

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

In the matter of:)	Case No. 02-LO-D-12
)	
DANIEL R. MOTHERSBAUGH)	<u>DIVISION ORDER</u>
1229 Lexington Avenue)	Loan officer license application granted
Akron, Ohio 44310)	
_____)	

Respondent, Daniel R. Mothersbaugh, submitted a loan officer license application to the Division of Financial Institutions ("Division") on April 22, 2002. On October 2, 2002, the Division notified Mothersbaugh that it intended to deny his loan officer license application because: (1) he was convicted of theft in 1993; (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.

Mothersbaugh requested a hearing and an administrative hearing was held on February 6, 2003. A Report and Recommendation was filed with the Division on March 21, 2003, recommending that the Division approve Mothersbaugh's 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.

For the reasons stated hereafter, the Division modifies paragraph 10 on page 5 of the Report and Recommendation.

The record reflects that Mothersbaugh was convicted of theft in 1993. (See Exhibit C.) 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

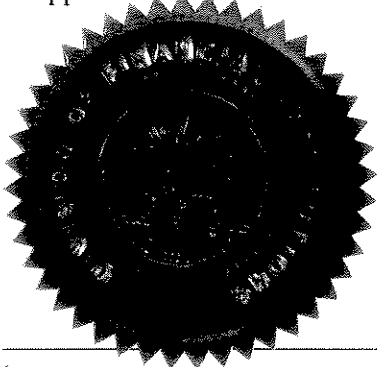
While a bench with a value of \$40 may not be a large dollar amount, the Division will not characterize a conviction involving a small dollar amount as *de minimis* – insignificant or immaterial, one that will have no legal relevance or bearing on the end result. The Ohio General Assembly has stated 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).

In the Report and Recommendation at paragraphs 10(i) and (ii), the hearing officer finds that Mothersbaugh has shown that he is honest, truthful and of good reputation and that he is not likely to commit a theft offense again. Further, in paragraph 10(iii), the hearing officer finds that Mothersbaugh’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 Ohio Mortgage Broker Act. Therefore, in accordance with the findings in paragraphs 10(i), (ii), and (iii), the Division adopts the recommendation of the hearing officer and thereby grants Mothersbaugh a loan officer license.

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 ^{7th} 8 day of July 2005.

ROBERT M. GRIESER

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

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.*