

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

In the matter of:)	Case No. 02-LO-D-15
)	
KORRE BRANDEN GAINES)	<u>DIVISION ORDER</u>
435 North Main Street)	Denial of loan officer license application
Oberlin, Ohio 44074)	&
<hr style="width: 40%; margin-left: 0;"/>)	Notice of Appellate Rights

Respondent, Korre Branden Gaines, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 15, 2002. On October 2, 2002, the Division notified Gaines that it intended to deny his loan officer license application because: (1) he was convicted of theft in 1996; (2) he had not proven to the Division 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 theft offense; (3) and his character and general fitness do 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 to 1322.12—the Ohio Mortgage Broker Act; and (4) the public would be best served by the denial of his loan officer license application.

Gaines requested a hearing and an administrative hearing was held on December 13, 2002. A Report and Recommendation was filed with the Division on January 15, 2003, recommending that the Division approve Gaines' application and grant him a loan officer license. No objections were filed.

In accordance with R.C. §119.09, the Division has considered the record, consisting of the Report and Recommendation, the transcript of testimony and exhibits, as well as all applicable laws. As a result, the Division makes the following findings and conclusions.

The Report and Recommendation is modified or disapproved as follows: Paragraph 1 on page 1 erroneously states that the Division received Gaines loan officer application on March 15, 2002. The application was received on April 15, 2002. The Report and Recommendation is hereby modified to reflect this change.

For the reasons stated hereafter, the Division disapproves: paragraphs 4 and 5 on pages 3 and 4; and the recommendation found on page 5.

The record reflects that Gaines was convicted of theft in 1996. (See Exhibit 4.) The Division cannot classify a theft offense as *de minimis*. *De minimis* means “about petty details.”¹ It is derived from the Latin legal phrase *de minimus no curat lex*, which means “the law does not concern itself with petty matters.”²

While a textbook with a value of \$91 may not be a large dollar amount, the Division will not characterize a conviction involving a small dollar amount as *de minimis* – insignificant or immaterial, one that will have no legal relevance or bearing on the end result. The Ohio General Assembly has stated that “any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, *** drug trafficking, or any criminal offense involving money or securities” is significant and will have a bearing on the licensing of mortgage loan officers, regardless of whether the offense constituted a misdemeanor or felony. (Emphasis added.) R.C. 1322.031(A)(2) and 1322.041(A)(3).

The policy adopted by the FDIC is inapplicable to the Ohio Mortgage Broker Act. The FDIC *de minimis* standard looks to the crime and its severity in determining whether to allow someone to work for a financial institution. The standard in the Ohio Mortgage Broker Act does not look at the severity of a crime, but rather places the burden on the applicant to show, by a preponderance of the evidence, that his activities and employment history since the 1996 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. (R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3).) In support of meeting his burden of proof, Gaines only provided his own self-serving testimony and one unsworn letter from a person not made available for cross-examination at the hearing. The unsworn letter is from a person who only knew Gaines for fifteen months in 2001 and 2002, and it does not show that the author had much personal knowledge of Gaines or any knowledge of his criminal background. (See Respondent’s Exhibit 1.) Other than the self-serving testimony of Gaines, no evidence regarding his employment record or activities from 1996 through 2000 was presented. The Division finds that Gaines’ self-serving testimony coupled with one unsworn letter does not prove, “by a preponderance of the evidence that [his] activities and employment record since the conviction show that [he] is

¹ *The Oxford Essential Dictionary of Foreign Terms in English*. Ed. Jennifer Speake. Berkley Books, 1999. *Oxford Reference Online*. Oxford University Press. Ohio State University. 9 February 2004 <<http://proxy.lib.ohio-state.edu:2151/views/ENTRY.html?subview=Main&entry=t33.e1820>>

² *Id.*

honest, truthful, and of good reputation, and there is no basis to believe that [he] will commit the offense again.” (R.C. §§ 1322.031(A)(2) and 1322.041(A)(3).)

As Gaines was unable to demonstrate to the Division by a preponderance of the evidence that he is honest, truthful, and of good reputation, the Division finds that the failure of Gaines to met his burden of proof coupled with his theft conviction show that his character and general fitness do not command the confidence of the public and warrant the belief that his business will be operated fairly and honestly with the purposes of the Ohio Mortgage Broker Act. In addition, the hearing officer found that Gaines answered Question 5 on the application incorrectly. (See Report and Recommendation, paragraph 3 (1st one) on page 3.) This is further proof that he does not have the requisite character and general fitness to command the confidence of the public and warrant the belief that his business will be operated in compliance with the Ohio Mortgage Broker Act. On a daily basis loan officers deal with consumers’ personal financial information and advise consumer on what is most often their largest financial investment. The Division finds that Gaines does not have the character and general fitness to originate loans.

In accordance with the foregoing, the Division concludes that Gaines’ loan officer license application should be denied.

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 8th day of July 2005.

ROBERT M. GRIESER

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

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