

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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INSTITUTIONS

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

KEVIN C. GLEBA

CASE NO. 05-0201-LOD

LANDI JACKSON-FORBES  
HEARING OFFICER

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**REPORT AND RECOMMENDATION**

Issued May 18, 2006

**I. FINDINGS OF FACT**

**A. Jurisdiction and Procedural History**

This matter came before Landi Jackson-Forbes, 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 the above captioned matter in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "Revised Code"). The hearing was held at 2:00 pm on December 22, 2005, at 77 South High Street, 19<sup>th</sup> Floor, Room 1936, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Kevin C. Gleba, of Brunswick, Ohio (hereinafter "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"), that was issued to Respondent on or about November 30, 2005.

The Division issued the NOH to Respondent on the bases that Respondent was convicted of Permitting Drug Abuse, a felony of the fifth degree in the Court of Common Pleas, Medina County, Ohio. The Division alleges that Respondent's conviction shows that his 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.

The Division, represented by Assistant Attorney General Martine Jean appeared at the December 22, 2005 hearing and presented its case. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 4 were admitted into the record without objection. Respondent's exhibits A and B were entered into the record as discussed in the transcript (hereinafter "Tr.").

**B. Loan Officer License Application**

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to Revised Code Chapter 1322.
2. On or about August 18, 2005, Respondent applied for an Ohio Mortgage Broker Loan Officer license ("loan officer license") by submitting a signed, sworn and attested Ohio Loan Officer Application ("Application") to the Division pursuant to Revised Code Chapter 1322. (State Ex. 1A, Tr. at 15)
3. Question number 6 on the Application asks, "Have you ... ever been convicted of any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad check, money laundering, or drug trafficking, or any criminal offense involving money or securities?" (State Ex. 1A, Tr. at 10)
4. Question number 7 on the Application asks, "Have you ever been a defendant in a criminal action in the Federal court system?" (State Ex. 1A)
5. Respondent checked the "no" boxes to questions number 6 and 7 and wrote for each question, "See attached page". In the attached page that Respondent referenced on questions number 6 and 7, Respondent gave his explanation of the facts that lead to the crime that he was charged with and for which he was subsequently convicted. Respondent also provided for the Division's review copies of the indictments, journal entry evidencing Respondent's conviction in the Court of Common Pleas, Medina County, Ohio and the judgment entry filed June 9, 2005 setting forth Respondent's sentence on June 6, 2005. (State Ex. 1A)

6. Respondent disclosed his criminal conviction on the Application although his conviction is not one of the enumerated criminal offenses listed in question 6 of the Application that is required to be disclosed under Revised Code §1322.031(A)(2) nor was his conviction in a federal court.
7. In March of 2004 Respondent drove a friend to a location to sell illegal drugs. The drug that the friend sold was cocaine, not marijuana as Respondent believed prior to the sell. Other than acting as the driver, Respondent did not participate in the transaction, nor did he receive any proceeds from the transaction. Respondent was arrested in November 2004 and charged with Permitting Drug Abuse, a violation of Revised Code §2925.13(A), a felony of the fifth degree. (Tr. at 23-26)
8. On March 9, 2005, Respondent plead no contest to the Permitting Drug Abuse charge and was found guilty of the offense. Respondent was sentenced to two years of community control and 60 hours of community service. Respondent was also ordered to obtain and maintain gainful verifiable employment and undergo assessment for drug and alcohol abuse and recommended follow-up treatment. Respondent was required to pay court costs in the approximate amount of \$1,100. (State Ex. 1B, Tr. at 19 & 21)
9. Respondent has been on probation since June 2005. His probation will end June 2007. Respondent can be sentenced to one year in prison if he violates any of the conditions of his probation. (Tr. at 20)
10. Respondent meets monthly with his probation officer and is tested for drugs. Respondent has not failed any of the drug tests. (Tr. at 21)
11. Respondent has completed the requisite 60 hours of community service. (Tr. at 20)
12. Respondent is currently paying the court costs associated with his conviction via monthly installments. At the time of the hearing Respondent's balance was approximately \$700.00.

13. Respondent acknowledged that his agreeing to take his friend to sell drugs is not favorably demonstrative that he has good character. Respondent was forthcoming about his conviction and the underlying circumstances during the application process. He takes full responsibility for the conviction and appeared remorseful. He indicated that it will not happen again because he doesn't want to put himself in that situation again and hurt his family. Respondent believes that his conviction does not reflect his character and believes that he is trustworthy. He indicated that he has handled sensitive and personal information and money while he was in the cell phone business and never had a complaint filed against him. (State Ex. 1C and Tr. at 28, 44 & 76)
14. Six letters of recommendation, two of which were from Respondent's former employers, provided positive statements regarding Respondent's character and work ethics. Only one of the letters was signed by the author. Respondent also provided a list of contact references that Respondent indicated all of whom would recommend that he be issued a loan officer license. The authors of the letters and the persons listed as references were not available at the hearing to be cross examined by the Division. While all the letters and the reference list were admitted into the record, the unsigned letters and the list were given no weight in this proceeding to which the Rules of Evidence do not strictly apply because the letters are unsigned and there is no independent or follow-up contact with the persons listed as references. It was explained to Respondent that the contents of an unsigned letter could not be relied upon for what the alleged author is purporting to claim. Respondent was given an opportunity to submit final signed letters but declined the offer to keep the record open to submit signed letters. (State Ex. 1C, Respondent Ex. A & B and Tr. at 42-43, 43-61)
15. Respondent's brother, who currently works with licensed loan officers, testified that Respondent's felony conviction would not impede on his ability to be a loan officer. Respondent's brother stated that Respondent is a "good kid" and that he would not have appeared at the hearing for his brother is he believed otherwise. Respondent's brother concluded that his brother used poor judgment and that Respondent's conviction does not directly relate to the mortgage business unlike the convictions of other mortgage broker license applicants of which he is aware. (Tr. at 63-64)

16. Respondent does not have any criminal convictions prior to or since his 2005 felony conviction. (Tr. at 44)

## II. CONCLUSIONS OF LAW

### A. Jurisdiction and Procedural Matters

Ohio Revised Code §119.07 requires the Division to notify Respondent of his right to request a hearing. The Division complied with §119.07 by notifying Respondent of his right to a hearing in the NOH which was properly served upon Respondent by certified mail.

### B. Loan Officer License Application

1. Pursuant to Revised Code §1322.041(A)(5), to issue a license, the Division must make a finding that, among other requirements, Respondent'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 Revised Code §1322.01 to §1322.12.
2. The Division brought into question Respondent's character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly by submitting evidence that Respondent, on March 9, 2005, plead no contest to a charge of Permitting Drug Abuse and was found guilty of the charge.
3. Although Respondent's conviction is recent, Respondent's unsolicited disclosure of his criminal conviction on the Application and his upfront provision of the court documents relating to his conviction demonstrates honesty which reflects positively on Respondent's character and general fitness as it relates to whether he will operate as a loan officer honestly and fairly.
4. Respondent's testimony and the testimony of his brother regarding Respondent's character while credible have little probative value and are unreliable without other evidence to substantiate their sworn testimony. Respondent has a stake in the outcome of this proceeding therefore his testimony is not impartial. Respondent's brother's comparison of Respondent's conviction with the convictions of other loan officer applicants and his belief that those

convictions more related to the mortgage business are more serious than permitting drug abuse fails to consider that while Respondent may not have actively participated in the drug sale, Respondent knew that illegal drugs were being sold and passively participated by taking the seller to the sale and allowing the sale to take place. Respondent's conviction may not be directly related to the mortgage business, but the fact that Respondent used poor judgment, as his brother stated, does directly affect how he will operate as a loan officer. Those that participate in the mortgage industry are obligated to take the time and care to ensure that applications and loan-related documents are truthful and accurate in every respect and that information conveyed to consumers is correct. There is no room for using poor judgment when a person is placed in a position of public trust as would be a mortgage loan officer.

5. The evidence and the testimony that was submitted by Respondent are not probative, reliable and sufficient to show that he could command the public's trust and that he would use sound judgment as a loan officer. Instead, Respondent's acts of submitting unsigned letters as evidence to show that he does have the character and general fitness to be a loan officer demonstrate that he may not show the care and attention, and use the judgment needed to handle important documentation. Trust cannot be lightly given to an applicant who admits that he did not know that letters needed to be signed. (See Tr. at 60) Respondent's acts do not relieve concerns about his fitness to act as a loan officer.
6. The facts at the hearing demonstrate that Respondent failed to establish that he has the requisite character and general fitness to command the confidence of the public and warrant the belief that he will operate honestly and fairly as a loan officer in compliance with the Ohio Mortgage Broker Act.

### III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Kevin C. Gleba be found to not have the character and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act. Accordingly, it is recommended that Kevin C. Gleba be denied an Ohio Loan Officer License.

Respectfully submitted,

Landi Jackson-Forbes  
Hearing Officer  
May 18, 2006  
Docket No. 05-0201-LOD