

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

In the matter of:)	Case No. 05-0048-LOD
)	
JASON E. STUVER)	<u>DIVISION ORDER</u>
7426 Gerald Drive)	Denial of Loan Officer License Application
Middleburg Heights, OH 44130)	&
)	Notice of Appellate Rights
)	

Respondent, Jason E. Stuver ("Respondent"), submitted a loan officer license application to the Division of Financial Institutions ("Division") on February 3, 2005. On May 25, 2005, the Division notified Respondent that it intended to deny his loan officer license application ("Application") because: (1) in or around 1995, in the Bedford Municipal Court, Cuyahoga County, Ohio, Respondent was convicted of petit theft; (2) in or around 1996, in the Garfield Heights Municipal Court, Cuyahoga County, Ohio, Respondent was convicted of telephone harassment; (3) in or around 1997, in the Court of Common Pleas, Cuyahoga County, Ohio, Respondent was convicted of trafficking in drugs; (4) per R.C. sections 1322.031(A)(2) and 1322.041(A)(3), Respondent has 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 criminal offense involving money or securities; and (5) because 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 R.C. sections 1322.01 to 1322.12, the Ohio Mortgage Broker Act.

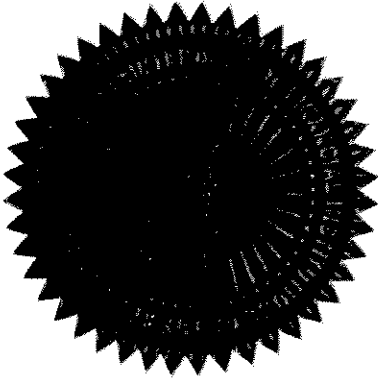
Respondent requested an administrative hearing, which was held on September 6, 2005. A Report and Recommendation ("Report") was filed with the Division on November 14, 2005, recommending that the Division deny Respondent's Application. No objections were filed.

In accordance with R.C. 119.09, the Division has considered the record, consisting of the Report, the transcript of testimony and exhibits, as well as all applicable laws. (The Report is attached). Following its review of the record, the Division hereby adopts the hearing officer's recommendation and denies the loan officer license application of Jason E. Stuver.

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 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 2nd day of November 2006.



ROBERT M. GRIESER

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

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

11/17/2005

IN RE: : **CASE NO. 05-0048-LOD**
:
JASON E. STUVER : **JANE S. ARATA, HEARING OFFICER**

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
Issued November 14, 2005**

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on September 6, 2005, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Jason Stuver ("Respondent" or "Mr. Stuver") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of petit theft, telephone harassment, and drug trafficking in 1995, 1996, and 1997, respectively. Therefore, the Division asserted that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent has not proven that he is honest, truthful and of good reputation, and that there is no basis in fact to believe that he would not commit any criminal offense involving theft, drug trafficking, money or securities again as required by R.C. 1322.041(A)(3); and
2. Respondent's 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 the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

James M. Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 8, 10, and Respondent's Exhibit A were admitted into the record. (The exhibit marked as State's Exhibit 9 was not used in this hearing.)

B. Jurisdiction and Procedural Matters.

The Division issued the NOH to Respondent on May 25, 2005. Respondent's hearing request was received by the Division on June 24, 2005. The Division scheduled the hearing for June 5, 2005, and continued it until September 6, 2005. The Respondent received the NOH by certified mail and received written notice of the date, time and location for both of the hearing dates set in this case.

C. Respondent's Loan Officer Application and Criminal Convictions.

1. Respondent is an individual who wants to conduct business in Ohio as a mortgage loan officer. (State's Exhibit 1; Hearing Transcript at 19-20.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)}".)
2. On May 2, 2002, amendments to Ohio's Mortgage Broker Act became effective that required mortgage loan officers to be licensed by the Division. R.C. 1322.02(B).
3. The Division received Respondent's Loan Officer Application ("Application") on February 3, 2005. (State's Exhibit 1.)
4. Respondent disclosed criminal convictions for petit theft in 1995, telephone harassment in 1996, and drug trafficking in 1997, on the Application. He also provided information about the underlying events. (State's Exhibit 1.)
5. Respondent's 1995 petit theft conviction was the result of his removal of a radio from a car at a junkyard. He was 18 at the time. His telephone harassment conviction was based upon a complaint filed by the mother of his friend. Respondent first found out that she did not want him to call their house when he was arrested for drug trafficking. He was convicted of drug trafficking in 1997 after he sold one-half an ounce of marijuana to a coworker. Respondent spent several months in prison and realized that this was not how he wanted to live his life. (State's Exhibit 1; TR at 28-31, 34-35.)
6. Respondent was convicted of driving under the influence in 1999. Due to oversight, he did not disclose this on his Application. (TR at 52-54.)

D. Respondent's Reputation and Character.

7. Respondent testified that he has completely changed since 1997 and no longer associates with the people he did back then. Respondent, now 28 years old, left prison at the age of 20. He is engaged to marry Katie Hall, the mother of his child. (TR at 12-14, 28, 34-35, 46.)
8. Respondent worked in customer service for Sun TV from 1997 through 1999. From 1999 through 2001, he worked at the front desk of a hotel. Respondent became a loan officer shortly before licensure was required. He applied for a loan officer license in 2002 and that application was denied. He has worked for four mortgage brokers and is currently a loan processor with OMC Lending, Inc. There is no indication of any problems with his work. (State's Exhibit 7; TR at 31-34, 36-38.)
9. Respondent provided a letter from Nancy George, his current employer at OMC Lending, Inc. She has known him since July of 2005 when he interviewed for the position. She stated that he is very knowledgeable about the mortgage industry. She also believes he is honest. Her letter states that he told her about the felony conviction during the first interview. He has done well during the two months he has been at OMC Lending. The letter does not indicate whether she is aware of his other criminal convictions. (Respondent's Exhibit A; TR at 25-26.)
10. Respondent identified Nancy George's letter at the hearing. Ms. George was not present at the hearing. Thus, even in this proceeding to which the Rules of Evidence do not strictly apply, the letter was considered but afforded less weight than it would have been if the author had been available to testify and for cross examination. (Respondent's Exhibit A; TR at 25.)
11. Katie Hall, Respondent's fiancée, testified on his behalf. She has been dating Respondent for three years. She testified that he has a good reputation in the community and is a changed person from when he was younger. (TR at 62-64.)
12. There is no evidence from any one Respondent worked with from 1997 to July of 2005 in the record.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer License Application.

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.
3. Ohio Revised Code Section 1322.041(A) provides that a loan officer license shall be issued if the Superintendent of Financial Institutions finds that certain conditions are met, including:

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven 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 honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

(5) The applicant's character and general fitness 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.

R.C. 1322.041(A)(3) and (5).

4. Respondent was convicted of petit theft in 1995 and drug trafficking in 1997. These criminal offenses are specifically referred to in R.C. 1322.031(A)(2) and 1322.041(A)(3).

5. Once the petit theft conviction was proven by the Division, the Respondent had the burden 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 {he} will commit such an offense again" in order to obtain a license. R.C. 1322.041(A)(3).
6. Instead, the record shows that Respondent was convicted of telephone harassment in 1996 and drug trafficking in 1997.
7. "Petit theft" and "drug trafficking" are expressly stated in the reference to "any criminal offense involving ... theft ... or drug trafficking" in R.C. 1322.031(A)(2) and are not what that provision refers to as "any criminal offense involving ... money or securities." Therefore, theft and drug trafficking are the criminal offenses involved for the purposes of the burden of proof shifted to Respondent by operation of the language in R.C. 1322.041(A)(3). Thus, the Respondent must prove that he will not be likely to commit any offense involving theft and drug trafficking again but does not have the burden to prove that he will not commit any offense involving money or securities as alleged in the NOH.
8. Respondent has learned from his mistakes and improved his life since 1997. He has been gainfully employed since that date. However, the relevant law requires him to prove 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 commit such an offense again." R.C. 1322.041(A)(3). To meet this burden of proof given his criminal convictions, independent, objective evidence regarding his work history and his activities, is needed. Respondent provided his own testimony, the testimony of his fiancée, and a letter from his boss who has only known him and his work for two months. There is no independent evidence about his work from 1997 to July of 2005.
9. The lack of evidence from objective sources about his work and activities from 1997 through the July of 2005 precludes the Respondent from establishing that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will commit a theft or drug trafficking offense again.
10. For the reasons described above, the evidence in the record does not establish that Respondent's character and general fitness 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 Ohio's Mortgage Broker Act as required by R.C. 1322.041(A)(5).

11. Ohio's Mortgage Broker Act authorizes the Division to protect the public from harm by denying a loan officer license to individuals if the evidence does not establish that they meet the licensing standards. R.C. 1322.041(A) and 1322.10(A). This decision must necessarily take into account the fact that a home is the most valuable asset owned by most individuals. Loan officers have access to confidential personal and financial information and play a critical role in the financing process. It is extremely important to protect the integrity of the process and proceed with caution when questions regarding an applicant exist.

III. RECOMMENDATION

The Respondent has not established the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3) and (5). Therefore, I respectfully recommend that Respondent's application for a loan officer license be denied pursuant to R.C. 1322.041 and 1322.10.

Respectfully submitted,

Jane Stempel Arata
Administrative Hearing Officer
November 14, 2005