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DIVISION OF FINANCIAL  
INSTITUTIONS

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

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DIVISION OF FINANCIAL  
INSTITUTIONS

**GINA R. CAYSON**

CASE NO. 05-0041-LOD

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**REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued January 9, 2006

**I. FINDINGS OF FACT**

**A. BACKGROUND**

The above matter came before the undersigned 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 3:00 PM on October 4, 2005, at 77 South High Street, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Gina R. Cayson, of Maple Heights, Ohio (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 allegation that in 1999, Respondent was convicted, in Cuyahoga County, Ohio, of Unauthorized

Use of Property, a theft offense, 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 Timothy C. Loughry. Respondent appeared pro se.

At the hearing, State's Exhibits 1 through 4 were admitted into the record. Respondent did not offer any exhibits or witnesses, other than herself, as discussed in the transcript (hereinafter "Tr."). However, at Respondent's request, the record was kept open for one week, to 5:00 PM on October 11, to receive such documents as Respondent submitted to further her case (Tr. pp. 44-48.). As a result, Respondent's Exhibit A was received into the record on October 11, comprised of five separate character letters and a fax cover sheet, all faxed to the undersigned Hearing Officer. No original copies of the letters were ever received by the Hearing Officer, despite instructions to the Respondent to send the documents with original signatures (Tr. p. 59.).

## B. JURISDICTION

The Division issued the Amended NOH against Respondent on May 24, 2005. Respondent requested a hearing, which was received by the Division on June 6, 2005. On June 14, 2005, the Division scheduled the hearing for June 16, 2005, but continued the hearing indefinitely on its own motion. On July 18, 2005, on the Division's motion, the hearing was rescheduled to October 4, 2005, at which time the hearing went forward.

## 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 1.)
2. Respondent is an individual who applied to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 2; Tr. pp. 13-15.)
3. On or about March 7, 2005, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit 2.)
4. Respondent signed the Application on, or about, March 4, 2005. (Exhibit 2.)
5. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (Exhibit 2; Tr. pp. 41-43.)

6. Respondent attached to the Application court records indicating that Respondent was found guilty of Unauthorized Use of Property in 1999. Respondent also attached other records which are not germane to the Division's charges in the NOH. (Exhibit 2.)
7. On, or about, March 9, 1999, six years prior to the submission of the Application, Respondent (known then as Gina Humphries) was found guilty, in Cuyahoga County Court, of one count of Unauthorized Use of Property, a first degree misdemeanor, a theft offense. (Exhibit 2; Tr. pp. 14, 18, 25-33.)
8. Respondent's explanation of the 1999 conviction for Unauthorized Use of Property was that she had needed a new vehicle for work and had entered into what she believed was an agreement to rent-to-own. However, Respondent did not obtain the rent-to-own agreement in writing. After paying weekly for a period of time, the car needed repairs and there was a disagreement over the warranty. Respondent paid to fix the car with the money she would have used to make the next payment. During this same time, the dealership was notified that Respondent's insurance was cancelled. After two weeks, the car dealership contacted police and reported the car stolen because, Respondent states, her husband refused to return the car and no payments had been made for over two weeks. Eventually the car was returned to the dealership. (Exhibit 4; Tr. pp. 25-33.)
9. The police report indicates that Respondent was uncooperative and belligerent with the police. The dealership indicated that there was no written agreement but sometimes a customer wanting to make payments over an extended period of time and then a percentage of the payments go toward the purchase price. (Exhibit 4.)
10. For the 1999 conviction, Respondent was sentenced to six months incarceration, suspended, one year probation, restitution of \$1,500 and costs. (Exhibit 4.)
11. Respondent's explanation why she answered Question 5 "No" but then attached documents indicating that she had been convicted of a criminal offense was that she must have misread the question to be asking only for felony convictions. Her reason for attaching the court records was unclear. (Tr. pp. 41-43.)
12. Prior to the record closing for receipt of Respondent's exhibits, Respondent presented letters from five individuals who spoke well of Respondent: Perry, Hunter, Rev. Currie, Crenshaw, and Harper.

The latter two letters were from individuals in the business community. Because of the hearsay nature of the testimonials, because the state did not have an opportunity to examine Respondent on the documents, and because they generally were not specific in their evaluation of Respondent's character, reduced weight was afforded the exhibits, although they were admitted to provide as full a record as possible and to allow for the more relaxed evidentiary requirements of an administrative hearing. (Exhibit A.).

13. Respondent's body language and, when describing the events leading up to her criminal conviction, the facts she stated which were in opposition to the personal observations of the reporting police officer detracted from her credibility. (Exhibit 4; Tr. pp. 29-30.)

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. The Division procedurally complied with O.R.C. Chapter 119 .

### **B. LICENSE APPLICATION**

2. In 1999, Respondent was convicted of a "criminal offense involving theft ...," an offense specifically cited in section 1322.041(A)(3), O.R.C.
3. The theft offense being proven by the Division, in order to obtain a license the Respondent must now prove, by a preponderance of the evidence, that the Respondent'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." Section 1322.041(A)(3), O.R.C.
4. Respondent did not present any evidence other than her own sworn testimony and five testamentary letters.
5. The 1999 conviction cited is still somewhat close in time to the Application, so that Respondent's explanations and demeanor

during the hearing would not be sufficient, without more, to meet Respondent's burden to show there is no basis in fact for believing that she will commit such an offense again.

6. Respondent did not present sufficient evidence to substantiate her own sworn testimony that there is no basis in fact for believing that the Respondent will commit such an offense again. Because the statute requires Respondent to meet a preponderance burden of proof, Respondent has not met her burden.
7. Because the materials attached to the Application submitted by Respondent disclosed the criminal arrest, Respondent was able to demonstrate that, in this instance, her activities since the offense show that the Respondent is honest or truthful. Because the Application itself incorrectly stated that the Respondent had not ever been convicted of a criminal offense, the effect of attaching the materials was partially nullified.
8. Respondent failed to prove by a preponderance of evidence her honesty in her activities since the offense because she offered no evidence other than her own testimony, the five non-specific letters and the Application.
9. The Division also charged that 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.
10. The Division brought into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by entering evidence of Respondent's theft conviction.
11. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning her general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly. Respondent's only evidence was her own testimony, which must be weighed considering the bias nature of the testimony, and the five letters which, as earlier noted, carried reduced weight.

### **III. RECOMMENDATION**

The Division has proven the prior theft conviction. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that her activities since the conviction show that she has been honest and truthful and of good reputation and there is no basis in fact for believing that she will not commit such an offense again, and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO GINA R. CAYSON.**

Respectfully submitted.

D. Michael Quinn  
Hearing Officer  
March 14, 2005  
Docket No. 04-DFI-047