

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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IN RE: : CASE #: 06-0094-LOD
:
DANIEL M. ROCHE : ADMINISTRATIVE HEARING OFFICER
:
(Denial of Loan Officer : MARK J. BALLENGER, ESQ.
License) :
:

**ADMINISTRATIVE HEARING OFFICER'S
REPORT**
Issued August 14, 2006

BACKGROUND

On or about January 27, 2006, the Ohio Division of Financial Institutions ("the State") served Daniel M. Roche ("the Applicant") with notice that it intended to deny his loan officer license. Then, on February 13, 2006, he requested a hearing about the matter. In turn, his request was honored.

This case was heard on July 6, 2006, beginning at 9:54 a.m. at 77 S. High Street, Columbus, Ohio, Rm. 1908. A stenographic record was made of the proceeding.

The Applicant did not appear at the hearing. Assistant Attorney Ted Klecker presented the case on behalf of the State.

This report is hereby filed with the Superintendent of the Division of Financial Institutions and the Applicant.

INDEX OF EXHIBITS ADMITTED TO RECORD

<u>Exhibit #/Document I.D.</u>	<u>Description of Exhibit</u>
1. State's Exh. A	Jurisdictional Exhibits: Notices of intention to deny the loan officer application and certified mail receipt
2. State's Exh. B	Copy of the Hearing Request Form
3. State's Exh. C	Copy of the Notice of Hearing
4. State's Exh. D	Copy of Order to Continue Hearing
5. State's Exh. E	Copy of the August 25, 2005, Loan Officer Application "the Application"
6. State's Exh. F	Applicant's October 26, 2005, explanation of criminal conviction and copy of certified court documents

TESTIMONY GIVEN BY

- State's witness, Staff Attorney Carrie V. Moore of the Consumer Finance Section

FINDINGS OF FACT

1. The State advised the Applicant of the reasons for its intent to deny him a loan officer license. (See the attached two pages, marked "Copy.")
2. In the Application, submitted to the State on August 25, 2005, the Applicant, in answering a question in a list of questions, checked the "no" box thereby indicating, inter alia, that he had not ever been convicted of any criminal offense involving theft. (Exh. #5, Question #6 and Tr. pp. 20-21.) The Applicant's signature of August 19, 2005, appears in the "Attestation" section at the end of the Application, where directly above his signature, it states: "Being first duly cautioned, I hereby swear or affirm that I have completed the foregoing Loan Officer Application fully and frankly," and "[t]he answers are complete and true of my own knowledge." (Exh. #5 and Tr.¹ pp. 20.)
3. The evidence presented at hearing showed the Application contained false information; despite what the Applicant attested to in the Application, he was convicted of a first degree misdemeanor of theft, after pleading no contest, in the Municipal Court of Elyria, Ohio, in the year 1997. (Exh. #6 and Tr. pp. 21-24.)

CONCLUSIONS OF LAW


The Applicant was convicted of a criminal offense of theft and he has not, as required by R.C. 1322.041(A)(3) – as a condition of licensure – proven by a preponderance of the evidence that his activities and employment record since the conviction show he is honest, truthful, and of good reputation, and that he will not commit such an offense again. (Findings of Fact #2 and #3.) Instead, his attestation to, and submission of a false application, show he lacks the character to command the confidence of the public and warrant the belief that he would operate a loan officer business honestly – another requirement for licensure under R.C. 1322.041(A)(5). (Ibid.)

Additionally, by his false attestation and submission, the Applicant has arguably violated: R.C. 1322.07(A) (prohibition against making any substantial misrepresentation in a license application); R.C. 1322.07(B) (prohibition against making a false or misleading statement of a material fact), and R.C. 1322.07(C) (prohibition against engaging in conduct that constitutes improper, fraudulent, or dishonest dealings).

RECOMMENDATION OF ACTION

Therefore it is recommended that the Superintendent of the Division of Financial Institutions deny the Applicant's request for the issuance of a loan officer license.

Respectfully submitted,



Mark J. Ballenger
Administrative Hearing Officer

¹ "Tr." refers to the transcript of the subject hearing.