

STATE OF OHIO  
DEPARTMENT OF COMMERCE 04 SEP -1 AM 11:51

IN THE MATTER OF: : DIVISION OF FINANCIAL  
: INSITUTIONS  
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Sarah L. Olwine : Case No. 04-0350-LOD  
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**REPORT AND RECOMMENDATION**  
**ADMINISTRATIVE HEARING OFFICER JULIE M. LYNCH**

Issued August 24, 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 June 29, 2004 at 77 South High Street, 19<sup>th</sup> Floor, Columbus, Ohio.

The hearing was held at the request of Respondent Sarah L. Olwine (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 2001, Respondent was convicted of Unauthorized Use of Property, a misdemeanor of the fourth 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 Dan Jones. Respondent appeared and represented herself.

At the hearing, State's Exhibits 1 through 8 were admitted into the record.

**B. JURISDICTION**

The Division issued the NOH against Respondent on April 19, 2004. The Respondent requested a hearing, which was received by the Division on April 30, 2004. On April 30, 2004, the Division scheduled the hearing for May 10, 2004. The Division, upon its own motion continued the hearing to June 29, 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 4).
2. Respondent is an individual who has conducted, and continues to conduct, business in Ohio. ( Tr. p. 12).
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 February 17, 2004, 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, February 12<sup>th</sup>, 2004. (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 or around 2001, Respondent was convicted of Unauthorized Use of Property, a misdemeanor of the fourth degree. (Ex.5).
8. Respondent submitted no letters of reference to attest to her character.

**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 her 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 had no witnesses nor did she provide any letters of reference.

### **DISCUSSION**

1. The Respondent stated that she was charged with shoplifting for walking out of a store with kids, an infant and a toddler and was distracted pushing the cart and had purchased \$100.00 worth of groceries but two candy bars were in the cart when she walked out of the store. The store would not let her pay for the candy bars and pressed charges. (Tr. p. 11).

2. The Respondent testified that she chose not to go to court and pled to a reduced charge of Unauthorized Use of Property and was fined \$250.00 with \$150.00 suspended. (Ex.2,4;Tr.p.11).

3. The Respondent stated that when she was filling out her loan mortgage license application a woman from her office helped her fill it out and she was embarrassed to tell her about the shoplifting charge even though she admitted to a 2002 DUI charge. Respondent felt the woman would understand the DUI charge more then she would a shoplifting charge. (Tr.p.12).

4. Respondent stated that she really didn't realize the consequence of not putting the shoplifting charge on her application. (Tr.p.12).

5. Respondent testified that she raises her children to be honest and that she has never cheated in class nor is she a dishonest person. (Tr.p.13).

6. Assistant Attorney General Dan Jones in closing arguments stated that in all of his vast experience he believes that this is not a person who should be denied a license and truly believes that it was an honest mistake and that Respondent has proven that her character and honesty and truthfulness and reputation and her general fitness meet the requirements set for in Chapter 1322 of the Ohio Revised Code.

7. Based upon Respondent's testimony her character and general fitness do 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 grant a Loan Officer License to the Respondent.

Respectfully submitted,

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Julie M. Lynch  
Hearing Officer  
August 24, 2004