

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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DIVISION OF FINANCIAL  
INSTITUTIONS

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

DENNIS M. FISHER

CASE NO. 04-0066-LOD

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**REPORT AND RECOMMENDATION**  
**ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

**Issued October 27, 2004**

**I. FINDINGS OF FACT**

**A. BACKGROUND**

The above 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 3:00 PM on May 27, 2004, at 77 South High Street, room 1914, Columbus, Ohio.

The hearing was held at the request of Respondent Dennis M. Fisher, of Mt. Vernon, 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 committed crimes involving Unauthorized Use of Property, Resisting Arrest and Disorderly Conduct and, also, that he submitted false information on the license application and is thereby ineligible to hold a license as a mortgage loan officer. The Division appeared and was represented by the Ohio Attorney

General's Office, Assistant Attorney General Anthony D. Siciliano. Respondent did not appear but had requested a hearing.

At the hearing, State's Exhibits 1 through 9 were admitted into the record (Transcript (hereinafter "Tr.") p. 16).

## B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent timely requested a hearing on February 23, 2004, that the Division scheduled for March 5, 2004, all within the requirements of Chapter 119, O.R.C. The Division continued the original date of the hearing to May 27, 2004, on which date the hearing went forward. (Exhibits 7-9.)

## 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. (Exhibit 7.)
2. Respondent is an individual who has been, and wishes to remain, a mortgage loan officer in Ohio. (Exhibits 1, 6.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that mortgage loan officers become licensed. (Senate Bill 76, 2001.)
4. On or about May 2, 2002, the Division received from Respondent a Loan Officer Application (hereinafter the "Application") which Respondent signed, under oath, on April 30, 2002. (Exhibit 1.)
5. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to ... passing bad checks ..." (Exhibit 1.)
6. On February 19, 1991, Respondent was found guilty of Unauthorized Use of Property, a misdemeanor theft offense, on Respondent's No Contest plea. (Exhibit 4.)
7. Respondent did not disclose the 1991 conviction on the Application. Respondent did not offer any explanation or evidence as to why he responded to Question 5 inaccurately.

8. The letter Respondent sent to the Division indicates that the No Contest plea was because Respondent believed he not guilty but reached a plea bargain. However, without Respondent's testimony no more may be determined. (Exhibit 4.)
9. Respondent's written explanation of the facts leading to the arrest on Unauthorized Use of Property was as follows: At age 19, a neighbor offered to sell him a fuzzbuster for a good price. While with his neighbor at a mall, his neighbor stole the item from a parked car without Respondent knowing such was his intent. Witnessing police made the arrest. (Exhibits 4, 6.)
10. On, or about, November 24, 1993, Respondent apparently entered into a plea agreement with the Franklin County Prosecutor and entered a guilty plea on two counts of unknown offenses while the Prosecutor dismissed one additional charge. The charges at the time of arrest – July 10, 1993 – were apparently assault, resisting arrest and disorderly conduct. However, neither the background check nor the Judgment Entry indicates the offenses for which Respondent was convicted and no further evidence was adduced at the hearing. (Exhibits 2, 4.)
11. The No Contest plea was entered 13 years prior to the hearing. The guilty pleas, whatever they were to, were entered 11 years prior to the hearing. The hearing took place 2 years after the Application. The Respondent's age on the arrest date of December 11, 1990, was 19. (Exhibits 1, 2, 4.)
12. Respondent did not submit any evidence into the hearing record. However, the letters received from Respondent by the Division as part of the investigation were treated as a written statement. Those letters cannot replace sworn testimony and were not given significant weight. The Respondent did not present evidence of his honesty, truthfulness or good reputation. (Exhibits 4, 6.)

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

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

## B. LICENSE APPLICATION

2. The Division has proven that in 1991 Respondent was convicted of a theft offense, to wit: Unauthorized Use of Property.
3. O.R.C. section 1322.041(A)(3) states, inter alia, that, if Respondent has been convicted of any criminal offense involving certain named offenses, including theft offenses, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
4. Because Respondent has not submitted any evidence into the record it cannot be concluded that Respondent proved by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again.
5. By virtue of the conviction, the Division has raised the issue of Respondent's honesty, truthfulness and reputation being such that a license may not issue. Because Respondent has not presented any defense, such as the argument that the offenses were quite some years ago, the Division's allegation must prevail.
6. In presenting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about April 30, 2002, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained false information, to wit: the "No" response to Question 5.
7. Because the Application submitted by Respondent contained a false response, the Division was able to demonstrate that Respondent's activities since the offenses show that the Respondent has not been honest or truthful. The rebuttable presumption is that Respondent knew, or should have known, that he had been convicted of a crime.
8. The Division also 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.

9. The Division sought to bring into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's inaccurate response to Question 5.
10. Filing an inaccurate Application is 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, including the lack of attention to detail. The public expects loan officers to be detail oriented in order to accurately navigate through the paperwork relating to a real estate loan.
11. Because Respondent has not submitted any evidence into the record it cannot be concluded that Respondent has refuted the Division's assertions that Respondent's character and general fitness do not command the confidence of the public nor warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Section 1322.041(A)(5).
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 proved by a preponderance of the evidence that Respondent's response to Question 5 was a substantial misrepresentation or a false statement of a material fact required by law on the license application, even though there was no evidence of intent. The mens rea standard must be one of negligence – knew or should have known – in Respondent's answering the questions on the license application. Respondent was responsible for knowing the true nature of the facts to which he was attesting and has not presented any facts suggesting it was not a negligent or deliberate act.




### C. DISCUSSION

There is little doubt that, if Respondent presented any evidence that the events surrounding the 1991 theft conviction occurred as he indicated in his unnotarized letter, a 13 year-old conviction would not be difficult for Respondent to overcome. In the alternative, his youth at the time coupled with any evidence of more recent good reputation, honesty and trustworthiness would have gone far in meeting Respondent's burden. Likewise, two 11 year-old convictions, whatever they were, again occurring when he was younger, would not necessarily be a bar to obtaining his license. However, for whatever reason, Respondent did not present any evidence at the hearing and, by virtue of section 1322.041, O.R.C., Respondent did not meet even the minimal burden placed on him. No speculation will be engaged in regarding Respondent's response to Question 5 and the inaccurate answer will have to speak for itself as no other evidence is available.

### III. RECOMMENDATION

The Division has proven the Respondent has a theft conviction which was not disclosed. Respondent did not submit any evidence to prove that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again or that Respondent'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 the Ohio Mortgage Broker Act. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO DENNIS M. FISHER.**

Respectfully submitted

  
D. Michael Quinn  
Hearing Officer  
October 27, 2004  
Docket No. 04-DFI-056