

Bob Taft  
Governor

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

Doug White  
Director

In the matter of:

OTIS C. WALTON  
779 Seward  
Akron, Ohio 44320

) Case No. 04-0223-LOD  
)  
) DIVISION ORDER  
)  
) Denial of Loan Officer License Application  
)

DIVISION ORDER

On April 11, 2003, Otis C. Walton ("Respondent") submitted a loan officer license application to the Division of Financial Institutions ("Division"). On January 22, 2004, the Division issued Respondent a notice of the Division's intent to deny Respondent's application, and notified Respondent of his right to a hearing on the matter. Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on March 2, 2004.

The hearing officer filed his written report and recommendation with the Division on May 3, 2004, recommending that the Division deny Respondent's application. A copy of the report and recommendation and a letter explaining Respondent's right to submit written objections to the report was served on Respondent. Respondent did not timely file objections. The Respondent's request for an additional hearing is not well taken by the Division.

In accordance with R.C. § 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

- The Division modifies paragraph 1(b) on page 1 of the Report and Recommendation to reflect that Respondent was convicted in Bowling Green Municipal Court, not the Municipal Court of Franklin County.
- The Division modifies the last sentence of paragraph 1 on page 6 of the Report and Recommendation.

Paragraph 1 on page 6 reads:

"The Hearing Officer notes that the Respondent has been convicted of two distinct criminal offenses. In 1998, the Respondent was convicted of petty theft and in 1991, he was convicted of passing bad checks."

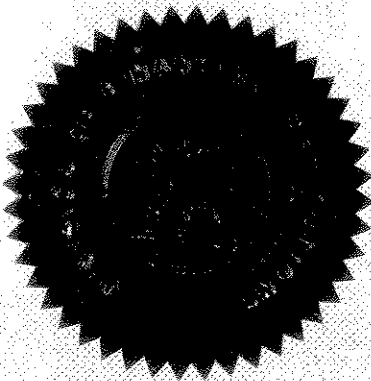
Respondent was actually convicted of petty theft in 1988. Paragraph 1 on page 6 shall read:

"The Hearing Officer notes that the Respondent has been convicted of two distinct criminal offenses. In 1988, the Respondent was convicted of petty theft and in 1991, he was convicted of passing bad checks."

Upon consideration of the hearing officer's report and recommendation, the Division confirms and approves the recommendation. Accordingly, Respondent's application for a loan officer license is hereby denied.

**NOTICE OF RIGHT TO APPEAL**

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 must, 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 2nd day of August 2005

**ROBERT M. GRIESER**

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

Certified Mail No. 7002 2030 0002 6802 5403

**Exhibit A**

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

2004 MAY -3 AM 8:24

In re: Otis C. Walton

Case No. 04-0223-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 Otis C. Walton not be granted. The Division conducted an investigation and found:

- a. In or around 1988, Mr. Walton was convicted of petty theft in the Municipal Court of Bowling Green, Ohio;
- b. In or around 1991, Mr. Walton was convicted of passing bad checks in the Municipal Court of Franklin County, Ohio;
- c. In or around April 8, 2003, Mr. Walton attested in a sworn statement that information he provided on a hearing application was truthful, knowing that the information he provided was false; and
- d. On or around April 11, 2003, Mr. Walton provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions.

2. As a result, the Division determined:

- a. Mr. Walton 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 criminal offense involving theft or any criminal offenses involving money or securities as set forth in Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3);
- b. Mr. Walton'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. Walton 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";

- d. Mr. Walton violated Revised Code Section 1322.07(B) which prohibits a loan officer applicant from “[m]ak[ing] false or misleading statements of a material fact, [or] omissions of statements required by state law”; and
- e. Mr. Walton violated Revised Code Section 1322.07(C), which prohibits a loan officer applicant from “[e]ngag[ing] in conduct that constitutes improper, fraudulent, or dishonest dealings”.

3. Mr. Walton’s address for service is 1079 South Cassingham Road, Columbus, Ohio 43209. He is hereinafter referred to as the “Respondent”. The Respondent is employed by Avalanche Funding Corp. (Exhibit 8).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter (Exhibit 8). The Respondent signed a certified mail receipt for that document. (Exhibit 8B).

5. On February 12, 2004, the Division received a signed Hearing Request Form from the Respondent. (Exhibit 9).

6. On February 19, 2004, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for February 23, 2004 at 9:00 a.m. (Exhibit 10). The hearing was simultaneously continued until March 2, 2004 at 8:30 am. (Exhibit 10).

7. The hearing was held beginning at 9:05 a.m. on March 2, 2004 and was attended by: Martine Jean, Assistant Attorney General, Executive Agencies Section, and Diane Wagenbrenner, Staff Attorney for the Division. The Respondent did not attend the hearing (*See* Tr. 8).

8. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

## FINDINGS OF FACT

1. On April 8, 2003, the Respondent signed a Loan Officer Application ("Application"), under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322 (Exhibit 1).

2. Question 5 of the Application provides:

Have you, or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWI's are criminal offenses.)

Yes ☐ No ☐

If yes, submit a detailed explanation of the facts and circumstances that gave rise to each charge and a certified copy of the journal entry evidencing the disposition of each charge.

In response to Question 5, the Respondent answered "No" (*Id.*).

3. Following submission of the Application, the Division contacted the Respondent by letter dated April 17, 2003 seeking an explanation about the discrepancy between the Respondent's answer to Question 5 and his background check as set forth in Exhibit 2. (Exhibit 3).

4. The background check as set forth in Exhibit 2 disclosed the September 8, 1988, petty theft arrest in Bowling Green and the March 10, 1991, failure to appear charge in Bowling Green Municipal Court.

5. In Response to that letter, the Respondent submitted a written explanation as follows:

The first case I will address stems from a situation that took place at Elderbeermans department store. I in Layman's terms stole clothing merchandise that ranged from a pair of pants to two shirts. Furthermore, there was no resistance from myself, because I know I was wrong; for I had just cashed my student loan refund check. Also, when the store security found over \$900 on me we both laughed because I put myself in a stupid situation when I obviously had the money to pay for the merchandise.

Finally, I pleaded no contest and fine and cost were paid all at once, immediately after court. Also, no jail time was served and I did not violate my probation.

My second case has two part the first deals with my old roommate "John Rankins" from Athens, Ohio who wrote checks from my checkbook that was never packed when I moved back to Toledo to finish my last two years of College. I was finally notified by certified mail from Mr. Spots and my bank. I later found the checks and compared signatures from Mr. Spots, also there was no I.D. checked by the delivery driver? I will assume because Bowling Green is such a small College town. I obtained legal counsel from a "Martin Smith" whom has since deceased. When I tried to prove my case it was to late, for the certified mail reached me to late. I felt then, as I still do know that the case was not properly handled.

The second part is that there was a letter, cancelled checks and a signed document from my old roommate "John Rankins" admitting his guilt, but the records have been destroyed. I could not prove my case with in a reasonable doubt, so I pleaded guilty (not smart] also I paid restitution to Mr. Spots and served three day in jail. I have moved passed that part of my life and looking towards a much better future. I have since then graduated, had a child and I also substitute teach for Columbus Public Schools.

6. On August 8, 2003, the Division wrote to the Respondent indicating that written information had not been received by the Division and that therefore the Application had been withdrawn. (Exhibit 5).

7. On August 26, 2003, the Division wrote to the Respondent indicating that based on information recently submitted by the Respondent to the Division, the Application had been reinstated to "pending" status. (Exhibit 7). The Division had before it records from the Bowling Green Municipal Court indicating the 1998 charge of petty theft (Exhibit 6A), the 1990 charge of passing bad checks (Exhibit 6B) and a cover sheet from the 1999 charge (Exhibit 6C).

#### 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 will be operated honestly and fairly in compliance with the purposes of Section 1322.01 to 1322.12 of the Revised Code.

3. Ohio Revised Code Section 1322.07 provides in relevant 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 license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentations 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[.];

...

4. Because the Respondent has been convicted of a theft offense and an offense of passing bad checks, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment record since his convictions show 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, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking or any criminal offense, involving money or securities. In order to issue a license, the Superintendent of the Division must find that the 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 provisions of the Ohio Mortgage Broker Act.

## DISCUSSION

1. The Hearing Officer notes that the Respondent has been convicted of two distinct criminal offenses. In 1998, the Respondent was convicted of petty theft and in 1991, he was convicted of passing bad checks.

2. In this matter, the Respondent must establish that his activities and employment record since his convictions show that he is honest, truthful, and of good reputation and that there is no basis to believe he will commit such criminal offenses again. In connection with the requirements of the Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of two "disabling offenses": namely, passing bad checks and theft. The Ohio General Assembly has enacted a statutory procedure whereby a particular offense is "automatically disabled" and the applicant unless he or she can show by a preponderance of the evidence that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again as set forth in the applicable statute. In this case, the offenses committed have not been challenged by the Respondent. The Respondent did not attend the hearing or put on any evidence.

3. The Hearing Officer is also greatly troubled by the failure of the Respondent to answer Question 5 correctly. The failure to disclose a criminal offense on the application is a false or fraudulent representation of a material fact. (See Ohio Revised Code Section 1322.07(A). The failure to disclose also constitutes the making of a false or misleading statement required by Ohio Revised Code Section 1322.07(B). The failure to disclose also constitutes engaging in conduct that constitutes improper, fraudulent or dishonest dealings as prohibited Ohio Revised Code Section 1322.07(C). The Division has a reasonable and legitimate expectation that full, complete and truthful answer will be given to its application questions. The level of transparency expected in the Application should be every bit as much as the level of transparency in the mortgage loan processing market. Full, complete and truthful answers should be expected. Question 5 of the Application is unambiguous in its applicability to this Respondent. The failure to answer Question 5 fully and truthfully is unacceptable.

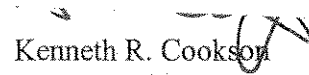
4. In this instance, in the absence of the participation in the hearing by the Respondent or any representative, the Hearing Officer cannot conclude that the Respondent has met his burden of proof in this matter. The Respondent has not established that his activities and employment record since the conviction show that he is honest, truthful and of good reputation, that there is no basis in fact for believing he will commit such offenses again. Further, the Hearing Officer also finds that the Superintendent of the Division has met its burden and may find that the Respondent's character and general fitness do not command the confidence of the public and do not 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 Ohio Revised Code.



## RECOMMENDATION

Based upon the above 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  
April 27, 2004