

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

0015 11/1

IN THE MATTER OF:

DEVORE CLARK

DIVISION OF FINANCIAL
INSTITUTIONS

CASE NO. 05-0049-LOD

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

Issued September 13, 2005

I. FINDINGS OF FACT

A. BACKGROUND

The above matter came before the undersigned 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 10:30 AM on June 23, 2005, at 77 South High Street, room 1924, Columbus, Ohio.

The hearing was held at the request of Respondent Devore Clark, of Cincinnati, 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 was convicted, in 1993, of Disorderly Conduct, in 1994 of Theft, in 1998 of Domestic Violence and in 1999 of Unauthorized Use of Property, a theft offense, all in Hamilton County, Ohio, 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 Martine Jean. Respondent appeared pro se.

At the hearing, State's Exhibits 1A, 1B, 1C, 1D, 1E, 2, 3, 4A, 4B, 4C, 4D and 4E were admitted into the record. Respondent submitted Exhibits A, B and C which were admitted into the record over the State's objections. Respondent did not offer any other exhibits or any witnesses, other than himself, as discussed in the transcript (hereinafter "Tr.").

B. JURISDICTION

The Division issued the NOH against Respondent on May 25, 2005. Respondent requested a hearing, which was received by the Division on May 31, 2005. On June 7, 2005, the Division scheduled the hearing for June 10, 2005, but continued the hearing to June 23, 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. (Exhibit 1B.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 2.)
3. On or about January 3, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 2.)
4. Respondent signed the Application on, or about, December 8, 2004. (Exhibit 2.)
5. Within the Application Respondent answered "Yes" to Question number 5, which asked: "Have you ... ever been convicted of ... any criminal offense. ****" No details to the "Yes" response were furnished. (Exhibit 2.)
6. As a response to an investigative request by the Division, Respondent submitted copies of court records and a written statement explaining his prior arrests and convictions. (Exhibit 4A-4E; Tr. pp. 22-23.)
7. On, or about, January 4, 1993, Respondent was found guilty, in Hamilton County Municipal Court, of one count of Disorderly Conduct, a fourth degree misdemeanor. (Exhibit 4B; Tr. p. 25.)

8. Respondent's explanation of the 1993 conviction for Disorderly Conduct was that he had pulled up to a gas station and the person in the car in front of him told Respondent to back his car up in a hostile and confrontational way. Respondent felt threatened as the other man approached him so Respondent threw the first punch and was charged. (Exhibit 4A, 4B; Tr. pp. 25-29.)
9. On, or around, June 13, 1994, Respondent was found guilty of a misdemeanor theft charge in Hamilton County Municipal Court. (Exhibit 4C; Tr. pp. 29-30.)
10. Respondent's explanation of the 1994 theft conviction was that, he and a friend were buying beer at a store when Respondent tried to tease his friend by putting beer under his (Respondent's) shirt. Respondent states he put it right back but that the security camera only caught him taking it, not returning it. After paying for other items, Respondent said the security guard demanded to know where the wine was and Respondent, after denying he had any other items, exited the store. The police were called and when the case went to trial the store representatives stated that Respondent had stolen meat. Respondent was found guilty. (Exhibit 4C; Tr. pp. 29-35.)
11. On, or about, October 9, 1998, Respondent was found guilty of domestic violence, a misdemeanor of the third degree, in Hamilton County Municipal Court. (Exhibit 4D; Tr. pp. 35-36.)
12. Respondent's explanation of the 1998 domestic violence conviction was as follows: The mother of Respondent's son and Respondent had a hostile and combative relationship. When Respondent returned his son to her house after a visitation, the woman confronted Respondent with threats and manipulated him into saying he would defend himself. Respondent states, and Exhibit 4D corroborates, that no physical contact was made, but the woman called police who arrested Respondent on her accusation of his threatening remarks. (Exhibit 4D; Tr. pp. 35-41.)
13. On, or about, December 22, 1999, Respondent was found guilty of Unauthorized Use of Property, a theft offense, in Hamilton County Municipal Court. (Exhibit 4E; Tr. pp. 41-42.)
14. Respondent's explanation of the Unauthorized Use of Property was that his girlfriend at the time would not leave his home and he evicted her. In retaliation, she filed various charges against him, which were all dropped, and she reported to the cable company

that he had old cable boxes and he never paid for cable. He states she had turned on the cable. He was charged with theft but it was reduced to UUP. (Tr. pp. 42-44.)

15. Respondent blames the 1999 UUP charge as being the result of the relationship and not the result of his unauthorized use of the cable company's equipment. (Tr. p. 43.)
16. Respondent believes that his working and owning a variety of businesses for the last thirteen years demonstrates honesty and a good reputation. (Tr. pp. 15-19, 69-74.)
17. Respondent did not present any evidence beyond his own testimony, other than Exhibits A, B and C which were repetitive or not found to be relevant and were not afforded any weight.
18. While Respondent admitted to the convictions, he denied that he was responsible for any of the acts leading up to the convictions.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

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

B. LICENSE APPLICATION

2. In 1994 and 1999, Respondent was convicted of "criminal offenses involving theft" an offense specifically cited in section 1322.041(A)(3), O.R.C.
3. The theft offenses being proven by the Division, in order to obtain a license the Respondent must now 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." Section 1322.041(A)(3), O.R.C.
4. It is not appropriate to relitigate a criminal conviction in an administrative hearing. It is appropriate to examine the underlying

circumstances of the conviction to determine issues such as character, honesty and reputation and whether the person would be likely to commit the offense again.

5. Respondent did not present any specific or relevant evidence other than his own sworn testimony.
6. Respondent's explanations and demeanor during the hearing were not sufficient, without more, to meet Respondent's burden to show there is no basis in fact for believing that he will commit such offenses again.
7. Respondent did not present any evidence to substantiate his own sworn testimony that there is no basis in fact for believing that the Respondent will commit such an offense again. Because the statute requires Respondent to meet a preponderance burden of proof, Respondent has not met his burden.
8. Because the Application submitted by Respondent disclosed the criminal arrest, Respondent was able to demonstrate that, in this instance, his activities since the offenses show that the Respondent is honest or truthful.
9. Respondent failed to prove by a preponderance of evidence his honesty in his activities since the offense because he offered no evidence other than his own testimony and the Application.
10. 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.
11. The Division brought 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 entering evidence of Respondent's theft and other convictions.
12. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly. Respondent's only evidence was his testimony which must be weighed considering the bias nature of the testimony.

13. Respondent failed to take responsibility for any of his past actions and, in that way, was unable to show that he was not likely to commit such offenses again.


C. DISCUSSION

Respondent presented no evidence other than his own testimony. The statute is clear that once the Division has demonstrated that Respondent has a prior conviction of one of the enumerated offenses, the burden shifts to Respondent to prove by a preponderance of evidence that he has been honest and truthful and of good reputation and there is no basis in fact for believing that he will not commit such an offense again, and that a license should be issued. Here, there is very little evidence at all in Respondent's favor, and certainly not a preponderance. The fact that Respondent chose to represent himself cannot change the statutory requirement. Based on the record available, it must be concluded that the Respondent did not rebut the Division's assertions that, since the conviction, Respondent was not honest, truthful or of good reputation and is likely to commit the offense again, and that Respondent's character and general fitness do not command the confidence of the public.

III. RECOMMENDATION

The Division has proven the prior theft conviction. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities since the conviction show that he has been honest and truthful and of good reputation and there is no basis in fact for believing that he will not commit such an offense again, and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO DEVORE CLARK.**

Respectfully submitted,



D. Michael Quinn
Administrative Hearing Officer
September 13, 2005
Docket No. 05-DFI-063