

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL  
INSTITUTIONS

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IN THE MATTER OF: : CASE NO. 05-0023-LOD  
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: :  
John C. Leek : James J. Lawrence, Hearing Officer

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ADMINISTRATIVE HEARING OFFICER'S  
REPORT AND RECOMMENDATION  
June 15, 2005

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I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 10:30 a.m. on April 25, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent John C. Leek (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent was convicted in 2001 of misapplication of bank funds. 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. The Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would commit such an offense 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).

Emily A. Smith, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared at the hearing without counsel. At the

hearing, State's Exhibits A through H and Respondent's Exhibits 1 - 6 were admitted into the record.

## **B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on March 11, 2005 by certified mail, return receipt requested. (Exhibit C.) Respondent's hearing request was received by the Division on March 17, 2005. (Exhibit D.) The Division scheduled the hearing for March 28, 2005 but, on its own motion, continued the hearing to April 8, 2005. At the Respondent's request the hearing was continued to April 25, 2005. Notices of the date, time and location of the hearings were sent by ordinary mail addressed to the same address as the NOH. (Exhibits E & G.)

## **C. Respondent's Loan Officer Application**

1. The Respondent filed a loan officer application on November 12, 2004. (Exhibit A.)
2. Question five of that application asked the following question:
  5. 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. (Emphasis in original.)
3. In response to Question 5, the Respondent answered "Yes." He attached a detailed explanation of the conviction. (Exhibit A.)
4. The Respondent provided a certified Judgment Entry from the United States District Court for the Northern District of Ohio, Eastern Division. The Entry for Case No. 4:01CR264 shows that on October 15, 2001 the Court found the Respondent guilty of Misapplication of Bank Funds, a violation of 18 U.S.C. 656. The Court sentenced the Respondent to three years probation, imposed a \$100.00 assessment and ordered payment of restitution in the amount of \$20,983.85. (Exhibit A.)
5. The Respondent explained that he committed the offense in the course of his employment as a Loan Manager and Vice President of Cortland Banks. During 1999 through June of 2000, he used bank funds to pay for bank Christmas parties, donations to charities on behalf of the bank, breakfast meetings with employees and people who did business with the bank. While he did not personally benefit from the use of the funds and no customer was affected, he did use the funds without permission or authorization from the bank. (Exhibit 6; TR at 17.)
6. The Respondent testified that after the conviction, he was employed by American Midwest Mortgage Company. (TR at 28.) In October of 2004, he went to work for Union National Mortgage Company where he is currently employed. His duties consist of reviewing loans for quality assurance. (TR at 29.)

7. No witnesses appeared to testify on the Respondent's behalf. The Respondent did submit five letters written in 2001 in support of the Respondent for purposes obtaining leniency in his sentence. (Exhibits 1 - 5.)

## II. CONCLUSIONS OF LAW

### A. Jurisdictional and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

### B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds that certain conditions are met, including, among other requirements not relevant here:

\* \* \*

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in R.C. 1322.031(A)(2), 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.

\* \* \*

(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.

The NOH states the Division intends to deny the Respondent's loan officer application because the Respondent has not met these conditions.

3. The NOH states that the Respondent has not shown that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit such an offense again, as required by R.C. 1322.041(A)(3). Because the Respondent was convicted of a crime involving money, one of the categories of crimes specified in R.C.

the Superintendent, 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 there is no basis in fact for believing that the applicant will commit such an offense again.

4. The Respondent has not met this burden. The Respondent has provided little information about his activities and employment record since his conviction. He testified only that he has worked for two mortgage companies. No one from these companies appeared or wrote on the Respondent's behalf. The letters that the Respondent did submit were written at the time of his conviction and do not address his activities and employment since the conviction. As such, this information is not sufficient to meet the Respondent's burden to prove by the preponderance of the evidence that his activities and employment since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit such an offense again as required by R.C. 1322.041(A)(3).
5. The NOH asserts that the Respondent's loan officer application should be denied because the 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). The Division bases this finding upon the Respondent's criminal conviction.
6. The Respondent's conviction is evidence that he does not possess the character and general fitness to be loan officer. The only evidence in support of the Respondent's character and general fitness were the letters urging a lenient sentence. Written in 2001, they are not strong evidence of the Respondent's character and general fitness today. In the absence of current testimony supporting the Respondent's character and general fitness to be a loan officer at this time, the conviction is sufficient to establish that the 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).
7. As a result of the Respondent's failure to meet the requirements of R.C. 1322.041 (A)(3) and (A)(5), the Superintendent is not required by R.C. 1322.041(A) to issue a loan officer license to the Respondent. Under such circumstances, R.C. 1322.10(A)(1) provides that after notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119, the Superintendent may, among other things, refuse to issue a loan officer license.

### **III. RECOMMENDATION**

The Respondent has not proven that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and

there is no basis in fact for believing that he will commit such an offense again. The record in this case establishes that the 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 Ohio's Mortgage Broker Act. Therefore, I respectfully recommend that the Superintendent of Financial Institutions deny the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,



James J. Lawrence  
Hearing Officer  
June 15, 2005