

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

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In re: Derry L. Pursley.

: Case No. 03-LO-D-89-90

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

The Ohio Department of Commerce, Division of Financial Institutions ("Division") proposes that the Loan Officer License Application of Derry L. Pursley not be granted because Mr. Pursley has been convicted of a criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering or drug trafficking, or a criminal offense involving money or securities in violation of Ohio Revised Code Section 1322.031(A)(2) and Section 1322.041(A)(3). Given Mr. Pursley's criminal conviction, the Division believes:

- i. that he has not proven that he is honest, truthful and of good reputation and that there is no basis in fact to believe he will not commit such an offense again as set forth in Ohio Revised Code 1322.031(A)(2) and 1322.041(A)(3); and
- ii. that Mr. Pursley's 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);

Mr. Pursley's address for service is 3209 Old State Road, Mt. Orab, Ohio 45154. (Exhibit 9). He is hereinafter referred to as the "Respondent". The Respondent is presently employed by Midas Mortgage Corporation (Exhibit 9).

This matter was initiated by the Superintendent of the Division by the issuance on September 11, 2003 of a Notice of Intent to Deny Loan Officer License & Notice of Opportunity for a Hearing together with a covering letter. (Exhibit 9).

On September 22, 2003, the Respondent wrote to the Division requesting a hearing. (Exhibit 10).

On September 30, 2003, the Division wrote to the Respondent acknowledging receipt of the request for a hearing, scheduling a hearing for 2:00 p.m. on October 7, 2003 and simultaneously continuing that hearing until 1:30 p.m. on October 14, 2003 at the Division in Room 1924 of the Vern Riffe Center, 77 South High Street, Columbus, Ohio. (Exhibit 11).

The hearing was held beginning at 1:45 a.m. on October 14, 2003 and was attended by Paula Luna Paoletti, Deputy Attorney General of the Executive Agencies Section of the Attorney General's Office of Ohio, the Respondent, *pro se*, and Martine Jean and Charles Febus, interns for the Office of the Attorney General.

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 April 30, 2002, the Respondent signed a Loan Officer Application (the "Application") under the provisions of the Ohio Mortgage Broker Act, Ohio Revised Code Section 1322. (Exhibit 1).

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 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 "No".

4. On June 14, 2002, the Division, by Ms. Axtell, Legal Counsel on Consumer Finance, wrote to the Respondent indicating that it was unable to make a decision as to whether to issue a license to the Respondent because of insufficient evidence. (Exhibit 2). The Respondent's background check indicated that on August 13, 2001, the Respondent was charged with two counts of forgery by the Highland County Police. (Exhibit 2). The Respondent was asked to provide a detailed explanation as well as certified copies of journal entries. (*Id.*).

5. On December 6, 2002, the Division, by Robert M. Green, Deputy Superintendent, wrote to the Respondent stating that the Respondent had failed to provide the information requested. (Exhibit 3). Therefore, the Respondent's application was deemed withdrawn pursuant to Revised Code Section 1322.031(D). (*Id.*).

6. On December 10, 2002, the Respondent wrote to the state that he had forwarded a response which was a letter from his counsel. (Exhibit 4).

7. On January 3, 2003, the Respondent executed a second Loan Officer Application. (Exhibit 6).

8. Question 5 of that Application provided:

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. (DUIs and DWI's are criminal offenses.) Yes ☐  
No ☐

If yes, 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 of each charge.

9. In response to that question, the Respondent answered "Yes" and provided further information. (Id). That information included a statement from the Respondent that he has not had any speeding tickets or other types of violation since July, 2001. (Id). The Respondent also included a letter from his attorney in which some background of the Respondent's misdemeanor conviction for attempted forgery was set forth. (Id).

10. On March 17, 2003, the Division, by Ms. Axtell, wrote to the Respondent indicating that the Respondent's criminal conviction for attempted forgery automatically disqualified the Respondent from receiving a license and seeking further information. (Exhibit 7).

11. In response, the Respondent submitted a letter dated March 25, 2003 as follows:

My name is Derry Pursley, I'm 53 years old, and I've lived all my life in rural Brown County. I worked as a teller in a local bank when I was going to college and continued to work in local banks until 1993 at which time I joined Midas Mortgage. Midas is located in Cincinnati, but my area was rural Brown, Adams, and Highland Counties. I go to church, coach little league, and referee basketball in this area and have an excellent reputation. I am a graduate of the Wisconsin Graduate School of Banking and have been successful in mortgage banking because I know so many people in my area and they trust me.

In 1997 I had a young couple pre-approved in Highland County but could not close on the property until he was off probation from work. They found a property they wanted but the seller would not wait the additional 30 days he had on his job probation. The purchase price was \$46,000.00 and when I explained this to my boss, Mike Bowen, said we would buy the property and transfer it to the couple when his probation was up. Mr. Bowen said he did not want to go all the way to Hillsboro for the closing and his wife owns a title company so she prepared the papers to take to Hillsboro. To simplify everything Mike put the property in mine and his name but he put up the money for the purchase. Mike did not give me a power-of-attorney but had signed everything in

advance , but when I got to Hillsboro the realtor wanted to use the deed he had prepared I signed Mike name and was going to get a power of attorney when I got back to Cincinnati. The next day I gave all paper work to Mike Bowen and he gave it to his wife at the title company to record and file and he said the file could go as is and they completed the transaction.

The young man lost his job and did not complete his probation so Mike and I had a piece of property deeded in our name. We listed the property but it did not sell and after approximately two years Mike came to me and said he had the property sold and brought the deed and paper work to my office to sign and he took it to the closing. I did not have any money in the transaction except , for time and mileage, so I was just glad to get rid of the property. The property was sold to the new owners and I thought we were done with it , but in the year 2000 a neighbor adjoining the property said part of the property we transferred to the new owners was theirs. When their attorney reviewed the file he stated the deed was not signed by Mike Bowen and there was not a power of attorney, which there was not so they charged me with possession of a forged document.

When I had my hearing my attorney advised me to plead guilty because if we went to a jury trial it would cost me an additional \$5,000.00 and it would be easier to get it expunged in two years and I just wanted to be done with this, so I went along. My two years are up June of 2003 and this is the only problem I've ever had with the law and it was my own stupid fault for going along with something and thing not following up like I know I should of. I did not gain anything or hurt anyone except myself and it all came about by trying to save a property for a young couple. The neighbor is still arguing we sold 1000 feet of his property but I had nothing to do with preparing, selling, or recording the documents, but that's what brought all this to a head. I hope you can make some sense out of this but it is the truth and how things can get out of control.

Since this transaction I have become even more cautious and make sure everything is done the correct way, regardless of how inconvenient it might be. This is the only blemish on my record and at my age I am not going to let anything like this happen again. This is a profession I enjoy and have worked hard to build what I have, and I would appreciate any consideration you might give me.

(Exhibit 8).

12. The March 25, 2003 letter, (Exhibit 8), is substantially similar to a letter dated September 9, 2002 which the Respondent provided the Department. It stated:

This letter is the explanation of what happened on the purchase of a piece of property in Highland County , Ohio and how I got involved. I've worked for Midas Mortgage for nine years , and my market area is the rural areas of Brown, Adams, and Highland Counties. I have lived in Brown County all my life, and I'm 52, and worked in local banks since I was in college beginning in 1969. So I've worked in finance and also lived here my entire adult life. Midas Mortgage is a small mortgage company located in the Blue Ash area of Cincinnati and owned by Michael Bowen.

What happened was in 1997 we had a customer wanting to buy a property in the Hillsboro area, about 70 miles east of Cincinnati. We had a young couple qualified to purchase the house but the husband had 30 days to go on probation period and the realtor informed us if we didn't close immediately he was going to go to the back up offer. In order to help the young couple get the home Mike Bowen agreed to purchase the house and sell it to the couple , for the same price, once his probation period was over. Mike said he would provide the funds and I would have to go and take care of the closing and we'd put it in both names because he didn't want to have to go to Hillsboro for a \$50,000. transaction. So Mike sent the documents and check with me to take care of the closing. One of the documents was not signed and the realtor said let it go and we have Mike sign it later and send it back. I never thought another thing about it and left the office and the realtor had some one sign and he notarized it unknown to me but at the time it didn't matter.

Our young man lost his job before his final 30 days were up , so we were stuck with a house, which was now in Mike Bowen's and Derry Pursley's name. It took us a year and a half to sell the house and Mike sold it to a couple and I didn't know what he got for it and I didn't go the closing. He brought the papers to my office to sign and he closed. I didn't make any money on the deal and thought we were done. In 2000 a neighboring company said that part of the property we had purchased and sold to our buyers had been sold to them but was on our deed, and that the realtor had sold to them but no recorded. This all occurred in 2001 and they sued and the only thing they could come up with that I , Derry Pursley , had possession of a forged document.

I had to hire an attorney for \$3,500.00 and at the hearing he advised me to plead guilty, because it was the quickest and cheapest, because if we went to trial he couldn't guarantee me

anything and it would be an additional \$4,000.00. I did because I thought that was the quickest way to get this behind us, this was June 2001, and I did not want to spend any more money win or lose. There was no fine and the judge put me on two years probation, which will be up soon , at which time my attorney said we would get it esponded from the records. I know this is a screwy story but it is what happened and I am still working for the same company.

I would appreciate your consideration on this matter , because this is my lively-hood and I don't even have a speeding ticket on my record. We tried to help a young couple and it became a nightmare, and the strip of land the company claims was for \$1,000,which we were never aware of.

(Exhibit 4).

13. The Respondent also submitted a copy of his Judgment Entry of Sentence (Misdemeanor) from the Highland County Court of Common Pleas. (Exhibit 5). That Entry states that the Respondent pled no contest to and was found guilty of attempted forgery.

14. As part of the Application, the Respondent signed a National Background Check authorization. (Exhibit 1).

### **CONCLUSIONS OF LAW**

1. Ohio Revised Code Section 1322.031(A)(2) requires that in an application for a license to be a loan officer, the 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. Ohio Revised Code Section 1322.041(A) provides in part that the Superintendent of the Division shall issue a Loan Officer License if the Superintendent finds that certain conditions are met including:

- (2) The applicant complies with Sections 1322.01 to 1322.12 of the Revised Code.
- (3) The applicant has not been convicted 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 offense, 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 sections 1322.01 to 1322.12 of the Revised Code.

3. The Respondent has been convicted of the misdemeanor of attempted forgery.

4. Disclosure of the misdemeanor conviction triggers the requirement that the Applicant's character and general fitness must be found to 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.

### **DISCUSSION**

1. In this matter, the Respondent has completed two separate Applications. (Exhibits 1 and 6). In Exhibit 1, the initial Application, the Respondent failed to indicate that he had been convicted of the misdemeanor of attempted forgery in June, 2001, only 10 months prior to completing the Application. In Exhibit 6, the Respondent acknowledged the misdemeanor conviction and provided a letter from his counsel, Richard Goettke. (Exhibit 6).

2. The attempted forgery by the Respondent involved a residential mortgage loan transaction in Ohio. (Tr. 20).

3. The misdemeanor conviction for attempted forgery involves a complicated set of facts. A young couple was attempting to purchase a house. (Tr. 23, 24). The realtor involved was anxious to sell the property and was not willing to hold the property beyond the end of the month. (Tr. 24). Otherwise, the realtor was going to sell it to another buyer. (Tr. 24). The young couple had been approved for a loan by the entity for which the Respondent worked. (Tr. 24). However, the husband of the young couple was still on "job probation" for an approximate 90-day period and the transaction would not occur on that basis. Mike Bowen, the owner of Midas Mortgage, for which the Respondent worked, stated that Mr. Bowen would buy the house, rent it to the young couple and, later, when the couple was eligible, sell the home to them for the same price. (Tr. 24). That initial closing by which Mr. Bowen purchased the house occurred. (Tr. 24).

4. The names on the deed to the property were Mike and Kathy Bowen, the owners of the mortgage company, as well as the Respondent's. (Tr. 25). However, the deed for that purchase was not recordable because of a dispute over the legal description to a strip of land behind the house. A correct legal description was ultimately attached to that deed by which the Respondent and Mr. and Mrs. Bowen received title to the property in question. (Tr. 27).

5. Ultimately, the couple was never able to close the purchase of the house because the husband was injured on the job and as a consequence lost his job. The Respondent and Mr. and Mrs. Bowen continued to own the home in question for approximately one year. Mr. Bowen fixed the property up and tried to sell it. (Tr. 27). Ultimately, the property was ready to be sold and the Respondent was asked to sign a deed. (Tr. 28). He did indeed sign a deed. (Tr. 28). That deed, however, also included the disputed land that was not part of the original title when the Respondent and Mr. and Mrs. Bowen acquired the property. (Tr. 29). In other words, the Respondent and Mr. and Mrs. Bowen signed the deed that attempted to transfer real estate that included a 1,000 foot strip of land for which they had not received title. (Tr. 29). As part of that execution of the deed, the Respondent signed the name of Mr. Bowen by the Respondent. He did not have a power of attorney to execute that document. (Tr. 30-31).

6. The Respondent has been in the mortgage finance business all of his life and he is presently 53 years of age. (Tr. 31). He has never before done a transaction like this. (Id).

7. The Respondent submitted a document from the Highland County Probation Department indicating that he was successfully released from probation in July of 2003. (Respondent's Exhibit A). The Respondent also submitted a pleading in a civil case filed by Davon Inc. against Michael Bowen and others indicating that a trial has been scheduled in the civil case brought by Davon Inc. to contest the transfer of the 1,000 foot strip. (Respondent's Exhibit B).

8. The conviction for attempted forgery acts to shift the burden to the Respondent to show his honesty, truthfulness, good reputation and that he will not commit such an offense again. Further, the Respondent is required to show that his 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 the legislation. The Hearing Officer is not convinced that the Respondent has met his burden. The conviction occurred in July, 2001, slightly more than two years before the hearing in this matter. (Exhibit 5). Moreover, the conviction arose directly from a residential real estate transaction in Ohio. The initial Application submitted by the Respondent, (Exhibit 1), failed to disclose the Respondent's conviction for attempted forgery. The Respondent provided no witnesses other than himself in support of his position other than the written documents identified in this Report and Recommendation. As an experienced professional in the residential real estate finance business, the Respondent should well have known the consequences of his action in signing another individual's name to a deed or other legal document. In the course of his proposed employment as a residential mortgage loan officer, the Respondent will come in contact




with numerous documents that will need execution by the appropriate parties. The Hearing Officer is not convinced that the Respondent has met his burden to show that the business will be operated honestly and fairly in compliance with the purposes of the legislation.

9. According, the Hearing Officer determines:
- i. that the record does not contain adequate information that the Respondent is honest, truthful and of good reputation;
  - ii. that the record does not show that there is no basis for believing that the Respondent will commit such an offense again;
  - iii. that the record does not show that the Respondent'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 Sections 1322.01 to 1322.12 of the Revised Code; and,
  - iv. that the record does not show that the purpose of the Ohio Mortgage Broker Act will be served by the issuance of a license in this matter.

#### RECOMMENDATION

Based on the above-findings of fact, conclusions of law and discussion thereof, 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  
January 9, 2004

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