

**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF Jeffrey P. Russell

**Ohio Department of Commerce, Division of Financial Institutions
Case Number: 04-0422-LOD**

FINDINGS OF FACT

1. On or about June 23, 2004, Jeffrey P. Russell ("Respondent" herein) submitted an application to the Ohio Department of Commerce, Division of Financial Institutions, (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 herein.
2. On or about August 24, 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 Vern Riffe Center for Government and the Arts on October 12, 2004. At the Hearing, Respondent failed to appear, and the Division was represented by Assistant Attorney General Emily Smith, Esq.. Ms. Earlene Smitherman was also present on behalf of the Division.
4. As of the date of the Application, Respondent was employed by Kemper Mortgage Inc.

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

Respondent's criminal record includes a conviction for theft in or around the year 2000.

Respondent disclosed the conviction in the Application as required by question five (5) of the Application.

Section 1322.041(A)(3) of the Ohio Revised Code provides that, following conviction of a theft offense, the burden is on the Respondent to 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 the Respondent will commit such an offense again.

In addition, Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent of the Division (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).

At the Hearing, the Division presented its evidence, including copies of the Application, the Notice, the Request for Hearing, and notice of the time and date of the Hearing, including the domestic return receipt for the Notice. The Division also provided the testimony of Ms. Smitherman (Tr. Pages 5 through 9)

Respondent failed to appear at the Hearing. Nothing in the record indicated that Respondent sought or received an extension or continuance of the Hearing, or notified the Division that Respondent would not be present. Respondent therefore presented no evidence or testimony at the Hearing to contradict or to refute the Superintendent's findings under Ohio Revised Code section 1322.041.

In light of the lack of appearance by the Respondent, Respondent has failed to provide evidence sufficient to overcome the Superintendent's determinations under Ohio Revised Code sections 1322.041 and 1322.10.

RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the Application of the Respondent be denied.

Respectfully submitted,



Jeffery E. Smith, Hearing Examiner

17 Nov. 04

Date