witnesses.

9. 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 October 21, 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 1).

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?

Yes ☐ No ☐

If yes, furnish details.

3. In response to Question 5, the Respondent answered "No". (Exhibit 1)

4. On January 23, 2003, the Division wrote to the Respondent indicating that the background check indicated that on July 24, 1996, the Respondent was charged by the Colerain Township with one count of theft over \$300. The Division asked for a detailed explanation of the facts and circumstances which gave rise to the charge as well as a certified copy of the Court's journal entry. (Exhibit 2).

5. On May 23, 2003, the Respondent wrote to the Division, in pertinent part, as follows:

I worked for the Sears & Roebuck Corporation from 8/93 to 7/96, when I was terminated for obtaining without consent of the person authorized to give consent, a pair of Jensen tweeters valued at \$29.99. I plead guilty, was charged with misdemeanor theft and fined \$100.00 for the action. Those are the legal ramifications of this incident, but what really occurred is a completely different story.

My position at Sears was as a salesperson in the Computer & Electronic Department. I worked there around 30 hours a week, or what would be considered full-time. My responsibilities were not only to customer service, but to display set-ups and stock ordering as well. We had very limited space for our stock and regularly ran a clearance bin to allow room for the updated models. The clearance models would at times run up to 80 percent off, plus as an associate I would receive my additional 10 percent off, making some of these items basically free of charge.

Often, my boss would use the items as incentive based, such as, if I stuck around to help with sale price set-ups or if I came in to help out on my day off, he would give different items away in exchange. The day that I was charged with this theft was no different from many previous ones from before. I worked for another employee who called in sick. My boss not only clocked me in for a couple hours extra, but also gave me the Jensen Tweeters. At the end of the night I turned in my financials and was going to leave when our loss prevention team stopped us. They were just doing routine checks to make sure that internal theft was being prevented. We I was searched they asked way I didn't have a receipt and I told them. They said ok, but to make sure that I had him produce one tomorrow. When I went in the next day my boss was not there, but he was called at home by loss prevention and he denied ever giving any of these things away, and since I didn't have a receipt, they went by his word and I was charged with theft.

I could not afford to fight it and was pretty much taken full advantage of. I have lived enough embarrassment for something that I didn't do, and find it hard to believe that I have to explain it again, and in this fashion. (Exhibit 3)

8. The Respondent also submitted a copy of the Hamilton County Municipal Court Journal Entry indicating that he was fined the sum of \$100.00 for this offense. (Exhibit 4). The Respondent also submitted a copy of the original complaint filed in the Criminal Court of Hamilton County Municipal Court. (Exhibit 5).

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 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 offenses, 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 Section 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;

- (C) Engage in conduct that constitutes improper, fraudulent or dishonest dealings[.]

....

4. Because the Respondent has been convicted of a theft offense, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his conviction show that he is honest, truthful and of good reputation and that there is no basis for believing he will commit such an offense again. The Division has the burden to show that the Respondent's character and 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 well as the burden of showing the violations of Section 1322.07(A), (B) and (C).

DISCUSSION

1. The Respondent does not deny that he was convicted in 1996 in the Hamilton County Municipal Court of theft, a first degree misdemeanor, and that he did not disclose that information on the Application. (Tr. 19-20).

2. Respondent acknowledges that he stole an item with a value of \$29 nearly eight years ago. He began that job while still in high school. (Tr. 23). When extra items of merchandise were not sold, they were put out for clearance or sent back to their respective areas. (Tr. 24). From time to time, the Respondent's supervisor would use those items as incentives for the workers to do extra jobs. (Tr. 24).

3. The Respondent explained his answer to Question 5 as follows:

Mr. Cookson, I answered that question "no" because I am friends with the owner's son, Kelton, is one of the sons I grew up with. When I began the job there, I thought possibly disclosing that would, ultimately, be detrimental towards getting the job and, also, I didn't weight as heavily on thinking that this was going to catch up to me somehow. I didn't really feel like I did it, for one, but, two, I'd have to disclose something like that down the road, so I didn't put it because of the nature of the relationship that I had prior with the son because the owner is his brother and the mother and father also work there. And for me, it was – kind of hit the character, again, I didn't think I would have to relive. That's why I answered it the way I did. (Tr. 26).

4. The Respondent attended Assumption Grade School and ultimately graduated from LaSalle High School. (Tr. 27). He grew up in a single parent household. (Tr. 27). Immediately after high school, the Respondent joined the United States Marine Corps. (Tr. 28). He served slightly more than a year on active duty and then the remaining five years as a

reservist. (Tr. 29). While in the Reserves, he also worked at the Outback Steak House for a total of five years (Tr. 30). Respondent also worked his way through Miami University. (Tr. 31). He graduated in 2002 with a Bachelor of Fine Arts. (Tr. 32).

5. Upon graduation, he began work at Cardinal Bank as a loan processor. (Tr. 33).

6. Other than the single conviction in 1996, the Respondent has had no further involvement with the criminal or civil justice system. (Tr. 35).

7. The Respondent knew that he was being dishonest when he answered Question 5. (Tr. 37). The Respondent acknowledges that it was a mistake on his part. (Tr. 37).

8. At the time of his involvement in the criminal matter, the Respondent was 19 years old. At the time of the hearing in this matter, he was 27 years old. (Tr. 40).

9. Testifying in support of the Respondent was Brandon Wheatley. Mr. Wheatley, along with his father and mother, are the owners of Cardinal Bank Mortgage Broker in Cincinnati. Mr. Wheatley is the CEO. (Tr. 42). Mr. Wheatley indicated that he instructed the Respondent in the processes involved in making loans and then turned him loose to become a loan officer. (Tr. 43). He supervised the Respondent very closely. (Tr. 44). Mr. Wheatley has not had any problems with the Respondent in his business acumen, savvy or ethical matters. (Tr. 45). Likewise, all of the feedback from brokers and others in the office has been positive about the Respondent. (Tr. 46). There has never been any negative feedback about the Respondent. (Tr. 47). Mr. Wheatley described the Respondent as meticulous and thorough. (Tr. 48).

10. Christopher Sterwerf also testified in support of the Respondent. He has been friends with the Respondent through high school and college, both on a personal and professional level. (Tr. 55). Mr. Sterwerf indicated that the Respondent and his brother had a difficult financial time going through private high school. (Tr. 56). Mr. Sterwerf trusted the Respondent and described him as a good friend. (Tr. 58).

11. The Respondent submitted a letter from M. A. Clements, Commanding Officer HQBN Commco(-) 4th Marine Division in Cincinnati indicating that the Respondent was a member of the Marine Reserves and was honorably discharged from the Corps on September 24, 2002. (Respondent's Exhibit A). Respondent also submitted a copy of a Meritorious Mast issued by the Marine Corps for outstanding service including his leadership ability and dedication to duty. (Respondent's Exhibit B).

12. The Hearing Officer is faced with undisputed sets of facts. The Respondent was convicted of a misdemeanor offense in 1996. The amount at issue was under \$30. The theft arose from his place of employment. The Respondent was convicted of a first degree misdemeanor. The Respondent failed to disclose that conviction on the Application. The evidence does not indicate that the conviction was expunged or reversed on appeal.

13. Had the conviction been disclosed, the decision before this Hearing Officer would have been even more difficult. However here, the Respondent acknowledges that he failed to disclose the conviction and that he knew the failure to disclose the conviction was wrong. The

Division, as well as the community has an expectation that financial matters will be handled with open disclosure. The process of applying for a license should be based on the same level of disclosure that the loan applications are based upon. In this case, the Hearing Officer determines that the Respondent has not established that his activities and employment record since the conviction show that he is honest, truthful and of good reputation and that there is no basis to believe that he will commit such an offense again. Here, while there is little likelihood that a theft offense will be committed again, the Respondent's honesty and truthfulness are called into question because he knowingly failed to disclose the conviction. Accordingly, the Hearing Officer cannot conclude that the Respondent has met his burden with respect to the requirements to show that he is honest and truthful. Likewise, the unchallenged violations of Section 1322.07 (A), (B) and (C), as well as the claim violation of Section 1322.04(1)(A)(5) are influenced by the failure to disclose the criminal conviction. That failure to disclose, because it is recent evidence of dishonesty, indicates to the Hearing Officer that the Respondent does 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.

14. Accordingly, the Hearing Officer determines that the Respondent has not met his burden here to show that his activities and employment record since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that the Respondent will commit such an offense again. Likewise, the Hearing Officer finds that the Division has established that 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.

RECOMMENDATION

Based on the findings of fact, conclusions of law, and discussion set forth 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
July 23, 2004