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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:	:	DIVISION OF FINANCIAL INSTITUTIONS
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Phillip R. Harris	:	Case No. 04-0277-LOD
	:	
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**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued July 10, 2004

I. FINDINGS OF FACTS

A. BACKGROUND

This matter came before this Hearing Officer, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (hereinafter the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:00 P.M. on May 14, 2004 at 77 South High Street, 19th Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Phillip R. Harris (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an investigation conducted by the Division which found that in or around 1994, Respondent pleaded guilty to and was convicted of Aggravated Trafficking, a felony of the second degree, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Emily A. Smith. Respondent appeared and represented himself.

At the hearing, State's Exhibits 1 through 6 were admitted into the record. Respondent admitted no Exhibit's into the record.

B. JURISDICTION

The Division issued the NOH against Respondent on March 16, 2004. The Respondent requested a hearing, which was received by the Division on March 29, 2004. The Division scheduled the hearing for April 8, 2004. The Division, upon its own motion continued the hearing to May 14, 2004 at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 5).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio as a loan officer with Ohio Mortgage Funding. (Tr. p. 31).
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed (Senate Bill 76, 2001).
4. On or about March 14, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 1).
5. Respondent filled out and signed the Application on or about, October 15, 2003. (Exhibit 1).
6. Within the Application Respondent answered "yes" to Question number 5, which asked: "Have you...ever been convicted of or pleaded guilty to any criminal offense including, but not limited to . . . drug . . . trafficking . . ." (Exhibit 1).
7. In 1994, 10 years prior to the submission of the Application Respondent was charged and convicted of one count of aggravated trafficking. (Exhibit's 1, 3; Tr. pp.12-13)
8. Respondent submitted no letters of reference to attest to his character.
9. Respondent had no character witnesses.
10. Respondent presented no Exhibits at the hearing.

II. CONCLUSIONS OF LAW

A. JURISDICTONAL ISSUE

1. The Division procedurally complied with O.R. C. Chapter 119.

B. LICENSE APPLICATION

2. 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 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.

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

(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.

4. Ohio Revised Code Section 1322.07(A) and (B) provide:

NO mortgage broker, registrant, licensee, or applicant for certificate of registration or license under Sections 1322.01 to 1322.07 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make any false or misleading statements of a material fact or any omission or statements required by state law, or false promises regarding a material fact through advertising or other means, or engage in a continued course of misrepresentations;

5. Because the Respondent answered yes to Question 5 of the Application, the burden of proof shifted to the Respondent to show by a preponderance of the evidence that his 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 purpose of the Mortgage Broker act.
6. Respondent provided no character references.

DISCUSSION

1. The Respondent stated that he is currently employed by Ohio Mortgage Funding Company. (Tr.p.31; Ex.1). Respondent stated he is a mortgage loan officer. (Tr. p.31; Exhibit 1).
2. The Respondent testified that in 1994 he was found guilty of aggravated trafficking and served three years probation. (Tr. p 25; Ex.1,3).
3. The Respondent did admit to having this criminal charge on his mortgage loan application. (Ex. 1). This conviction was 10 years ago. (Tr. p. 13; Ex.1).
4. Even though it appears that the Respondent has had no involvement with the criminal justice system since his release from probation in 1997, there is a current issue that Respondent is currently acting as a mortgage loan officer even though he read and signed the Loan Officer Application on page 2 of the Loan Application, which states that "...it is a crime to act as a loan officer without first having obtained a license..." (Tr. pp. 34 - 36; Ex.1).
5. Respondent further testifies that when sending in his application he did not have his signature witnessed by the Notary. (Tr. pp. 43 - 44; Ex.1).
6. Respondent states in his testimony that the Certificate of Employment forms are already pre-signed and Notarized and sent in a bulk packet. (Tr. p. 47).
7. Respondent testified that all employees in his office act a loan officers and he argues that it is because there is such a high turn over rate in his office. (Tr. p. 48).
8. Emily Smith then pointed out to Respondent that he understood and testified that he read the application and even questioned it in his mind but continued to act as a loan officer. (Tr. p. 49).
9. Respondent acknowledges that he did understand and was acting as a loan officer. (Tr. p. 51).

10. Respondent then tries to excuse his behavior by blaming the state for not having the rules more prominently outlined (Tr. p. 54). Though Respondent acknowledges reading and signing the Loan Officer Application that outlines the Ohio Mortgage Broker Act and notifies the signer that it is a crime to act as a loan officer without first obtaining a license (Tr. pp. 43-44; Ex.1).

11. Based upon Respondent's testimony his character and general fitness do not 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, as set forth in section 1322.041(A)(5).

RECOMMENDATION

Based on the above-findings of fact, conclusion of law and discussion thereof, it is the recommendation of the Hearing Officer that the Superintendent of the Division deny a Loan Officer License to the Respondent.

Respectfully submitted,

Julie M. Lynch
Hearing Officer
July 10, 2004