

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

In the matter of:

**DANIEL B. GALLAGHER**  
6853 Chadbourne  
North Olmsted, OH 44070

) Case No. 03-LO-D-11-12  
)  
) **DIVISION ORDER**  
)  
) **Loan Officer License Application Approval**  
)

**DIVISION ORDER**

WHEREAS, the Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322; and

WHEREAS, the Division finds that this Order is appropriate and is consistent with the purposes fairly intended by the provisions of the Ohio Mortgage Broker Act; and

WHEREAS, on February 5, 2003, Daniel B. Gallagher ("Respondent") submitted a loan officer license application to the Division, and on April 30, 2003, the Division issued Respondent a notice of the Division's intent to deny his loan officer license application, and notified Respondent of his right to a hearing on the matter;

WHEREAS, Respondent requested a hearing, and pursuant thereto, an administrative hearing was held in accordance with Ohio Revised Code Chapter 119 on June 27, 2003;

WHEREAS, the hearing officer filed his written Report and Recommendation with the Division on July 29, 2003, recommending that the Division grant Respondent's application;

WHEREAS, a copy of the Report and Recommendation and a letter explaining Respondent's right to submit written objections to the report was mailed to Respondent via certified mail;

WHEREAS, Respondent did not file objections;

WHEREAS, pursuant to R.C. 119.09, the Division has considered the Report and Recommendation, applicable laws, the transcript of testimony and exhibits;

WHEREAS, pursuant to R.C. 119.09, the Division hereby modifies and/or disapproves certain paragraphs in the Hearing Examiner's Findings of Fact and Conclusions of Law as follows. Paragraphs of the Report and Recommendation not specifically addressed below are approved.

1. Paragraph C of the Hearing Examiner's Finding of Fact states that because Respondent failed to disclose his conviction on his application, the Division determined that Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act. The Division's determination that Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act was based not only on Respondent's failure to disclose his criminal history, but also on the 1997 conviction itself. Accordingly, the Division hereby modifies Paragraph C to include the conviction as a separate basis for finding that Respondent's character and general fitness do 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 the Ohio Mortgage Broker Act.

2. The Division disapproves the Hearing Examiner's Finding of Fact G, which states: "As written on the application, Question #5 is at least arguably confusing and difficult to read." Question # 5 is not confusing or difficult to read. And, Respondent testified that although he misinterpreted the phrase "including but not limited to," he did not find the question confusing. (See Transcript Page 17, lines 1-17; Page 19, lines 1-6.) The record indicates that during closing arguments the Hearing Examiner attempted to summarize or had interpreted Respondent's argument to be that the question was confusing. (See Transcript Page 57, lines 20-22.) However, Respondent's counsel responded by stating: "I think [Respondent's] interpretation may have been incorrect, but I think his interpretation was reasonable[.] \*\*\* [R]espondent made a mistake." (See Transcript Page 57, lines 23-25, and Page 58, lines 1-4.)
3. The Division disapproves Conclusion of Law G in that the Hearing Examiner uses the fact that Respondent "ran for North Olmsted City Council in 2001" as evidence that Respondent's character and general fitness 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 the Ohio Mortgage Broker Act. Simply running for an elected position is not evidence of good character. Accordingly, the sentence "[h]e even ran for North Olmsted City Council in 2001[.]" is hereby stricken from Conclusion of Law G.

WHEREAS, the Division approves Finding of Facts F, G, I, and M, wherein the Hearing Examiner found Respondent to be a credible witness, and found Respondent's testimony that he did not intend to falsify his application or to conceal his conviction to be credible.

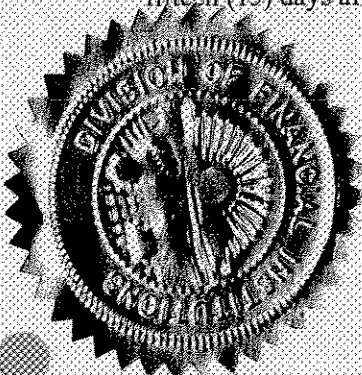
WHEREAS, Respondent has in fact had his 1997 conviction expunged;

The Division hereby confirms and approves the Hearing Examiner's Recommendation that the Division approve Respondent's loan officer license application and issue him a loan officer license.

#### **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 26<sup>th</sup> day of November, 2003.



**ROBERT M. GRIESER**

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