

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Willard Freeman, Jr.**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0071-LOD**

**FINDINGS OF FACT**

1. On or about March 14, 2003, Willard Freeman, Jr. ("Respondent" herein) submitted an application and related materials (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A.
2. On or about January 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit B herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the offices of the Ohio Division of Financial Institutions on March 10, 2004. At the Hearing, the Respondent appeared *pro se*, and the Division was represented by Assistant Attorney General Paula Luna Paoletti, Esq. Also present was Mark Rhea, Division Staff Attorney.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 25)
5. As of the date of the Application, Respondent was employed as a loan officer by Assured Mortgage Services.

## CONCLUSIONS OF LAW

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Sections 1322.041 and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

## DISCUSSION

At the Hearing, Respondent and the Superintendent stipulated to the Superintendent's evidence relating to the theft conviction of Respondent as described in the Notice. (Tr. Page 25) Respondent testified that he failed to disclose the referenced criminal conviction in response to question 5 of the Application based upon his belief that the conviction had been expunged. (Tr. Pages 13, 14, 19, 21) Respondent disclosed that belief to the Division for the first time at the Hearing (Tr. Pages 23, 24), and testified that an application to expunge the conviction has in fact been filed by the Respondent. (Tr. Page 24) Other than his own testimony, Respondent did not present any other evidence or testimony to explain why he believed that the conviction in question had been expunged or why he failed to disclose the conviction in response to the referenced question in the Application.

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

Under Ohio Revised Code sections 1322.031(A)(2) and 1322.041(A)(3), Respondent's theft conviction, admitted by Respondent, causes the burden of proof to shift to the Respondent to prove, by a preponderance of the evidence, that Respondent's activities and employment record

since the conviction show that the Respondent is honest, truthful, and of good reputation, and there is not basis in fact to believe that the Respondent will commit such an offense again.

The only evidence presented by Respondent relating to Respondent's character and fitness consisted of his own testimony and certain unsubstantiated testimonial letters. Beyond that, Respondent presented no objective evidence of his character and fitness in support of his contention that the Superintendent's findings under Ohio Revised Code sections 1322.041(A)(2), 1322.041(A)(3), and 1322.041(A)(5), as set forth in the Notice, are inappropriate and incorrect.

Respondent's criminal conviction was relatively minor in nature and does not appear to evidence a pattern of ongoing criminal behavior for which there should necessarily be a significant concern that Respondent's business would not be operated honestly and fairly in compliance with the Act.

Unfortunately however, Respondent failed to disclose the criminal conviction as required by question 5 of the Application, and the relevant provisions of Ohio law do not provide an excuse by mistake, misunderstanding, or misreading of the question at issue, or a belief, however sincere, that the conviction has been expunged. Therefore, there is support for the Division's assertion that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code Section 1322.07 in failing to disclose the criminal violations

In light of Respondent's failure to provide objective testimony contradicting the Superintendent's assertions under Ohio Revised Code section 1322.041, and Respondent's failure to disclose the conviction as required by the Application, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.041, 1322.07, and 1322.10.

### **RECOMMENDATIONS**

For the reasons set forth herein, the referenced Application of the Respondent should be denied.

Respectfully submitted,

  
Jeffery E. Smith, Hearing Examiner

4 May 04

Date