

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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CASE NO. 05-0119-LOD

IN THE MATTER OF: JAMES N. YOUNG

REPORT AND RECOMMENDATION OF THE HEARING OFFICER  
William R. Damschroder

I. Findings of Fact

A. Background

This matter came before this Hearing Officer, who is an attorney licensed to practice law in Ohio and duly appointed by the Division of Financial Institutions ("the Division"), Department of Commerce to serve as Hearing Officer. The hearing in this matter was held on September 8, 2005, in accordance with the procedures of Ohio Revised Code ("ORC") Chapter 119.

The hearing was held to consider whether an **Order to Deny the Application for a Loan Officer License** should be issued by the Division to James N. Young, an individual, because Mr. Young was convicted of a theft offense and has not proved since his conviction 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 similar criminal offense, that he made substantial misrepresentations on his license application, made false or misleading statements of material fact, and engaged in conduct that constitutes improper, fraudulent, or dishonest dealing, and that Mr. Young's character and general fitness do not command the confidence of the public and warrant the belief that he would operate his business honestly and fairly, in compliance with the purposes of the Ohio Mortgage Broker Act. The Division appeared and was represented by Assistant Attorney General Mindy Worly. Appearing as a witness for the Division was Mark L. Rhea, Consumer Finance Staff Attorney. James N. Young ("Respondent") did not appear in person or through counsel, and presented no evidence to be considered at the hearing.

B. Jurisdiction and Procedural Matters

1. The Division issued a Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing to Respondent on June 30, 2005, and served it upon Respondent by certified mail. The letter was signed for on Respondent's behalf on July 2, 2005. The certified mail receipt was received by the Division on July 5, 2005. (State's Exhibits #8, #9)
2. Respondent's signed and submitted a hearing request form, asking that an administrative hearing be held concerning the Division's intention to deny

Respondent a license. This request was received by the Division on July 11, 2005. (State's Exhibit #10)

2. By letter of July 13, 2005, the Division notified Respondent that the requested hearing was to be held on July 21, 2005, but the Division, in the same letter, then continued the hearing indefinitely. By subsequent letter of August 2, 2005, the Division notified Respondent that the hearing was to be held on September 8, 2005. (State's Exhibits #11, #12)
3. Respondent did not attend the hearing. The hearing starting time was delayed by thirty minutes to allow Respondent an opportunity to participate. Neither Division personnel nor Division counsel received notice from Respondent that she would not be attending or participating in her hearing. (Tr. pp. 3, 24, 25)

**C. Respondent's Loan Officer Application and Criminal Convictions**

1. On or about November 12, 2004, the Division received the loan officer license application of Respondent. (State's Exhibit #1)
2. In completing the application, Respondent indicated by answering "No" on question #5, that he had not ever been convicted of any criminal offense. (State's Exhibit #1)
3. As part of the application process, the Division conducts a criminal background check of each applicant. R.C. 1322.031 (B)
4. In response to the Division's request, Respondent submitted obtained documentation from the Portage County Municipal Court providing the Division with the details concerning a January 16, 1998 conviction for theft, and a written explanation of the circumstances surrounding his conviction. (State's Exhibit #4)
5. Respondent's written explanation indicated that his theft conviction arose from picking up a book bag belonging to someone else and leaving a book store located near Kent State University. (State's Exhibit #4)

**II. Conclusions of Law**

**A. Jurisdictional and Procedural Matters**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her right to request a hearing. The Division's notice to respondent was sent by

certified mail, signed for by Respondent, and Respondent returned a request for hearing form to the Division.

2. The Division complied with notification of hearing requirements by sending Respondent a stating the date, time and location of the hearing in this matter
3. Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in his absence. *Reed v. State Med. Bd.* (1988) 40 Ohio App. 3d 124, 125-126.
4. The Division has procedurally complied with R.C. Chapter 119, and jurisdiction over this matter is established.

**B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to R.C. Chapter 1322.
2. The Franklin County Court of Common Pleas in Chiero v. Bureau of Motor Vehicles, 55 Ohio Misc. 22, 9 Ohio Op. 3d 429, 381 N.E. 2d 219 (1977), in referring to the decision in Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio Law Abs. 146, 1222 N.E. 2d 503 (C.P. Franklin Co. 1954), stated that "(i)t is a fundamental concept of administrative law and procedure that the party asserting the affirmative of an issue bears the burden of proof." Thus, the Division bears the burden of proof in this case.
3. The Supreme Court of Ohio, in St. Augustine Church v. Attorney General of Ohio, Charitable Foundations Section, 67 Ohio St. 2d 133, 21 Ohio Op. 3d 84, 423 N.E. 2d 180 (1981) stated that an applicant for a license has the burden to show it is entitled to a license. Thus, the Respondent must show she is entitled to a license.
4. The Supreme Court of the United States, in Dent v. West Virginia, 129 U.S. 114 (1889), said of state-imposed conditions on practicing a profession:

(t)he power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud...If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and

application, that they can operate to deprive one of his right to pursue a lawful vocation.

5. R. C. Section 1322.041 (A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

- (2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.
- (3) The applicant has not been convicted of or pleaded 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 or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of evidence, that the applicant'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.

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- (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 sections 1322.01 to 1322.12 of the Revised Code.

6. The Division's argument in seeking to deny Respondent a loan officer's license rests on R.C. Sections 1322.07, which states in pertinent 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 licensure through false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation 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;

7. The Division has proved that Respondent answered question #5 incorrectly by checking the box marked "No", when the criminal background check proved that Respondent had been convicted of a criminal offenses.
8. Since a conviction has been proved, Respondent bears the burden of showing that, since his conviction, he is honest, truthful, and of good reputation, and that his actions since his conviction demonstrate that he is not likely to commit another criminal offense.
9. With respect to the answer to Question #5, concerning criminal convictions, it is incumbent upon Respondent to offer some explanation for the obviously incorrect answer provided in his application.
10. Respondent's failed to participate in his hearing, failed to offer any information or evidence to meet his burden, and failed to offer any explanation for his answer to questions on his application.
11. The Division has met its burden of proof of showing that Respondent is not entitled to a license.
12. Respondent has failed to present any evidence to meet his burden of proof that he is entitled to a license.

## **II. Recommendation**

In careful consideration of the testimony and exhibits at the hearing, it is hereby recommended that James N. Young be found to not have met the prerequisites set forth in Revised Code Section 1322.041, and that the Superintendent of Financial Institutions deny Mr. Young's application for a Loan Officers License.

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William R. Damschroder, Esq.  
Hearing Officer

3/7/06  
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Date