

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

In the matter of:)	Case No. M2005-9991545
)	
RICKY A. MCDONALD)	<u>DIVISION ORDER</u>
7905 Pleasant View Trail)	Denial of Loan Officer License Application
Concord, OH 44060)	&
)	Notice of Appellate Rights

Respondent, Ricky A. McDonald (“Respondent”), submitted a loan officer license application (“Application”) to the Division of Financial Institutions (“Division”) on May 4, 2005. On March 24, 2006 the Division notified Respondent that it intended to deny his Application because: (1) in or around 1990, Respondent was convicted of DUI/Drugs and Attempted Trafficking in Drugs; (2) in or around 1992, Respondent was convicted of felony Aggravated Assault; (3) in or around 1994, Respondent was convicted of Driving under the Influence of Alcohol and/or Drugs of Abuse; (4) in or around 1996, Respondent was convicted of Operating a Vehicle While Under the Influence of Alcohol and/or Drugs of Abuse; (5) in or around 1998, Respondent was convicted in federal court of Unlawful Possession of a Firearm; (6) in or around 1999, Respondent was convicted of Driving Under the Influence; (7) Respondent had 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 drug trafficking or any criminal offense involving money or securities; and (8) because his character and general fitness did 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. 1322.01 to 1322.12, the Ohio Mortgage Broker Act.

Respondent requested an administrative hearing, which was held on January 4, 2007. Respondent appeared with counsel. A Report and Recommendation (“Report”) was filed with the Division on February 21, 2007, 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. As a result, the Division makes the following findings and conclusions. Any finding and/or conclusion not

specifically addressed below is approved, adopted, and incorporated herein. (The Hearing Examiner's Report is attached).

The Division disapproves paragraph 7 on page 4 and paragraph 11 on page 6 of the Report.

In 1990 in the Lake County Court of Common Pleas, Respondent pleaded guilty to and was convicted of felony Attempted Trafficking in Drugs. (State's Ex. E). Respondent disclosed this conviction, among others, in response to question 5 in his loan officer license application. As grounds for its intent to deny Respondent's Application, the Division cited Respondent's failure to meet the burden set forth in the Senate Bill 76 version of R.C. 1322.041(A)(3), which provided as follows.

(A) * * * [T]he superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(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.

Cited in paragraph (A)(3) above, R.C. 1322.031(A)(2) lists "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." (Emphasis added.)

The Report states that an "attempted" drug trafficking offense "is not a crime enumerated in R.C. 1322.031(A)(2) for the purposes of R.C. 1322.041(A)(3)[.]" (Report, paragraph 7, pp. 4-5). The Division disagrees. R.C. 1322.041(A)(3), read in conjunction with R.C. 1322.031(A)(2), applies to enumerated offenses "involving" drug trafficking. An attempted drug trafficking conviction, by its very nature, involves drug trafficking. According to Respondent, the conviction was not for an attempt to sell to another individual, but the amount of LSD in his possession was for more than personal use. (Tr., p. 25). Accordingly, the Division finds that Respondent's conviction was for an offense involving drug trafficking; therefore, he was required to meet the burden set forth in R.C. 1322.041(A)(3).

Since his attempted drug trafficking conviction, Respondent has compiled five additional criminal convictions: one for felony aggravated assault, three for operating a vehicle under the

influence, and another for unlawful possession of a firearm. (State's Exs. E, F, and H). Prior to the attempted drug trafficking conviction, Respondent was convicted of driving under the influence. (Id.) In more recent years, Respondent, on the unlawful possession of a firearm conviction, has served roughly 3 years in prison, was released to a halfway house, and remained on supervised release until 2005. (State's Ex. E; Tr., pp. 20-21, 55-56). Given Respondent's lengthy—and recent—criminal record, the Division simply cannot find that Respondent is of good reputation and eligible for licensure pursuant to R.C. 1322.041(A)(3).

Lastly, the Division modifies the Recommendation on page 7 of the Report.

In addition to not meeting the prerequisite for licensure in R.C. 1322.041(A)(5)(as amended by S.B. 185, 1322.041(A)(6)), Respondent, as discussed above, does not meet the requirement for licensure in R.C. 1322.041(A)(3).

For the reasons stated above, the Division hereby denies the loan officer license application of Ricky A. McDonald.

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 20th day of March 2007.

RICHARD F. KECK

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