

IN THE MATTER OF: : CASE NO. 04-0122-LOD  
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**Stanfield Simmons** : James J. Lawrence, Hearing Officer

## I. FINDINGS OF FACT

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 June 15, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Stanfield Simmons (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).

1. Respondent 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.
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.

Martine Jean, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. The Respondent appeared with Counsel David W. Pryor, Gallagher, Gams, Pryor, Tallan & Littrell, LLP of Columbus, Ohio. At the hearing, State's Exhibits 1 through 6 and Respondent's Exhibits A – E were admitted into the record.

**B. Jurisdiction and Procedural Matters**

The Division issued the NOH to Respondent on January 22, 2004 by certified mail, return receipt requested. The Respondent requested a hearing within ten days. The Division scheduled the hearing for March 4, 2004 but, on its own motion, continued the hearing to a later date. The Division subsequently scheduled the hearing for May 4, 2004, but it was continued at the Division's request to June 15, 2004. Notice of the date, time and location of the hearing was sent by ordinary mail addressed to the address of the applicant's attorney with a copy to the Respondent.

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

1. The Respondent is employed by Consumer financial Consulting, a licensed mortgage broker. The Respondent filed a loan officer application on August 29, 2002. (Exhibit 2.)
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 or pleaded guilty to any criminal offense including, but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?
3. In response to Question 5, the Respondent answered "yes." However, he provided no details concerning the nature of the offenses or the circumstances that gave rise to the offenses. (Exhibit 2; TR at 22.)
4. As part of the application process, the Division conducted a criminal background check. R.C. 1322.031 (B).
5. The background check on Respondent's application revealed two separate criminal charges by local police agencies. (Exhibit 3.)

6. By letter dated December 10, 2002, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to each charge and a certified copy of the journal entry evidencing the disposition and sentence resulting from each charge. (Exhibit 3; TR at 23.)
7. The Respondent provided entries from the United States District Court for the Eastern District of New York and from the Franklin County Court of Common Pleas detailing three criminal convictions. (Exhibits 4, 5, & 6.)
8. The entry from the United States District Court shows that the Respondent was convicted of conspiracy to commit a crime against the United States (Firearms) in violation of Section 371, Title 18, U.S. Code in Case No. 91-CR-986-2 on January 29, 1992. The Court sentenced the Respondent to eight months in federal prison. (Exhibit 4; TR at 24.)
9. An entry from the Franklin County Court of Common Pleas shows that the Respondent was convicted of attempted theft in violation of R.C. 2913.02, a first degree misdemeanor, in Case No. 87CR-12-4053 on November 3, 1992. The Court sentenced the Respondent to sixty days which was suspended upon the payment of a \$250.00 fine and costs. (Exhibit 4; TR at 32.)
10. An entry from the Franklin County Court of Common Pleas shows that the Respondent was convicted of receiving stolen property in violation of R.C. 2913.51, a fourth degree felony, in Case No. 01CR02-1184 on July 5, 2001. The Court imposed a period of three years community control but imposed no jail sentence. (Exhibit 4; TR at 38.)
11. With regard to the federal conviction, the Respondent explained that at the end of summer quarter 1991, he accepted a ride home from two acquaintances. While eating at a McDonald's restaurant in Brooklyn, New York, they were surrounded by federal agents who searched their vehicle and found a bag of handguns in the trunk. Respondent and the two acquaintances were arrested and charged with engaging in the business of dealing in firearms without a license. Respondent asserts that he did not know that the guns were in the car, but pleaded guilty to the reduced charge of conspiracy to avoid a longer prison sentence. (TR at 24 - 28.)
12. With regard to the conviction for attempted theft, the Respondent explained that in 1987, he accompanied his cousin to the Lazarus department store at Northland Mall. He used his cousin's employee discount card to purchase items of clothing. The Respondent received a summons to appear in court and was placed in a first-time offenders' diversion program. He apparently

did not satisfactorily complete this program, because in October of 1992 he was arrested. When he appeared in court the judge released him on his own recognizance. He subsequently pleaded guilty to attempted theft and was sentenced to sixty days, suspended upon payment of costs and a \$250.00 fine. (TR at 32 - 37.)

13. With respect to the conviction for receiving stolen property, the Respondent explained that in 2001, he purchased a used vehicle from a private individual. Although the seller gave him a title and keys to the vehicle, unknown to Respondent, the vehicle had been stolen from a dealership. When an astute police officer noticed that the vehicle identification number on the Respondent's registration did not match the number on the vehicle, the Respondent was charged with receiving stolen property. The Respondent pleaded guilty to the fourth degree felony to avoid doing any jail time. The Court sentenced the Respondent to three years of Community Control and order to pay restitution to the dealer. (TR at 38 - 44.)

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

1. The Respondent asserts that he has not done anything dishonest or improper in his capacity as a loan officer in the last two-and-a-half years. He rates his honesty and integrity a ten on a scale of one to ten. (TR at 102.) Six witnesses appeared at the hearing to testify in support the Respondent's reputation and character.
2. Michelle Gladney, who has been employed by National City Bank for over two years as a loan officer, worked with the Respondent during that time. She has referred over one hundred customers to the Respondent when she was not able to get their loans processed through her own employer. Based upon her experiences with the Respondent, she does not believe that he would ever engage in dishonest or criminal conduct. She believes that the Respondent has earned the public's trust and that disallowance of his license would be a detriment to the community. (TR at 52 - 60.)
3. Fabienne Butler, who has been employed by Huntington National Bank for twenty-seven years as a manager of a division, has known the Respondent for about four years. She came to know the Respondent when he assisted her in resolving her financial problems. She has referred her friends to the Respondent for help in resolving their financial problems. At no time in their relationship has she had any reason to believe that the Respondent has acted dishonestly or improperly. She believes that the Respondent has earned the public's trust and deserves to have a loan officer license. (TR at 61 - 66.)

4. Carrie Pettus, who has been employed by Huntington National Bank for thirteen years as an account relationship associate, has known the Respondent for a year. She also sought the Respondent's assistance in obtaining a loan. She has not heard any accusations against the Respondent's integrity or honesty. She has heard from friends and realtors that he is a great loan officer. She believes that he has earned the public's trust and that he should receive his loan officer license. (TR at 68 -72.)
5. Rhonda Sue McIntyre, who has been employed by Supreme Title Agency for one year as a closing officer, has done about fifteen closings with the Respondent over the past year. During their relationship, she has had no reason to believe that the Respondent has acted dishonestly or improperly. She says that the Respondent has helped a lot of people buy or refinance their homes and get out of debt when other loan officers could not. She believes that the Respondent has earned the public's trust and deserves a loan officer license. (TR at 73 – 78.)
6. Erica Lynn Burton, who has been employed by Consumer Financial Consulting for two years as a loan processor, has worked with the Respondent during that time. She testified that he is a great loan officer and that she gets a lot of positive feedback from customers. She also testified that during their relationship, the Respondent has not acted in a dishonest or improper way. She believes that the Respondent has earned the public's trust and would never engage in any criminal or dishonest conduct. She said that if the Respondent gets his license, he will be a positive influence in the lives of middle class people who do not always qualify for the better loans and that it would be a misfortune if he could not continue working as a loan officer. (TR at 79 – 85.)
7. Timothy Brown, who is the broker for Promise Realty and has been in the real estate business for seven years and is also a licensed loan officer, has known the Respondent for about a year. Through his work with a nonprofit company called Future Community Builders, he has referred over thirty first-time home buyers to the Respondent for special assistance. He has had no reason to believe that the Respondent would do anything dishonest or make any misrepresentations. He believes that the Respondent has earned the public's trust and would never engage in criminal or dishonest conduct. Mr. Brown testified that he will continue to send business to the Respondent because he takes care of the clients to the best of his ability and is personally concerned about their welfare. (TR at 86 – 92.)
8. The Respondent also presented affidavits from five other individuals including the owner and manager of Consumer Financial Counseling, an employee of the City of Columbus Department of Development who benefits

from the Respondent's assistance with the Down Payment Assistance Program administered through HUD, and an employee of the Neighborhood House Community Housing Development Organization. All of the Affiants attested to the Respondent's integrity and honesty. (Exhibits A – E.)

9. Finally, the Respondent testified that he is the minister of music for the Mt. Zion Apostolic Church in Columbus and will be starting classes soon to enable him to participate in a pastoral role in the church. (TR at 97 -98.) He testified that he has completed a Bachelor of Science degree in Economics at The Ohio State University (TR at 97) and has been invited to join the board of trustees of the Neighborhood House Community Housing Development Organization. (TR at 99.)

## **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. R.C. 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.
2. R.C. 1322.041(A) provides that a loan officer license shall be issued 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 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.

\* \* \*

(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. 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 if he finds:

\* \* \*

(b) A conviction of or guilty plea 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.

### C. DISCUSSION

1. The Division determined that Respondent's loan officer application should be denied because the Respondent did not prove 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 required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3). The record shows that Respondent was convicted in the Franklin County Court of Common Pleas of the offense of attempted theft in violation of R.C. 2913.02 and receiving stolen property in violation of R.C. 2913.51. (R.C. 2913.01(K)(1) provides that a theft offense includes, among other offenses, the offense of attempted theft.) R.C. 1322.041(A)(3) requires that an applicant for a loan officer license who has been convicted of an offense listed in R.C. 1322.031(A)(2) must show, by the preponderance of the evidence, that his activities and employment since the conviction prove 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.
2. The Respondent has submitted significant evidence to show that his activities and employment since the conviction satisfy the conditions of R.C. 1322.041(A)(3). The testimony of the six witnesses was probable, persuasive and credible. Five of these witnesses either work or have worked in the financial services industry. Accordingly, they should be aware of the

importance honesty and reputation to a loan officer. Each testified that the Respondent is honest and truthful and would not, in their opinions, commit a criminal offense. Each testified that the Respondent has earned the public's trust. In addition, Respondent testified that he is married and has a child, is active in his church and has completed his baccalaureate degree. These facts tend to show that his life has changed in ways that will make it unlikely that he will commit a criminal offense again. On the other hand, the Respondent was convicted of offenses that support the inference that the Respondent may behave in ways that disregard the property rights of others. The weight to be given to this inference is mitigated by the testimony of the Respondent that in both instances he was not aware that the conduct was criminal. In the incident that led to the attempted theft conviction, the Respondent was unaware that his cousin was not authorized to allow him to use her employee discount and in the incident that led to the receiving stolen property conviction, the Respondent was unaware that the vehicle that he purchased had been stolen. Based upon his observations of the Respondent's expression and general demeanor while testifying, the Hearing Officer finds that the Respondent's testimony is believable. Accordingly, the Respondent has shown by a preponderance of the evidence that his activities and employment since the convictions prove 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 or any criminal offense involving money or securities.

3. The Division also determined 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 record in this case establishes that Respondent has a substantial criminal record that includes offenses that support an inference that Respondent may behave in ways that disregard the property rights of others. However, the weight of this inference is mitigated by the circumstances surrounding the offenses. The Respondent testified that in each incident he did not know that he was committing a criminal offense. In 1991, he was not aware that guns were in the vehicle; in 1987, he was not aware that his cousin was not authorized to allow him to use her employee discount; and in 2001, he was not aware that the vehicle that he purchased was stolen. He testified that in each case he pleaded guilty to avoid any or additional time in jail. For the reasons stated above, the Hearing Officer finds the Respondent's testimony to be credible. Accordingly, the record in this case does not support the Division's determination 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.

### **III. RECOMMENDATION**

The Respondent has met all of the prerequisites for receiving a loan officer license set forth in R.C. 1322.041. Therefore, I respectfully recommend that the Superintendent of Financial Institutions grant the Respondent's loan officer application pursuant to R.C. 1322.041 and 1322.10.

Respectfully Submitted,

  
James J. Lawrence  
Hearing Officer  
August 31, 2004