

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

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DIVISION OF FINANCIAL  
INSTITUTIONS

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REPORT AND RECOMMENDATION OF HEARING OFFICER

IN THE MATTER OF George D. Gallagher, Jr.

Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 05-0050-LOD

FINDINGS OF FACT

1. On or about October 8, 2004, George D. Gallagher, Jr. ("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 January 31, 2005, 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 March 23, 2005, at 77 South High Street, Columbus, Ohio. At the Hearing, the Division was represented by Assistant Attorney General Martine Jean, Esq. Respondent appeared *pro se*.
4. As of the date of the Application, Respondent was employed by Eagle Financial Company.

## 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 1322.041, and 1322.10 of the Ohio Revised Code for the denial of Respondent's Application.

## DISCUSSION

The Division and Respondent stipulated to admission of the Division's exhibits, including the Notice. (Tr. Page 54)

In the Notice, the Division has determined 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.

At the Hearing, Respondent presented only his own testimony to describe the facts and circumstances surrounding the convictions, his subsequent incarceration, and his subsequent parole and work activities. Respondent presented only his own testimony as well in support of Respondent's general contention that Respondent's character and general fitness command the confidence of the public and warrant the belief that the business will be conducted by the Respondent in an honest and fair manner, consistent with Ohio Revised Code section 1322.041(A)(5).

Except for two unsubstantiated purported testimonial letters (for which the authors were unavailable for cross-examination by the Division), Respondent unfortunately presented no substantive evidence, witnesses, or objective third-party testimony at the Hearing to contradict the findings of the Division as set forth in the Notice, including the adequacy of Respondent's character and fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. While Respondent testified as to his personal feelings about his situation and matters prior, and subsequent to, the acts leading to the convictions, no objective evidence was submitted to substantiate Respondent's contentions contra to the findings of the Division.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly

and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

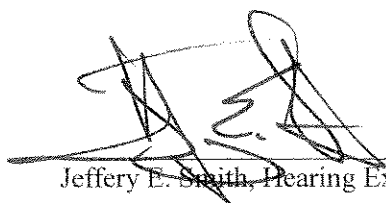
Based on the foregoing, there is support for the Division's assertion that Respondent fails to meet the basic statutory criteria required by Ohio Revised Code section 1322.041(A)(5) and there is no objective evidence or testimony to contradict that finding.

In light of the criminal convictions, and the lack of objective evidence provided by Respondent to meet Respondent's statutory "character and general fitness" tests, Respondent has failed to provide evidence sufficient to overcome the Superintendent's findings under Ohio Revised Code section 1322.041(A)(5).

#### RECOMMENDATIONS

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

  
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Jeffery E. Smith, Hearing Examiner

10 May 05  
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Date