

STATE OF OHIO  
DEPARTMENT OF COMMERCE

2004 SEP -3 AM 10:08

IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**MARCUS E. CANNADY**

CASE NO. 04-0081-LOD

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

**Issued September 2, 2004**

**I. FINDINGS OF FACT**

**A. BACKGROUND**

The above matter came before this 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 10:30 AM on April 22, 2004, at 77 South High Street, 19<sup>th</sup> Floor, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Marcus E. Cannady, of Cincinnati, (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 Respondent was convicted in 1998 of two different misdemeanors and, also, that Respondent failed to disclose the past criminal offenses; and, as a result of each and all of those activities, 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 Martine Jean. Respondent did not

appear, but, as part of the application process, previously provided the Division with a statement, which has been admitted as Exhibit 3A and treated as an unnotarized, section 119.07, O.R.C., written statement.

As described more completely in the transcript, Respondent contacted the Division the morning of the hearing and requested a continuance. This request was not submitted timely, nor made to the hearing officer, nor were satisfactory reasons given, and the Respondent did not demonstrate why, with two months notice, his request for a continuance came less than two hours prior to the commencement of the hearing. For all those reasons, and for each of them, Respondent's request for a continuance was denied.

At the hearing, State's Exhibits 1A, 1B, 2, 3A, 3B, 4, 5, 6, and 7 were admitted into the record.

## B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent requested a hearing, which was received by the Division, by fax, on February 23, 2004. On February 24, 2004, the Division scheduled the hearing for April 22, 2004, 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 5.)
2. Respondent is an individual who has applied to conduct, business in Ohio as a Mortgage Loan Officer. (Exhibit 1A.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. Respondent filled out, and signed and attested to, a Loan Officer Application (hereinafter the "Application") on, or about, April 4, 2002. (Exhibit 1A.)
5. On or about April 22, 2002, Respondent submitted to the Division the Application. (Exhibit 1A.)
6. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or

pleaded guilty to any criminal offense including, but not limited to, theft ..." (Exhibit 1A.)

7. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or for those offenses for which there exists a record, but asks if the applicant has ever been convicted of or pleaded guilty to *any* criminal offense, including, but not limited to, certain named offenses. (Exhibit 1A.)
8. In, or about, March 12, 1998, four years prior to the submission of the Application, Respondent was found guilty, in Clermont County, Batavia Municipal Court, of one count of Unauthorized Use Of Property, a misdemeanor of the fourth degree. (Exhibit 3C.)
9. Respondent's explanation of the Unauthorized Use Of Property conviction was that the offense involved his continued use of the prior owner's license plates after his purchase of a motorcycle. (Exhibit 3A.)
10. On, or about, July 29, 1998, almost four years prior to the submission of the Application, Respondent was found guilty, in Hamilton County Municipal Court, of Failing to Comply with a Police Officer's Order, a misdemeanor of the first degree. (Exhibit 3B.)
11. Respondent's explanation of the Failing to Comply with a Police Officer's Order conviction was that he made a bad choice while driving during completion of the community service relating to the prior charge. (Exhibit 3A.)
12. Respondent was in his young twenties when he committed the offenses. (Exhibits 1A, 3B, 3C.)
13. Respondent knew he had criminal convictions on his record at the time he filled out the Application. (Exhibit 1A, 3A.)

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

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

B. LICENSE APPLICATION

2. On March 12, 1998, Respondent was convicted of a "criminal offense involving theft ...", an offense specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.
3. On July 29, 1998, Respondent pleaded guilty to Failing to Comply with a Police Officer, an offense not specifically cited in section 1322.041(A)(3), O.R.C., but inquired about in Question 5 on the Application in the language "any criminal offense".
4. The theft offense being proven by the Division, 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" in order to obtain a license. Section 1322.041(A)(3), O.R.C.
5. In eliciting evidence whether Respondent's activities since the offenses prove that the Respondent is honest and truthful, the Division demonstrated that, on or about April 4, 2002, Respondent signed and filed an application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained false information.
6. Because the Application submitted by Respondent contained a false response, Respondent was not able to demonstrate that his activities since the offenses show that the Respondent is honest or truthful.
7. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities and employment record since the convictions show that he has been honest, truthful, and of good reputation and that there is no basis in fact for believing that he will commit such offenses again and that a license should be issued.
8. 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.
9. 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 bringing forth evidence of Respondent's inaccurate response to Question 5.

10. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail. If the false information was submitted intentionally, it demonstrates lack of truthfulness and honesty.
11. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
12. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a material fact or omissions of statement required by state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the Application "No."
13. The Division demonstrated that Respondent's sworn response to Question 5 was a false statement of a material fact required by law. The mens rea standard must be one of negligence – knew or should have known – in Respondent's answering the questions on the license application. Respondent not only could have learned the true nature of the facts to which he was attesting but he should have learned those facts, if he was not already in possession of that knowledge. Respondent knew those events occurred in his past and it was incumbent on him to determine if those events were in the categories of activities which he was required to report. The Division has proven violations of the Ohio Mortgage Broker Act sections 1322.07(A), (B), or (C), O.R.C.

#### C. DISCUSSION


The Division has the responsibility to protect the public in the public's financial dealings with licensees. Respondent's two misdemeanors in 1998 might not have been sufficient to prevent a license from being issued. However, Respondent's answer to question 5 appears to indicate that he was less than honest since his prior convictions. Respondent did not put forth sufficient evidence to overcome the Division's allegations and Respondent's evidence did not rise to a preponderance of evidence.

Unlike purchasing a car or appliance, in a financial transaction there is frequently no readily available method for the customer to ascertain the accuracy of the representations of a Loan Officer. In addition, a Loan Officer has access to extensive financial information for every customer. For these reasons alone, Loan Officers must demonstrate higher standards of honesty and veracity. Concepts of duty to customer and veracity are integral to the licensee's obligations. Respondent did not prove that his more recent activities show him to be honest and truthful.

### III. RECOMMENDATION

The Division has proven the two prior criminal convictions. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities and employment record since the convictions show that he has been honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit such offenses again and that a license should be issued. The Division proved the 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 sections 1322.01 to 1322.12 of the Revised Code. The Division has proven violations of the Ohio Mortgage Broker Act sections 1322.07(A), (B), or (C). Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO MARCUS E. CANNADY.**

Respectfully submitted,



Dr. Michael Quinn  
Hearing Officer  
September 2, 2004  
Docket No. 04-DFI-034