

STATE OF OHIO
DEPARTMENT OF COMMERCE
Division of Financial Institutions
Consumer Finance

In the matter of:)	Case No. M2006-9993024
)	
WAYNE A. HINCHMAN, JR.)	<u>DIVISION ORDER</u>
7 Gordon Avenue)	Denial of Loan Officer License Application
Hamilton, Ohio 45013)	&
)	Notice of Appellate Rights
)	

Respondent, Wayne A. Hinchman, Jr. ("Respondent"), submitted a loan officer license application ("Application") to the Division of Financial Institutions ("Division") on August 11, 2006. On October 17, 2006, the Division notified Respondent that it intended to deny his Application because: (1) in or around 2006, in the Hamilton, Ohio, Municipal Court, Respondent was convicted of Unauthorized Use of Property; (2) pursuant to R.C. 1322.031(A)(2) and 1322.041(A)(3), Respondent has not proven that he is honest, truthful, and of good reputation, and 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; and (3) because 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 R.C. 1322.01 to 1322.12 – the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on November 2, 2007. A Report and Recommendation ("Report") was filed with the Division on January 2, 2007, recommending that the Division approve Respondent's Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not

specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto.)

The Division disapproves paragraph 5 on page 5, and paragraph 8 on page 6 of the Report.

The Report concludes that Respondent met his burden under 1322.041(A)(3) to show that, since the date of the offense, he is honest, truthful, and of good reputation, and 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. The Report bases its conclusion primarily upon the Respondent's self-serving testimony concerning the circumstances of the offense, and the live testimony of a character witness, Mr. James E. Wenzel, Respondent's current supervisor. The evidentiary standard set forth R.C. 1322.041(A)(3) requires the fact finder to review the Respondent's activities and employment after the date of the conviction.

A) Upon the conclusion of the investigation required under division (B) of section 1322.031 [1322.03.1] of the Revised Code, the superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

* * *

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.

(Emphasis added.) Id. Respondent was convicted only six months prior to submitting his Application. (See, State's Exhibit A.) The Report seems to beg the question, how much evidence is required to overcome the stain caused by the theft of a pen?

. . . Respondent's testimony and Mr. Wenger's testimony are more probable and credible evidence that Respondent is honest, truthful and of good reputation than the single conviction for taking a BiC-type pen.

Report, at para. 5. The answer, of course, is that a preponderance of the evidence is all that R.C.

1322.041(A)(3) requires; that is, more likely than not. In the present case, Respondent's witness testified that he has only known the Respondent for two months. (*See*, Transcript of Proceedings, Nov. 30, 2006, page 32.) This testimony should be given a weight commensurate with the brief period of his professional relationship with the Respondent. Furthermore, the Report's finding, quoted above, considers the subject matter of the offense: a pen. The Report does not mention Respondent's own characterization of the event as a "small verbal confrontation," or otherwise acknowledge the unprofessional nature of Respondent's tit-for-tat with the clerk which led to his arrest and conviction. (*See, Id.*, at pp. 19, 22-23.) The Division finds that a mere matter of months is not enough time to sustain the Respondent's burden of proof.

Upon consideration of the record, the Division hereby rejects the hearing officer's recommendation and denies the loan officer license application of Wayne A. Hinchman, Jr.

It is so ordered.

NOTICE OF APPELLATE RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this Order.

Signed and sealed this 23rd day of February 2007.

RICHARD F. KECK

Acting Deputy Superintendent for Consumer Finance
Division of Financial Institutions
Ohio Department of Commerce