

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

RECEIVED
DIVISION OF FINANCIAL INSTITUTIONS
MAY 13 PM 1:15

In re: Donald R. Shively

:

Case No. 04-0258-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 Donald R. Shively not be granted. The Division conducted an investigation and found:

- a. In or around 1977, in the Court of Common Pleas of Franklin County, Ohio, Mr. Shively was convicted of burglary, a felony of the second degree, and possession of criminal tools, a felony of the fourth degree;
- b. In or around 1985, in the Court of Common Pleas of Franklin County, Ohio, Mr. Shively was convicted of forgery with specifications, felony of the fourth degree;
- c. On or around April 28, 2002, Mr. Shively attested in a sworn statement that the information he provided on a licensing application was truthful, knowing that the information he provided was false; and
- d. On or around April 30, 2002, Mr. Shively provided untruthful information to the Division.

2. As a result, the Division determined:

- a. Mr. Shively 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, forgery 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. Shively'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. Shively 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";

laundering, or drug trafficking, or any criminal offense involving money or securities? If the answer is Yes, furnish details.

Yes ☐ No ☐

3. In response to Question 5, the Respondent answered "No".

4. Following the submission of the Application, the Division received a background check on the Respondent which disclosed: an April, 1976 arrest for breaking and entering and possession of criminal tools; a August, 1976 arrest for aggravated robbery; a January, 1985 arrest for forgery; a January, 1987 arrest for passing bad checks; a January, 1989 arrest for passing bad checks; and a February, 1993 arrest for passing bad checks.

5. On August 29, 2002, the Division wrote to the Respondent indicating that the Division is unable to make a decision as to whether to issue to the Respondent a loan officer license because of insufficient evidence. (Exhibit 3). The Division identified the various arrests and requested that the Respondent provide the detailed explanation of the facts and circumstances that gave rise to each charge and a copy of all relevant court journal entries.

6. In Response thereto the Respondent wrote to the Division as follows:

1. April 19th Breaking & Entering> I was 19 years old and opened up the doors to a bowling ally of my friends dads. He was with me and we got caught inside and his father charged us. Nothing was taken!

2. Aug. 19th Aggravated Robbery> Myself and my brother were watching our neighbors dog when she was out of town for the weekend. She had given us the keys to the house and we had a party in her house with about 20 other kids. We found out their were several things missing after she got home and we were charged.

3. Oct. 2nd 84, Jan 7th 85> Forgery. I worked at an insurance co. with a friend (Patrick Rankin). He owed my money and said I could pick up his check and keep it. After I did so he went to the owner and said he never received his check. It took about 4 weeks for them to trace the check. The reason why Pat even went to him was the fact that I took a manager position with another co. The owner called me and told me of the circumstances and I told him yes I did cash the check but it was with Pats permission. He informed me that he had re-issued another check to pat and that he had pressed charges against me. Pat had moved to Florida and I was stuck. (Patrick Rankin will give a sworn statement on this as will Joe Carnaveli who was the one who pressed the charges. Patrick Rankin resides at 3615 Ringling Ln. Gahanna OH 43230.

4. 1987-89-93 Passing bad checks> These were made to grocery stores (Kroger, Big Bear) and any money owed those stores was paid back in full plus any check charges!

President, Treasurer). My 13 year old son will start 8th grade this year, he played basketball, track and football and carries at 3.30 GPA in middle school. My daughter is 8 years old. She is cheerleading for the third year and plays basketball and models for Z Model Mgmt. Since 1992 I have worked for 2 mortgage companies. 1992-1996 Martin & Associates; 1997 – Present, Sunrise Mortgage, Formally Greer Mtg. I am supplying a list of personal friends and parents of children I have coached over the past 20 years. Please contact any or all if this will help in your decision. In closing I would like to say that I am not denying the fact that I have made wrong choices in my life, but I have certainly learned from them. I am 47 years old and very well respected in the sports community. I have had the pleasure of coaching and teaching thousands of children and the most rewarding thing is to watch them grow into responsible men, and years later hear them say thank you Coach Shively.

(Exhibit 10).

12. On November 24, 2003, the Division wrote to the Respondent demanding that the Respondent produce a certified copy of the Journal Entry indicating the conviction for forgery in 1985. (Exhibit 11).

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

Ohio Mortgage Broker Act. The record also shows that the Division has established that the Respondent violated Sections 1322.07(A), (B) and (C).

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
May 10, 2004