

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS  
CONSUMER FINANCE

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In re: Paul C. Carson

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Case No. 04-0026-LOD

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF  
THE HEARING OFFICER

1. The Ohio Department of Commerce, Division of Financial Institutions ("Division"), proposes that the Loan Officer License Application of Paul C. Carson not be granted. The Division conducted an investigation and found:

- a. In or around 2003 Mr. Carson pleaded guilty to receiving stolen property and misuse of credit cards, fifth degree felonies, in the Common Pleas Court of Butler County, Ohio;
- b. On or around September 8, 2003, Mr. Carson attested in a sworn statement that information he provided in a licensing application was truthful, knowing that the information he provided was false; and,
- c. On or around October 6, 2003, Mr. Carson provided untruthful information to the State of Ohio, Department of Commerce, Division of Financial Institutions.

2. As a result, the Division determined:

- a. Mr. Carson has not proven that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities as set forth in Ohio Revised Code Sections 1322.031(A)(2) and 1322.041(A)(3); and
- b. Mr. Carson'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 set forth in Ohio Revised Code Section 1322.041(A)(5).

3. Mr. Carson's address for service is 2121 Vine Street, Cincinnati, Ohio, 45202. He is hereinafter referred to as the "Respondent". The Respondent is employed by Villa Mortgage, Inc. (Exhibit 6A).

4. This matter was initiated by the Superintendent of the Division by the issuance on January 22, 2004, of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter (Exhibit 6A).

5. The Respondent timely submitted to the Division a Hearing Request Form. (Exhibit 7).

6. On February 2, 2004, the Division wrote to the Respondent acknowledging receipt of the request for a hearing and scheduling the hearing for January 28, 2004 at 9:00 a.m. (Exhibit 8). The hearing was simultaneously continued until March 2, 2004 at 10:30 a.m. in Room 1908 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (*Id.*).

7. The hearing was held beginning at 10:30 a.m. on March 2, 2004, and was attended by: Martine Jean, Assistant Attorney General of Ohio in the Executive Agencies Section, the Respondent, pro se, Dianne Wagenbrenner, a staff attorney with the Division and Jim Rigsby, a witness for the Respondent.

8. The hearing was conducted pursuant to Section 119 of the Ohio Revised Code. The Division is deemed to have jurisdiction to conduct the proceedings.

#### FINDINGS OF FACT

1. On September 8, 2003, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1A).

2. Question 5 of the Application provides:

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. (All DUIs and DWI's are criminal offenses.)

Yes ☐ No ☐ If the answer is yes, furnish details.

3. In response to Question 5, the Respondent answered "Yes" (*Id.*). Respondent further provided written explanation as follows:

I am writing to provide further details to questions five and seven on his application for a Mortgage Broker License.

In February 9, 2003, I was intoxicated in downtown Cincinnati. I was in an area I was not to be in, the police were called and I was subsequently arrested. I pled guilty to resisting arrest and criminal trespass. I regret the incident, no longer drink and can see no chance of a repeat of this type of offense.

Also, I do not know if this shows on my record, but feel I should probably it. Also in February of 2003, I was going through a difficult break up of a relationship. The car I was driving was in her name. During the course of an argument, she called the police to state I had not returned her car. I was unaware at the time she wanted the car back. I made arrangements with her and returned the vehicle, but the police did pursue charges of Unauthorized Use. I pled no contest and was found guilty. There were no further ramifications from this case.

As to question seven, in the Spring of 2002, my position at my employer was restructured and I lost my job. At the time, I was making approximately \$20,000/month. The resulting loss of income put me in a position where I was unable to pay my bills. The only option I could see was to file bankruptcy.

Thank you for your consideration of my application. I would like to point out that these incidents were my only brushes with the law in my life. I have since gotten my life back together and look forward to no other legal problems. If I can provide any further documentation, please contact me directly. (Exhibit 1B).

4. The Division received a background check on the Respondent. (Exhibit 2) That background check disclosed a February, 2003 arrest for drug paraphernalia, trespassing and resisting arrest. (Exhibit 2)

5. On November 20, 2003, the Division wrote to the Respondent indicating that the Division was unable to make a decision as to whether to issue a license because of insufficient evidence. (Exhibit 3).

6. In response, in a letter received by the Division on December 2, 2003, the Respondent wrote as follows:

I am writing in response to your letter dated 11/20/2003. Per your request I have enclosed a certified copy of a journal entry evidencing the disposition of the charge as well as other supporting documentation. With respect to item "B" I have never served time in confinement as part of a sentence.

I would also like to take this opportunity to address the circumstances surrounding this charge. To be very blunt, I have had a problem with drug and alcohol addiction. This problem spiraled out of control and I hit my bottom earlier this year. I would like to point out that I am one week shy of my 34<sup>th</sup> birthday and up until earlier this year, had never encountered any legal difficulties. However, as you can see, in roughly 60 days, I faced charges in 3 counties.

My story is in essence as follows. I attempted to get sober in September of 2002. I did not enroll in any treatment facility and tried to maintain sobriety through meetings of Alcoholics Anonymous. I found the meetings helpful and was able to achieve a start of sobriety. However, late in the year, I relapsed. Having no where to go, my parents took me into their home in February of 2003. They entrusted me with their home and resources and did their best to help me to maintain my sobriety. Unfortunately, I left their home late in February and used my father's credit card to fund what was to be my last drunk.

On March 3, 2003 I simply could not live with who I had become. I had gone from a college educated professional with a high level of income to homelessness. With no where else to turn, I went to the Drop In Center, a shelter for the homeless in Cincinnati. They gave me a referral to the Center for Chemical Addictions Treatment (CCAT), a treatment facility for drug and alcohol addiction located in Over the Rhine in Cincinnati. I stayed through a 7 day detox program and then completed a 28 day treatment program, designed to educate me on alcoholism and addiction and assist me in acquiring some rudimentary tools to stay sober. Frankly, there is no doubt in my mind that had this not been available I would most likely have died.

Being completely without resources, CCAT set me up in transitional housing upon my completion of the treatment program. Shortly after my discharge from CCAT, I became aware of an outstanding warrant in Butler County. I found out at that point my father had reported his credit card stolen and I was to face charges. I turned myself in on the warrant and was released on my own recognizance with pre-trial conditions. Essentially, I was to report to Butler County once a week for an accounting of my activities and drug and alcohol screening.

As time went on, I completed CCAT's aftercare program and became increasingly involved in AA. Because the incident involved a substance abuse problem, my attorney advised me to seek treatment in lieu of conviction. As a part of this process, I was advised to enter a guilty plea, with the understanding it would be held in abeyance. At trial, the judge asked if I had a plan. I responded that it was to stay in transitional housing for at least one year, continue my involvement with AA, get a job back in the mortgage profession and continue to put my life together. As you can see from the entry, that is the plan he adopted for me.

As it stands, as long as I complete the terms of the treatment, on August 4, 2004 these charges will be dismissed and I will not be convicted. To date I have adhered to the guidelines set forth. The probation officer in charge of my supervision is Jason Bellman (513 887 5653), he has told me you can call to verify my compliance if so desired. I have completed my

treatment program, I have paid restitution to my father and I am currently employed at Villa Mortgage. I am also very involved in AA. I generally attend between 7 and 10 meetings per week and am now "sponsoring" 2 newcomers and I chair a "beginner's" meeting at another treatment facility in Northern Kentucky. God willing, I will have 9 months of sobriety on December 3.

Mr. Rhea, I cannot describe to you my feelings of remorse with respect to some of the actions I have taken during active alcoholism and addiction. On a daily basis, I am rebuilding my life. I am now able to help support my two children with the proceeds from my job. I have enclosed a copy of my resume for your review. I have been in the mortgage industry for almost 8 years now. Villa primarily does new purchase money and it is remarkably gratifying to me to help to be able to fulfill the dream of new home ownership for my clients. I have made some terrible errors in my past. While I cannot undo the past, it is my daily goal to make the present better for myself and those around me.

Thank you for your consideration of my application. I hope the information I have enclosed is sufficient. If I can be of any further assistance in this matter, please call me at 513 252 8843 or write me at the above address. I look forward to hearing from you soon. (Exhibit 4A)

7. Respondent also submitted Journal Entries from the Hamilton County Municipal Court as well as information from the Center for Chemical Addictions Treatment and the Butler County Court of Common Pleas (Exhibits 4B, 4C, 4D, 5A, 5B and 5C).

#### CONCLUSIONS OF LAW

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license as a loan officer, an applicant must submit a statement as to whether the applicant has been convicted 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.

2. Ohio Revised Code Section 1322.041(A) provides that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (3) The applicant has not been convicted or plead 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 offenses, the applicant has proven to the superintendent by a preponderance of the evidence, that the applicant's activities and employment records 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.

...

- (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 Section 1322.01 to 1322.12 of the Revised Code.

Because the Respondent has been convicted of the offense of receiving stolen property, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his activities and employment records since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit another 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. The evidence in the record must show to the Superintendent of the Division that the Respondent's character and fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.

#### DISCUSSION

1. The Hearing Officer notes at the outset that the Respondent correctly reported to the Division in connection with the Application his convictions for resisting arrest and criminal trespass. However, Respondent appears not to have disclosed that he was also convicted of receiving stolen property in July, 2003. (Tr. 13).

2. At the time of the hearing in the matter, the Respondent was 34 years of age. (Tr. 15). He has worked as a loan officer for Villa Mortgage since August of 2003. (*Id.*). Prior to that he worked as a fundraiser for Mighty Vine Wellness, a non-profit organization. (*Id.*). The Respondent has a high school degree and a Bachelor of Arts in German Studies and a Certificate of International Business from the University of Cincinnati which he received in August of 1992. (Tr. 16).

3. The Respondent freely admits that he has a drug and alcohol problem. (Tr. 20). He started drinking when he was twelve or thirteen years old and it has escalated from there. (*Id.*). When he was about 33, he discovered cocaine and his life subsequently was turned upside down. (*Id.*). He went from having a very high paying job at the Ohio Financial Group to using alcohol and crack cocaine. (Tr. 20). On March 3, 2004, one day after the hearing in the matter, the Respondent celebrated his one year anniversary being clean from cocaine use. (Tr. 21).

4. The Respondent has had several rehabilitation sessions. (*See* Tr. 22). He has completed each of the treatments and hasn't drunk or used cocaine since. (Tr. 23).

5. The Respondent acknowledges that 2003 was a "pretty rough year" for him. (Tr. 25). With regard to the stolen credit card charge, the Respondent turned himself in to the Butler County authorities and ultimately was given treatment in lieu of conviction. (Tr. 27). With regard to the stolen credit card matter, the Respondent took the credit card from his father's wallet and drank or used cocaine paying by for it with the credit card. (Tr. 39).

6. From September 2002 through March 2003 the Respondent suffered through a period of relapse. (*See* Tr. 37). He began again using cocaine and alcohol. (*Id.*).

7. The Respondent has been estranged from his wife for three years (Tr. 38).

8. Respondent submitted a letter from his criminal defense counsel in connection with the misuse of credit cards charge. (Respondent's Exhibit A) The defense lawyer wrote that the Respondent has been approved for intervention in lieu of conviction which will result in all charges against him being dismissed and that such dismissal, as a matter of statutory law pursuant to Ohio Revised Code Section 2951.041(E), is not a criminal conviction for purposes of any disqualification or disability imposed by law.

9. The Respondent also submitted a letter of reference from Timothy Kramer, Vice President of Villa Mortgage, in support of the Respondent's application. (Exhibit B).

10. Testifying in support of the Respondent was James S. Rigsby. (Tr. 47 et seq.) Mr. Rigsby has been a recovering alcoholic himself for 20 years, (Tr. 47). He was candid in his assessment of the Respondent and stated that if the Respondent were to use alcohol or drugs again, that it would be a basis for believing that the Respondent would commit another criminal offense involving theft of monies or securities. (Tr. 47).

11. Mr. Rigsby is a supporter of the Respondent and to his knowledge the Respondent has been following the guidelines that the Court put in place for him to follow. (Tr. 49).

12. The Superintendent of the Division must find that the Respondent's character and general fitness command the confidence of the public to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act. In connection with the requirements of Ohio Revised Code Section 1322.031(A)(2), the Respondent has been convicted of a "disabling offense"; namely receiving stolen property. The Ohio General Assembly has enacted a statutory procedure whereby particular offenses "automatically disable" an applicant unless he or she can show by a preponderance of the evidence that his/her activities and employment since the conviction show that he/she is honest, truthful and of good reputation and that there is no basis in fact to believe that he/she will commit such an offense again.

13. In this case, the level of alcohol and cocaine dependency acknowledged by the Respondent is considerable. He has a lengthy involvement with rehabilitation processes as well as the criminal justice system. Many of the criminal offenses are of relatively recent occurrences. The Hearing Officer does not find that the Respondent is so far removed from his chemical addiction and involvement in the criminal justice process to believe that there is no

basis that he will commit such offenses again. Likewise, the Hearing Officer finds that the Respondent has not established his honesty, truthfulness and good reputation.

14. The Hearing Officer determines that at the time of submission of the Application, the Respondent had pleaded guilty to the criminal offense of receiving stolen property. (See Exhibit 5A). Only upon successful completion of the treatment in lieu of conviction will this matter not be deemed to be a disabling offense pursuant to statute. That will not occur until later. Because of the plea of guilty, the Respondent must establish by a preponderance of the evidence that his activities and employment record since the conviction show that he is honest, truthful and of good reputation and that there is no basis in fact for believing that the Respondent will commit such an offense again. The Respondent has not met that burden.

15. The Respondent has not established to the satisfaction of the Hearing Officer that, by a preponderance of the evidence, the Respondent's activities and employment records, since the conviction, show that the Respondent is honest, truthful and of good reputation and that there is no basis for believing that the Applicant will commit such an offense again. Since the conviction, the Respondent has been in drug treatment. There is little evidence in the record about the Respondent's reputation. Further, the Hearing Officer cannot find that the Respondent's character and general fitness command the confidence of the public and warrant them to believe that the business will be operated honestly and fairly in compliance with the purposes of Section 1322.01 to 1322.12 of the Ohio Revised Code. The drug dependency casts considerable doubt on the Respondent's character and general fitness.

#### RECOMMENDATION

Based upon the above findings of fact, conclusions of law and discussion set forth herein, it is the recommendation of the Hearing Officer that the Superintendent of the Division not grant a Loan Officer License to the Respondent.

Respectfully submitted,

Kenneth R. Cookson  
Hearing Officer  
April 28, 2004