

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

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**DIVISION OF FINANCIAL
INSTITUTIONS**

LORA J. MARTIN

CASE NO. M2006-9992873

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued March 8, 2007

I. FINDINGS OF FACT

After having heard the testimony, considered the evidence, observed the demeanor of the witnesses, and weighed their credibility, the Hearing Officer finds the following to be 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 scheduled by the Division at the request of Respondent Lora J. Martin of Deerfield, 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 July 28, 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted of Petty Theft in 1982, and failed to disclose that criminal conviction on her application to the Division for a loan officer license. The Division alleges that based upon Respondent's conviction and failure to disclose the conviction, Respondent has not proven that she is honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense involving money or securities, and that Respondent does 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 purposes of the Ohio Mortgage Broker Act. The Division also alleges violation of Revised Code §1322.07 (A), (B) and (C).

The hearing was held at 2:00 on October 17 2006, in Room 1910 at 77 South High Street, Columbus, Ohio. The Division appeared and was represented by Assistant Attorney General Todd A. Nist. Respondent appeared *pro se* and testified at the hearing.

At the hearing, State's Exhibits A through G were admitted into the record without objection, and Respondent's Exhibits 1 through 5 were admitted 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 R.C. Chapter 1322. (State Ex. A & D)
2. Respondent signed under oath and afterwards filed with the Division on May 5, 2006 a Loan Officer License Application ("Application") for licensure as a loan officer pursuant to Revised Code Chapter 1322. Quality Mortgage of Ohio is listed as the sponsoring/employing mortgage broker company. (State Ex. D)
3. Pursuant to Revised Code §1322.03(B), the Division conducted a criminal records background check based on Respondent's fingerprints as part of the application process. The criminal background check revealed a 1982 Petty Theft charge and conviction in the Bowling Green, Ohio Municipal Court. (State Ex. E & F)
4. Respondent failed to disclose the 1982 Petty Theft conviction on the Application. (State Ex. D)
5. By letter dated July 18, 2006, Respondent discussed the circumstances that lead to her sole conviction in 1982, and her life since the conviction occurred. During Respondent's first year of college, she along with some friends, attempted to take a pair of sandals from a five and dime store. Respondent plead no contest and was found guilty of Petty Theft. She was ordered to pay \$61.00 in fines and court costs and was required to attend a class. (State Ex. F & G)
6. Respondent testified that she did not intentionally mislead the Division when she failed to disclose the Petty Theft conviction. Respondent testified that she did not remember or recall the conviction when she completed the Application. (Tr. at 21-22)
7. Respondent appeared remorseful and stated that her conviction is an embarrassment to her. Respondent has not had another criminal conviction in the twenty-four years that have passed since the Petty Theft conviction.
8. Respondent considers herself a honest and ethical person and has demonstrated this character through her employment history since her 1982 conviction. Respondent has worked for MCI Telecommunications/Verizon in various capacities for over twenty years. (Respondent Ex. 5, Tr. at 40-41)
9. Three letters of recommendation were offered in support of Respondent's licensure as a loan officer from friends and colleagues. These persons spoke highly of Respondent and believe that she is honest, trustworthy, hardworking and professional. These letters, while hearsay, provided specifics why the individual authors wrote the letter and the activities of Respondent that caused a favorable impression. (Respondent's Ex. 2-4)

II. CONCLUSIONS OF LAW

A. Jurisdiction

The Division procedurally complied with Revised Code Chapter 119 in mailing the NOH, in demonstrating delivery of the NOH, and in scheduling the hearing that had been requested by Respondent within the time parameters established in Revised Code §119.07, §119.08 and §119.09. The Division has jurisdiction over this matter.

B. Loan Officer License Application

1. In order to issue a license Revised Code §1322.041(A) requires the Division must make a finding that inter alia:
 - (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 the sections 1322.01 to 1322.12 of the Revised Code.
2. The Division has proven that in 1982 Respondent was convicted of Petty Theft, which is included by reference to "theft" offenses so that the conviction may provide a basis for recommending that Respondent's Application be denied under Revised Code §1322.041 as the same incorporates the terms of Revised Code §1322.031(A)(2). Pursuant to Revised Code §1322.041(A)(3), the burden shifts to Respondent to prove by a preponderance of the evidence that her "activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again."
3. Over twenty-four years have passed since Respondent's conviction without incident. That alone indicates that Respondent is not likely to commit another crime in the future. Respondent's testimony, the letters of recommendation she provided from others attesting to her character, and the passage of twenty-four years since the conviction are sufficient to meet Respondent's burden to demonstrate there is no basis in fact for believing that she will commit such an offense again or any offense involving money or securities.

4. In eliciting evidence that Respondent's does not have the character and general fitness to command the confidence of the public and warrant the belief that she will operate honestly as a loan officer, the Division demonstrated that Respondent signed an inaccurate loan officer license application under oath and filed it with the Division to obtain a loan officer license.
5. The Mortgage Broker Act requires truthfulness and accuracy in applications filed with the Division. The Application filed by Respondent with the Division was inaccurate, but there was no intention to mislead the Division with regard to the Petty Theft conviction. The incident has not arisen in twenty-four years and Respondent's consistent testimony that she forgot that it had happen was credible. Respondent's employment history, the support of friends and colleagues, and Respondent's clean criminal record are sufficient to meet her burden that she has the character and general fitness to command the confidence of public and warrant the belief that the business will be operated honestly and fairly in compliance with the Mortgage Broker Act.
6. The Division has also charged violations of the Ohio Mortgage Broker Action §1322.07(A). (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of material fact or omissions of statement required by law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent not disclosing her criminal conviction on the Application.
7. Respondent's failure to disclose her sole conviction on the Application does not automatically demonstrate that she intended to make a substantial misrepresentation or a false or misleading statement on her Application, or engage in improper, fraudulent or dishonest conduct. Intent is required for a conclusion that Revised Code §1322.07(A), (B), and (C) have been violated. *Webb v. State Med. Bd.*, 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001).
8. Ohio Revised Code §1322.031(A)(2) requires a loan officer license applicant to include in the application a statement as to whether an applicant 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. Respondent's Petty Theft conviction was a conviction that was required to be disclosed on the Application.
9. Respondent's explanation that she had forgotten about the twenty-four year old incident when she filled out the Application was credible, and does not demonstrate that she had the requisite intent to make a substantial misrepresentation in the Application that violated Revised Code §1322.07(A), a false statement of a material fact in violation of Revised Code §1322.07(B), and engage in conduct that is improper, fraudulent, or dishonest in violation of Revised Code §1322.07(C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Lora J. Martin be found to have presented sufficient evidence to prove, by a preponderance of the evidence, that her activities and employment record since her 1982 conviction show that she is honest, truthful, and of good reputation, and that she has 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, and that consequently she be granted an Ohio Loan Officer License.

Respectfully submitted,

Mandi Jackson-Forbes
Administrative Hearing Officer
March 8, 2007
Docket No. 06-DFI-172