

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

In the matter of:)	Case No. 04-0180-LOD
)	
CRAIG J. CUSICK)	<u>DIVISION ORDER</u>
7009 E. Acoma Drive, Apt. 1098)	Denial of Loan Officer License Application
Scottsdale, Arizona 85254)	&
)	Notice of Appellate Rights

Respondent, Craig J. Cusick, submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on April 18, 2003. On January 22, 2004, the Division notified Cusick that it intended to deny his Application because: (1) in 2002 he was convicted of underage purchase of beer, receiving stolen property, and possession of drug paraphernalia; (2) 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 offense involving receiving stolen property; (3) he violated R.C. 1322.07(A) by failing to disclose his receiving stolen property conviction on his loan officer license application; (4) he violated R.C. 1322.07(B) by making a false statement of a material fact or by omitting a statement required on the licensing application; (5) he violated R.C. 1322.07(C), which prohibits an applicant from engaging in improper or dishonest conduct; and (6) because his character and general fitness does 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. 1322.01-3122.12—The Ohio Mortgage Broker Act.

Cusick requested an administrative hearing, which was held on February 27, 2004. A Report and Recommendation (“Report”) was filed with the Division on April 5, 2004, recommending that the Division grant Respondent’s Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and the exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner’s Report and Recommendation is attached).

The Division disapproves the second sentence of paragraph 4 on page 4 of the Report.

The burden is on the state to show by a preponderance of the evidence that Respondent's character and general fitness do not 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. The fact that the Respondent did not disclose his criminal convictions does not cause such a burden shift.

The Division disapproves the second sentence of paragraph 8 on page 8 of the Report.

As stated above, the burden rests with the state to show that Cusick's character and general fitness do not 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.

The Division disapproves paragraph 10 on page 6 of the Report.

The record reflects that Cusick was convicted of receiving stolen property, underage purchase of beer and possession of drug paraphernalia on February 1, 2002. (See State's Exhibit 4). At the time Respondent signed and submitted his Application to the Division he had criminal convictions, for which disclosure was required. (See State's Exhibits 1 and 4). The expungment order pertaining to his convictions did not come into effect until August 12, 2003. (See State's Exhibit 5). Therefore, the expungment order has no bearing on the issue of Respondent's non-disclosure. Additionally, an administrative hearing is not the arena in which to relitigate convictions.

The Division disapproves paragraph 11 on page 6 of the Report.

As the hearing officer notes and as evidenced by the record, the expungment order was issued after the date that Respondent submitted his Application. (See State's Exhibits 1 and 5). Additionally, the age of the Respondent is not a factor in any determination by the Division, especially in the case sub judice where the convictions occurred only 14 months before the filing of the Application.

The Ohio Mortgage Broker Act does not differentiate between misdemeanor or felony convictions. Respondent was convicted of receiving stolen property, an enumerated offenses listed in R.C. 1322.01(A)(2). This conviction shifts the burden to Respondent to prove by a preponderance of the evidence, that his activities and employment history since the conviction show 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. 1322.031(A)(2) and 1322.041(A)(3)). Besides his own testimony, Respondent offered no other evidence into the record concerning his employment record or activities since the convictions. Therefore, he did not prove by a preponderance of the evidence his burden as required by R.C. 1322.041(A)(3). (See, also, *Ryan O'Reilly English v. State of Ohio, Dept. of Commerce* (Case No. 04CIV0163) Medina County Court of Common Pleas (affirming the decision of the Division to deny applicant a loan officer license on the basis that since only three years had passed since the applicant's misdemeanor conviction, there was insufficient time to meaningfully demonstrate the burden set forth in R.C. 1322.041(A)(3)).

The Division disapproves paragraph 12 on page 6 of the Report.

The expungment order was issued after Cusick submitted his Application. (See State's Exhibit 5, Transcript pp. 25-26). Therefore, he was required to disclose the convictions on his loan officer license application in response to question 5. (See State's Exhibit 1). The Division has a responsibility to the public to be diligent in its oversight, and this responsibility demands that not answering a direct question about one's criminal background accurately be taken seriously. Respondent violated R.C. 1322.07(A), (B), and (C) when he answered "no" to question 5 on his Application and then attested to the truthfulness of this statement because he had three criminal convictions. (See State's Exhibits 1 and 4).

The Division disapproves paragraph 13 on page 6 of the Report.

Cusick was convicted of three offenses, including the enumerated offense of receiving stolen property in 2002. A little over one year later he submitted his Application and provided untruthful information by answering "no" to question 5. (See Exhibit 1). Due to his conviction of a specifically enumerated offense found in R.C. 1322.031(A)(2) and 1322.041(A)(3), the burden shifted to Cusick to prove by a preponderance of the evidence that his activities and employment record since the conviction show that he 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. Cusick has not met this burden, as the only evidence he presented at the hearing was his own self-serving testimony.

The Division disapproves the recommendation found on page 7 of the Report.

The Division finds 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 Ohio Mortgage Broker Act. Additionally, the Division finds that Respondent has not met his burden to prove by a preponderance of evidence, that his activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will not commit another offense involving receiving stolen property. Thus, Respondent has not met the conditions for licensure set forth in R.C. 1322.041.

In accordance with the foregoing, the Division hereby denies the Loan Officer License Application of Craig J. Cusick.

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 15th day of February 2006.

ROBERT M. GRIESER

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