

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. 04-0261-LOD
)	
KEVIN T. RAINEY)	<u>DIVISION ORDER</u>
21151 Ball Avenue)	Denial of Loan Officer License Application
Euclid, Ohio 44123)	&
)	Notice of Appellate Rights

Respondent, Kevin T. Rainey, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on December 29, 2003. On February 12, 2004, the Division notified Respondent that it intended to deny his Application because: (1) he had been convicted of theft, drug abuse, attempted drug abuse, drug possession, assaulting a police officer, possession of criminal tools, trespassing, disorderly conduct; (2) he 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 not commit another offense involving theft or any criminal offense involving money or securities; and (3) because his character and general fitness did not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing which was held on May 20, 2004. A Report and Recommendation (“Report”) was filed with the Division on March 25, 2005, recommending that the Division approve Respondent’s Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not

specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached).

The Division disapproves Paragraph 11 on page 4 and the Discussion on page 7 of the Report and Recommendation.

The hearing officer concluded in Paragraph 11 that Respondent had provided 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." This finding confuses the burdens of proof at issue in this case between the enumerated offense, theft, under R.C. 1322.041(A)(3), and the separate but more general question involving the Respondent's fitness to become a loan officer under R.C. 1322.041(A)(5).

The hearing officer's basis for this conclusion, mainly, seems to be the Respondent's treatment for drug or alcohol use, and willingness to disclose the offenses truthfully on his application. However, in regards to Respondent's conviction for theft, Respondent's burden was to show, by a preponderance of the evidence, that his activities and employment record since the conviction show that he 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." R.C. 1322.041(A)(3). Respondent has not shown this by a preponderance of the evidence, because during the five years immediately following his theft conviction, he was convicted of possession of a controlled substance, driving under the influence (four times, with the last being a felony), drug abuse, possession of marijuana (twice), possession of drug paraphernalia (twice), driving under suspension, and operating with plates that belong to another vehicle.

The Division finds that the Respondent's efforts to redeem himself during the five years since his last conviction prior to submitting his application, including his honest disclosure of his

criminal record on the application, do not yet outweigh the number and severity of the offenses and the length of Respondent's criminal history, spanning five years.

Upon consideration of the hearing officer's Report, the Division overrules the recommendation of the hearing officer. Accordingly, Respondent's Application is hereby denied.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 28th day of September 2006.

ROBERT M. GRIESER

Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce