

**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**  
**Division of Financial Institutions**  
**Consumer Finance**

|                             |   |   |
|-----------------------------|---|---|
| In the matter of:           | ) | Case No. 04-0143-LOD                              |
|                             | ) |   |
| <b>BERNARD JOHN GARDIER</b> | ) | <b><u>DIVISION ORDER</u></b>                      |
| 1045 Parkwood Drive         | ) | <b>Denial of loan officer license application</b> |
| Cleveland, Ohio 44108       | ) | &   |
| _____                       | ) | <b>Notice of Appellate Rights</b>                 |

Respondent, Bernard John Gardier, submitted a loan officer license application to the Division of Financial Institutions ("Division") on October 21, 2003. On April 14, 2004, the Division notified Gardier that it intended to deny his loan officer license application because: (1) he had been convicted of attempted drug trafficking in 1996, and he had 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 theft-type offense; and (2) because his character and general fitness did not command the confidence of the public and warrant the belief that his business will be operated honestly and fairly in compliance with the purposes of R.C. §§ 1322.01 to 1322.12—the Ohio Mortgage Broker Act.

Respondent requested a hearing and an administrative hearing was held on July 26, 2004. A Report and Recommendation was filed with the Division on September 13, 2004, recommending that the Division approve Gardier's application and grant him a loan officer license. No objections were filed.

In accordance with R.C. §119.09, the Division has considered the Report and Recommendation, all applicable laws, the transcript of testimony and the exhibits. As a result, the Division modifies and/or disapproves the findings and/or conclusions listed below. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report and Recommendation is attached hereto as Exhibit A.)

The Division modifies paragraph 3 on page 3 under LICENSE APPLICATION.

The Division adds the following text to paragraph 3:

“(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."

The Division disapproves paragraph 5 on page 4 under **LICENSE APPLICATION**.

The Respondent has the burden to show "...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. (See R.C. § 1322.041(A)(3)). This burden is placed on the Respondent because he was convicted of drug trafficking, one of the enumerated offenses of R.C. §1322.031(A)(2). The fact that Respondent answered yes to Question 5 of the application does not in and of itself shift the burden.

The Division disapproves paragraph 5 on page 4 under **DISCUSSION**.

The Division has the burden to show that Respondent's character and general fitness 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 sections 1322.01 to 1322.12 of the Revised Code—the Ohio Mortgage Broker Act.

The Division modifies paragraph 9 on page 5 under **DISCUSSION**.

The Division also finds that Respondent did not prove by a preponderance of the evidence that his activities and employment record since his 1996 drug trafficking conviction that he is honest, truthful and of good reputation and that there is no basis in fact for believing that he will commit such an offense again. (See R.C. § 1322.041(A)(3)).

As Respondent did not satisfy his burden of proof the Division adopts the Hearing Officer's recommendation to deny Respondent's loan officer license application.

Respondent's loan officer license application is hereby denied.

It is so ordered.

**NOTICE OF APPELLATE RIGHTS**

Respondent is hereby notified that pursuant to R.C. 119.12, this order may be appealed by filing a notice of appeal with the Ohio Division of Financial Institutions setting forth the order appealed from and the grounds for the appeal. A copy of such notice of appeal must, pursuant to R.C. 119.12, must also be filed with the court of common pleas of the county in which the place of business of the Respondent is located, or the county in which the Respondent is a resident. A notice of appeal must be filed within fifteen (15) days after the date of mailing of this order.

Signed and sealed this 28th day of November 2005.

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**ROBERT M. GRIESER**

Deputy Superintendent for Consumer Finance  
Division of Financial Institutions  
Ohio Department of Commerce