

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

**REPORT AND RECOMMENDATION OF HEARING OFFICER**

**IN THE MATTER OF Michael E. Holbert**

**Ohio Department of Commerce, Division of Financial Institutions  
Case Number: 05-0038-LOD**

**FINDINGS OF FACT**

1. On or about June 6, 2002, Michael E. Holbert ("Respondent" herein) submitted an application (the "Application" herein) to the Ohio Department of Commerce, Division of Financial Institutions (the "Division" herein) for licensing as a loan officer as defined in Chapter 1322 of the Ohio Revised Code. A copy of the Application is attached and incorporated as Exhibit A. On or about February 10, 2004, Respondent submitted another application (the "Second Application" herein) to the Division for licensing as a loan officer, a copy of which is attached and incorporated as Exhibit B. The Application and the Second Application are referred to herein collectively as the "Applications".
2. On or about April 22, 2005, the Division notified Respondent that it intended to deny the Applications and, by Division Order, provided Respondent with timely notice of opportunity for a hearing in accordance with the Ohio Administrative Procedure Act, Chapter 119, Ohio Revised Code (the "Notice"). A copy of the Notice is attached and incorporated as Exhibit C herein. The Division Order charged that Respondent failed to meet the certain designated requirements for licensing contained in Chapter 1322 of the Ohio Revised Code, and cited the circumstances as described in the Notice.
3. In response to the Notice, Respondent requested a hearing and, in response to that request, a hearing was held (the "Hearing" herein) at the Vern Riffe Center for Government and the Arts on June 7, 2005. At the Hearing, the Division was represented by Assistant Attorney General James M. Evans, Esq., and Respondent was represented by Jay A. Adams, Esq.
4. As of the date of the Notice, Respondent was employed by First Mortgage Banc Corporation.

## **CONCLUSIONS OF LAW**

1. That the conduct of the Respondent established a statutory rationale for denying the Application of the Respondent based on the provisions of Chapter 1322 of the Ohio Revised Code.
2. That the documentation presented by the Division established a sufficient and reasonable basis for the Division to deny Respondent's Application for licensing as a loan officer.
3. That the information and documentation available to the Division prior to the hearing established a statutory rationale under Chapter 1322 of the Ohio Revised Code for the denial of Respondent's Application, and the record of the Hearing supports that denial.

## **DISCUSSION**

The Hearing was held at Respondent's request as a result of the Notice.

At the Hearing, Respondent and the Division stipulated to admission of the Division's exhibits, including the Notice which references Respondent's 2003 OMVI conviction as described therein as well as Respondent's criminal conviction for Possession of Criminal Tools in 2004 (Tr. Page 16)

The Superintendent alleges in the Notice that Respondent's failure to disclose the OMVI conviction in the Second Application is a violation of Ohio Revised Code section 1322.07, and further adversely impacts the character and general fitness of the Respondent under Ohio Revised Code section 1322.041(A)(5).

Respondent testified at the Hearing that he failed to disclose the OMVI conviction in the Second Application (Tr. Page 26) and that he also failed to disclose a bankruptcy filing as required by question number 7 of the Applications. (Tr. Pages 22, 23, 26, 62) Respondent also testified as to a felony conviction for Possession of Criminal Tools in 2004 after the date of filing of the Second Application. (Tr. Pages 31, 32, 33, 76) State's Exhibits 7, 8, and 13, and testimony elicited at the Hearing, also evidence a variety of other charges and offenses, including traffic and domestic matters, involving the Respondent, as well as a drug-related employment discharge, which Respondent recognized at the Hearing. (Tr. Pages 42, 55, 56, 60, 61)

At the Hearing Respondent presented only his own testimony in support of Respondent's general contention that 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, and to contradict the assertions of the Superintendent that the failure to disclose the criminal convictions constitutes a violation of Ohio Revised Code section 1322.07, subsections (A) through (C).

Section 1322.041(A)(5) of the Ohio Revised Code states that the Superintendent shall issue a loan officer license if the Superintendent finds that 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 stated provisions of Ohio law.

The Act provides that the Superintendent is charged with regulation and oversight of mortgage brokers and loan officers in the State of Ohio, and part of the Superintendent's consideration in that regard relates to the character and general fitness of the Respondent and the ability of the Respondent to command the confidence of the public as set forth in subsection 1322.041(A)(5) of the Ohio Revised Code. That provision requires that the Superintendent issue a loan officer license if, among things, Respondent's character and general fitness (1) command the confidence of the public and (2) warrant the belief that the business will be operated honestly and fairly in compliance with applicable law. These standards require subjective analysis, and the General Assembly has decided that it is appropriate that the Superintendent undertake a determination, based on industry and regulatory experience, as to whether an applicant's character and fitness enable the applicant to meet the referenced requirements. See *Leon v. Ohio Bd. Of Psychology*, 63 Ohio St. 3d 683, 1992 Ohio 105, 590 N.E. 2d 1223 (1992). See also *Lorain City Bd. Of Edn. v. State Emp. Relations Bd.*, 40 Ohio St. 3d 257, 533 N.E. 2d 264 (1988).

At the Hearing, Respondent testified that the failure to disclose the OMVI conviction pursuant to question five of the Second Application was due to an "oversight" (Tr. Pages 36, 37); was "unintentional" (Tr. Page 42); and was not necessary or appropriate as the OMVI was a "traffic offense" (Tr. Page 64). Respondent also testified that the failure to disclose the bankruptcy was basically due to a misunderstanding regarding relevancy of the bankruptcy in the application proceedings. (Tr. Page 62)

Chapter 1322 of the Ohio Revised Code does not provide that Respondent's intent or understanding is a determining factor, or a defense, to failure to provide complete disclosure to the Division as required by the Applications.

Other than his own testimony, Respondent presented no other evidence or testimony to explain his failure to disclose the OMVI conviction in the Second Application; his failure to disclose the bankruptcy in response to the referenced questions in both Applications; the facts and circumstances surrounding the felony conviction for Possession of Criminal Tools; or to address the statutory factors set forth in Ohio Revised Code section 1322.041(A)(5). There is therefore support for the assertion by the Division that Respondent's character and fitness are not consistent with the statutory requirements of Ohio Revised Code section 1322.041(A)(5).

In addition, Respondent's failure to disclose the bankruptcy as well as the OMVI may be construed as being false, misleading, and dishonest with respect to Respondent's required disclosures. There is therefore support for the assertion by the Division that Respondent violated subsections (A), (B), and (C) of Ohio Revised Code section 1322.07 in failing to adequately disclose the criminal assault conviction, and in providing information which could be construed as false, misleading, and dishonest in conjunction with the Applications. Again, the relevant statutory provision does not provide for a defense or excuse of mistake, misunderstanding, or intent.

In light of Respondent's failure to disclose the referenced bankruptcy and OMVI conviction, the subsequent 2004 felony conviction for Possession of Criminal Tools, and the lack of objective evidence or testimony by Respondent to meet Respondent's statutory "character and general fitness" test and provide evidence to contradict the Superintendent's assertions under Ohio Revised Code section 1322.07, Respondent has failed to provide evidence sufficient to overcome


the Superintendent's findings under Ohio Revised Code sections 1322.041(A)(5) and 1322.07(A)-(C).

**RECOMMENDATIONS**

For the reasons set forth herein, it is hereby recommended that the referenced Application be denied.

Respectfully submitted,

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Jeffery E. Smith, Hearing Examiner

10/12/05  
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Date