

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Anthony M. Drain**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 04-0427-LOD**

**FINDINGS OF FACT**

1. On or about June 22, 2004, Anthony M. Drain ("Respondent" herein) submitted an application (the "Application") to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code (a copy of which is attached and incorporated as Exhibit A herein).
2. On or about October 22, 2004, the Division notified Respondent that it intended to deny the Application, and, by Division Order, provided Respondent with timely notice of an opportunity for a hearing in accordance with the Ohio Administrative Procedures Act, Chapter 119, Ohio Revised Code, a copy of which is attached and incorporated as Exhibit B herein (the "Notice"). The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Sections 1322.041 and 1322.10 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing, and, in response to that request, a hearing was held (the "Hearing" herein) on December 14, 2004, at the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. At the Hearing, Respondent was represented by Kevin J. Osterkamp, Esq., and the Division was represented by Assistant Attorney General Emily A. Smith, Esq.
4. Respondent did not contest that, for the purposes of the Hearing and this administrative proceeding, the allegations of fact set forth in the Notice were true. (Tr. Page 17)
5. As of the date of the Application, Respondent was employed by Home Acceptance Corporation.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Sections 1322.041 and 1322.10 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a Loan officer.
3. That the information and documentation available to the Division prior to the hearing established a technical, statutory rationale under Sections 1322.031, 1322.041, and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## **DISCUSSION**

Section 1322.041(A)(3) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that the applicant has not been convicted of, or pleaded guilty to, certain enumerated offenses. If the applicant has in fact been convicted of or pleaded guilty to such offenses, the Superintendent shall issue the loan officer license if the applicant proves 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 truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Respondent's criminal record evidences convictions in 1986 of Breaking and Entering, a probation violation in 1988, and Strong Arm Robbery in 1991, which unfortunately reflect some of the very criminal offenses the legislature found to be an antithesis to the mortgage broker industry, and specifically enumerated in Ohio Revised Code Section 1322.031(A)(2). Respondent was forthright in his response to question 5 of the Application in disclosing his criminal history, and providing further information concerning that matter and his life since the conviction. According to testimony at the Hearing, Respondent is an alcoholic (Tr. Page 20), and the criminal acts took place at a young age and in conjunction with Respondent's drug and alcohol addiction. (Tr. Pages 21, 22, 28, 32, 36, 37, 38, 42, 43) At first glance, Respondent's record reflects conviction of serious crimes which, upon review, would indicate that Respondent is the very kind of individual which the legislature intended to bar from the mortgage broker practice.

The legislature also recognized, in Ohio Revised Code Section 1322.041(A)(3), that circumstances may arise when that criminal record may not reflect real changes in an individual, which have occurred since the facts that gave rise to the criminal record. As noted previously, Ohio Revised Code Section 1322.041(A)(3) provides that, despite such a criminal record, an applicant may prove to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction(s) show that the applicant is honest, truthful, and of good reputation, and that there is no basis in fact for believing that the applicant will commit such an offense again.

This statutory ability to, in essence, look past and overcome a criminal history represents a difficult and serious consideration for the Superintendent, who is charged with protecting the public from unscrupulous practitioners in the mortgage broker industry at a time when the industry suffers publicly from a number of "bad players" whose activities have resulted in reputation damage and expanded regulatory oversight for the mortgage industry.

At the Hearing, Respondent and the Division stipulated to the criminal record of Respondent as described in the Notice and Application (Tr. Page 17), and the Respondent presented his own testimony as well as that of his ex-wife and the Operations Manager and Assistant Treasurer, together with certain unsubstantiated written testimonials, all in support of Respondent's general contention that Respondent is truthful and of good reputation; that there is no basis in fact for believing that Respondent will commit such offenses again; and that 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.

The verbal and written testimony presented by Respondent and others at the Hearing, together with materials submitted by Respondent in conjunction with the Application, evidence an individual who readily admits, and has paid for, the indiscretions and actions of his past, and who has met the burden of proving, by a preponderance of the evidence, that he should be entrusted with the responsibilities of acting as a loan officer under Ohio law in the State of Ohio. The evidence presented by Respondent reflects an individual who has met the burden of overcoming his criminal history as provided by Ohio Revised Code Section 1322.041(A)(3), and whose character and general fitness will, and does now, command the confidence of the public and warrant the belief that the business will be operated honestly and fairly, consistent with Ohio Revised Code Section 1322.041(A)(5).


Subsequent to his criminal convictions many years ago, Respondent has maintained a steady work record, including work in the financial services industry; has taken responsibility for his children, including actions beyond his legally-required support (Tr. Pages 26, 27, 28, 29, 41, 42, 53); is active in attending and participating in AAA activities, including volunteer activities at a local hospital (Tr. Pages 31, 32, 38, 39); is remorseful and forthcoming with respect to his addictions and criminal acts (Tr. Pages 14, 20, 21, 22, 28, 31, 34, 51, 53 ); and has generally exhibited the personal and professional qualifications which would appear to enable Respondent to acknowledge and overcome his criminal past. The offenses do not appear to evidence a pattern of ongoing conduct, or a risk that Respondent is likely to continue such activities. Since the time of the criminal offenses and incarceration, the testimony and evidence indicates that Respondent has conducted his personal and professional life in an honest and truthful manner, with an apparently strong community and professional reputation and family attachments.

Respondent is open and forthright with respect to the mistakes of his past and his criminal convictions, and appears sincere when he states that to do so "...would be a death sentence for me." (Tr. Page 34). It appears from the evidence and testimony presented that Respondent is a conscientious individual who takes his responsibilities and obligations seriously, is embarrassed and forthright about the activities which gave rise to his criminal convictions, and will not likely revert to such activities again and disappoint his children, his business colleagues, members of his community, and others who have placed their confidence, faith, and trust in him and in his ability to overcome his past

## RECOMMENDATIONS

For the reasons set forth herein, it is recommended that the referenced Application of the Respondent be approved.

Respectfully submitted,

  
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Jeffery E. Smith, Hearing Examiner

  
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Date