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

**IN RE:** : **CASE NO. M2006-999595**  
:  
**VI A. DANIELS** : **JANE S. ARATA, HEARING OFFICER**

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**ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
Issued December 11, 2006**

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**I. FINDINGS OF FACT**

**A. Background.**

This matter was heard by Jane S. Arata, an attorney licensed to practice law in Ohio, who was appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held November 15, 2006, at 77 South High Street, in Columbus, Ohio. Respondent Vi A. Daniels ("Respondent" or "Ms. Daniels") requested the hearing to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for a Hearing ("NOH"). Ms. Daniels' maiden surname is Williams. She has had three other married surnames – Clayton, Spurr, and McKinney.

The Division alleges that Respondent was convicted of receiving stolen property and theft in 1982. The Division further alleges that she violated R.C. 1322.07(A), (B), and (C) by failing to disclose her theft conviction on her loan officer license application. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent has not proven that she is honest, truthful, and of good reputation, and that there is no basis in fact to believe that she would not commit such an offense involving theft, money or securities again as required by R.C. 1322.041(A)(3);
2. 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 as required by R.C. 1322.041(A)(5);  
and

3. Respondent violated R.C. 1322.07(A), (B), and (C) by failing to disclose her theft conviction on her application.

Todd Nist, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Jason Wright attended the hearing as the Division's representative and testified as a witness. Neither Respondent nor counsel representing her attended the hearing. State's Exhibits A through G were admitted into the record during the hearing.

**B. Jurisdiction and Procedural Matters.**

1. The Division issued the NOH to Respondent on June 22, 2006, and served it upon her by certified mail at the address she provided on her Loan Officer License Application in January of 2006. (State's Exhibits A and E; Hearing Transcript ("TR") at 9, 21-22.) It is clear that the Respondent received the NOH by certified mail because she sent the Division the hearing request form sent to her with the NOH. (State's Exhibits A, E, and F; TR at 23.)
2. The Division received Respondent's hearing request on July 3, 2006. (State's Exhibit F.)
3. The Division scheduled the hearing for July 13, 2006, and continued it to November 15, 2006, on its own motion. On July 5, 2006, the Division sent a letter to Respondent notifying her of the date, time, and location for each hearing scheduled in this matter. The Division sent that letter by regular mail to the Respondent at the address where she received the NOH. There is nothing in the record indicating that Respondent did not receive that letter. (State's Exhibits E, F, and G; TR at 21-23.)
4. The Respondent did not contact anyone at the Division, the Division's counsel, or the Hearing Officer to indicate that she could not be present at the hearing or request a continuance. (TR at 4, 24-25.)
5. The hearing was held on the date and at the location set forth in the Division's July 5, 2006 letter. The hearing started 45 minutes after the time set forth in that letter to make sure that the Respondent was not lost or running late. (State's Exhibit G; TR at 1, 4.)

**C. Respondent's Loan Officer Application and Criminal Convictions.**

6. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit A.)
7. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).

8. The Division received Respondent's Loan Officer Application ("Application") in January of 2006. (State's Exhibit A.)

9. Respondent answered "Yes" to Question 5 on the Application, which asked:

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

(Application, State's Exhibit A, emphasis and boldface type in original.)

10. Respondent's answer to Question 5 disclosed that she had a DUI in 1983 and a felony receiving stolen property conviction in 1981. Respondent further stated that, "Both were when I was young, over ½ my life ago." (Application, State's Exhibit A.)

11. On February 3, 2006, the Division sent Respondent a letter requesting more information on the convictions disclosed on the Application. The letter also requested that she fill in a multi-state offender questionnaire. Respondent's multi-state offender questionnaire signed February 8, 2006, just two weeks after she signed her Application, disclosed a 1982 theft conviction not disclosed on the Application. She apologized for not disclosing that conviction and other alcohol related convictions on the Application and explained that she "didn't really remember" them when she filled out her Application. The questionnaire also clarified that her receiving stolen property conviction was in 1982 not 1981 as stated on the Application. (State's Exhibits A and B.)

12. The Hearing Officer finds Respondent's claim that she did not remember the theft conviction just two weeks earlier incredible. The only logical inference that can be drawn from the materials in the record is that she intentionally failed to disclose the theft conviction on the Application.

**D. Respondent's Character and Reputation.**

13. Respondent did not disclose her 1982 theft conviction on the Application. Respondent's inaccurate response to Question 5 reflects negatively on her honesty, truthfulness, and ability to be a loan officer. It also raises concerns about whether her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

14. Respondent's Application, multi-state offender questionnaire, and conviction records are the only materials in the record with information pertaining to her reputation and character. They do not establish that her activities and employment record since the first 1982 conviction show that she is honest,

truthful, and of good reputation. They likewise do not suffice to establish that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. (State's Exhibits A and B.)

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction and Procedural Matters.**

1. Ohio Revised Code Section 119.07 requires the Division to notify Respondent of her right to request a hearing. The Division's NOH properly notified the Respondent that she was entitled to request a hearing and was served upon her by certified mail. The Division has complied with the requirements set forth in R.C. 119.07 for notifying Respondent of her right to request a hearing.
2. Ohio Revised Code Section 119.07 requires an agency to notify a party of the time, date, and place of the hearing once a date is set. The Division's letter including this information was sent to the Respondent by regular mail at the address she provided to the Division in her Application and where she received certified mail service of the NOH.
3. Ohio Revised Code Section 119.07 does not require the notice of the actual hearing to be sent by certified mail. The use of regular mail, which is used for the service of many legal papers and court notices, was appropriate in this case. McCoy v. Bureau of Unemployment Compensation (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78. The letter notifying Respondent of the actual hearing was sent to her by ordinary mail and not returned to the Division as undeliverable.
4. The Division complied with the notification of hearing requirement set forth in R.C. 119.07 by notifying the Respondent of the date, time, and place of the hearing in this matter.
5. The Respondent received proper notice of the hearing and therefore, it was appropriate for the hearing to proceed in her absence. Reed v. State Med. Bd. (1988), 40 Ohio App.3d 124,125-26, 532 N.E.2d 189, 191.
6. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### **B. Loan Officer License Application.**

7. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

8. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has been convicted of 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.
9. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(3) The applicant has not been convicted of or pleaded 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 an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant'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.

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(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 sections 1322.01 to 1322.12 of the Revised Code.

R.C. 1322.041(A)(2), (3), and (5).

10. Respondent was convicted of theft and receiving stolen property in 1982. Both offenses are specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).
11. Once the first of those convictions was proven by the Division, the Respondent had the burden to prove, by a preponderance of the evidence, that her "activities and employment record since the conviction show that {she} is honest, truthful, and of good reputation, and there is no basis in fact for believing that {she} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).

12. The record contains little evidence regarding Respondent's activities and employment record after the convictions. She knew she had a theft conviction that should have been disclosed on the Application but failed to disclose it. This failure coupled with the lack of evidence regarding employment and activities after 1982, prevent Respondent from meeting her burden of proof under R.C. 1322.041(A)(3).
13. Nondisclosure of the theft conviction and the lack of evidence also preclude Respondent from establishing that her character and general fitness command the confidence of the public and warrant the belief that her business will be operated honestly and fairly in compliance with the purposes of Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).
14. Ohio Revised Code Section 1322.07(A) prohibits an applicant from making any substantial misrepresentation in any license application.
15. Ohio Revised Code Section 1322.07(B) prohibits an applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
16. Respondent's failure to disclose her theft conviction in response to Question 5 was a substantial misrepresentation on the Application that violated R.C. 1322.07(A). This response was also a false statement of a material fact in violation of R.C. 1322.07(B).
17. Respondent also violated R.C. 1322.07(B) by omitting the statement regarding her theft conviction required to be in an application by R.C. 1322.031(A)(2).
18. Ohio Revised Code Section 1322.07(C) prohibits an applicant from engaging in "improper, fraudulent, or dishonest dealings."
19. Respondent engaged in improper, fraudulent, and dishonest dealings in violation of R.C. 1322.07(C) by not disclosing the theft conviction on the Application.
20. Respondent's violations of R.C. 1322.07(A), (B), and (C) preclude her from being in compliance with R.C. 1322.01 through 1322.12 of the Revised Code, a condition required for licensure by 1322.041(A)(2).
21. The Respondent has not established the licensing prerequisites set forth in R.C. 1322.041(A)(2), (3), and (5).

### III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(2), (3), and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata  
Administrative Hearing Officer  
December 11, 2006