

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

KEITH E. KUFRIN

DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. 05-0154-LOD

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REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN

Issued February 13, 2006

I. FINDINGS OF FACT

A. BACKGROUND

The above-captioned 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 9:00 AM on November 3, 2005, at 77 South High Street, 19<sup>th</sup> Floor, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Keith E. Kufrin, of Lewis Center, 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 failed to disclose a past criminal offense, and is thereby ineligible to obtain a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General James M. Evans. Respondent appeared Pro Se.

At the hearing, State's Exhibits 1 through 11 were admitted into the record. Respondent did not offer documentary evidence, but relied on the Division's exhibits. Two witnesses, including Respondent, appeared on Respondent's behalf, as discussed in the transcript (hereinafter "Tr.").

## B. JURISDICTION

Respondent filed a Loan Officer Application with the Division on June 15, 2005. The Division issued the NOH against Respondent on August 25, 2005. Respondent requested a hearing, which was received by the Division on September 8, 2005. On September 13, 2005, the Division scheduled the hearing for September 19, but continued the hearing to November 3, 2005, on its own motion, 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. (Exhibits 1, 6.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1; Tr. p. 36.)
3. On or about January 8, 2004, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit A.)
4. Respondent signed the Application before a notary on June 9, 2005. The Attestation reads, in part "... The answers are complete and true of my own knowledge." (Exhibit 1; Tr. p. 36.)
5. On, or about, May 28, 1997, 8 years prior to the submission of the Application, Respondent was convicted of Criminal Damaging, a misdemeanor. (Exhibit 4; Tr. pp. 33.)
6. Respondent's explanation of the 1997 conviction is: He was driving during a storm and his car broke down. He went to a farmhouse and waited but no one was home and did not appear. Respondent stated he broke a window to gain entry to use the telephone, but left a note indicating what had happened and that he would pay for the damages. After his car was towed and he was at the garage, the local sheriff arrested him based on his note, although the owner of the property did not want to press charges. Respondent stated

he paid for the damages and pleaded guilty. (Exhibits 4, 5; Tr. pp. 31-34.)

7. Respondent's conviction was expunged by the Municipal Court of Crawford County on August 3, 2005. (Exhibit 5; Tr. pp. 34-35.)
8. On the Application, Respondent answered "No" to Question 5 which asked: Have you ... ever been convicted of **any criminal offense?** ..." (Exhibit 1; Tr. pp. 31, 34.)
9. Respondent's explanation why he responded "No" to Question 5 was that he believed that the conviction had been expunged 8 years earlier and that it was no longer on his record once he paid the fine and restitution, which he did immediately. This belief was reinforced when, in July 1997, a background check for new employment did not reveal any criminal convictions. Respondent was not represented by legal counsel at the criminal proceeding. (Tr. pp. 28-29, 31-34, 44.)
10. Respondent was never incarcerated. Respondent paid a small fine and court costs and was released. (Exhibits 4, 5; Tr. p. 33.)
11. No evidence has been presented that Respondent has had any other criminal convictions and the Crawford County Court, in granting the expungement, made the same determination. (Exhibit 5.)
12. No evidence was presented that Respondent received the instruction page with the Application. For that reason, and because there was no foundation laid, Division Exhibit 9 was not accepted into the record.
13. Respondent's witness believed that Respondent was convinced that the conviction had been expunged and he was surprised when it was turned up from the Division's investigation. (Tr. pp. 70-71.)
14. Respondent's testimony was credible. His demeanor, body language and immediate response to questions asked demonstrated that he was not trying to engage in subterfuge but was forthright.
15. The eye contact and body language of Respondent's witness conveyed sincerity. His testimony was credible. His relationship with Respondent creates a bias in his opinions, but not in his factual observations.

16. Respondent's witness was under the impression that the criminal conviction had been expunged. (Tr. p. 61.)
17. Respondent's witness believes Respondent to be honest and truthful. He has seen Respondent advise customers to not refinance but to pay down their debt to improve their credit score, even though Respondent gave up a commission in the process. (Tr. pp. 63-67.)
18. Respondent's witness believes Respondent to have an excellent rapport with customers and a good reputation, that he is helpful with customers and co-workers. (Tr. pp. 65-67.)
19. Respondent's witness believes Respondent to have the confidence of his customers based upon observations of Respondent's interaction with customers and their responses. (Tr. pp. 66, 68-69.)

## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

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

### B. LICENSE APPLICATION

2. Respondent has been charged with a violation of sections 1322.041(A)(5) and 1322.07, O.R.C.
3. The Division has not charged Respondent with having a type of criminal conviction that would automatically require the Respondent to prove, by a preponderance of the evidence, that the Respondent's "activities and employment record 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." Sections 1322.041(A)(3) and (4), O.R.C.
4. The Division is incorrect that the fact that Respondent has been charged with a violation of 1322.07 shifts the burden of proof to Respondent. The Division still has the burden of proof, but the burden of going forward shifted to Respondent upon the conclusion of the Division's case-in-chief.

5. The Division 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.
6. The Division brought into question Respondent's character and general fitness to 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 by bringing forth evidence of Respondent's incorrect response to Question 5.
7. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about June 9, 2005, Respondent signed an application under oath and, afterwards, filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained inaccurate information, to wit: the "No" response to Question 5.
8. Filing an inaccurate Application is generally negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law.
9. Respondent answered to the best of his knowledge at the time, although it was later proven that his knowledge was inaccurate.
10. Because Respondent showed that his incorrect response to Question 5 was neither borne of intent or negligence, Respondent was able to negate the allegation that his activities show that he is not honest and truthful.
11. Respondent did provide sufficient evidence to overcome the Division's evidence, relating to his response to Question 5, questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
12. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes

improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5, on the Application "No."

13. The Division failed to demonstrate that Respondent's response to Question 5 was a substantial misrepresentation or a false or misleading omission or a fraudulent statement of a material fact required on the license application. The Division, while proving the answer to Question 5 was incorrect, presented no evidence that Respondent committed a deliberately deceptive act. Respondent submitted more persuasive evidence that the act was a mistake and, therefore, not deliberate. The Division has the burden of proof. Since definitions found in statute, case law and Black's Dictionary indicate that "false," "misleading" and "misrepresentation" require an intentional act, the Division has not met its burden..

### C. DISCUSSION

The 1997 conviction is not sufficient to prohibit Respondent from receiving a loan officer's license. Indeed, the only reason his conviction exists is that he was honest enough to leave a note at the crime scene describing what he did.

The Division has sufficiently raised the issue of his character and general fitness and, thus, the burden moves to Respondent to overcome the Division's evidence. Respondent has met that burden and demonstrated, thereby that Respondent's general fitness does command the confidence of the public and there is the belief that the business will be operated honestly and fairly.

### III. RECOMMENDATION

Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO KEITH E. KUFRIN.**

Respectfully submitted,

D. Michael Quinn  
Hearing Officer  
February 13, 2006  
Docket No. 05-DFI-156