

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

**IN THE MATTER OF:**

**DIVISION OF FINANCIAL  
INSTITUTIONS**

**STEPHEN G. DRAPP III**

**CASE NO. 05-0173-LOD**

**LANDI JACKSON-FORBES  
HEARING OFFICER**

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**REPORT AND RECOMMENDATION**

**Issued September 28, 2006**

**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 Stephen G. Drapp, III, of Painesville, 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 December 1, 2005. The Division issued the NOH to Respondent on the basis that Respondent has a Disorderly Conduct conviction, a Passing Bad Checks conviction and a Criminal Trespass conviction all occurring in 2000, and the Division's 2004 Final Order denying Respondent a loan officer license. The Division alleges that based upon Respondent's convictions and the Division's 2004 Final Order, Respondent has not proven that he 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. The Division further alleges that Respondent's criminal convictions, and the Division's 2004 Final Order 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 hearing was held on February 7, 2006, at 77 South High Street, 19<sup>th</sup> Floor, Room 1924, Columbus, Ohio. The Division, represented by Deputy Attorney General Matthew Lampke, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through I were admitted into the record without objection (hereinafter "Tr."). At the end of the hearing the record in this case was left opened until February 20, 2006 to permit Respondent to submit evidence to support his testimony. No additional evidence was received from Respondent.

**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)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (State Ex. A)
3. The Division received a Loan Officer License Application for Respondent on or about August 11, 2003 (2003 Application"). Respondent checked the "yes" box to Question 5 which asked, "Have you or has any company for which you have been an officer, or more than 5% owner or director ever been convicted of or pleaded guilty to any criminal offense...?" In his explanation to Question five, Respondent wrote "D.U.I. Disposition = final all fines paid in full". (State Ex. H)
4. The criminal background check the Division conducted pursuant to Revised Code §1322.03(B) revealed two additional convictions for Respondent in addition to the DUI; a passing back checks conviction and a disorderly conduct conviction. All three of Respondent's convictions took place in 2000. On January 22, 2004, the Division's issued to Respondent notice of its intent to deny his 2003 Application and gave Respondent an opportunity to request a hearing. (State Ex. I)
5. Respondent did not request a hearing on his 2003 Application or further pursue a loan officer license because the sponsoring mortgage broker company went out of business and Respondent believed that he had to be employed by a licensed mortgage broker to obtain a loan officer license. Respondent subsequently found employment that did not require him to have an Ohio Loan Officer License. The Division subsequently denied Respondent's 2003 Application on March 25, 2004 (State Ex. I & Tr. at 50-51)
6. Respondent reapplied with the Division on July 13, 2005 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("2005 Application") and fingerprint card. (State Ex. A)
7. Within the 2005 Application Respondent checked the "yes" box to Question 5 which asked; "Have you ... ever been convicted of any criminal offense...?" Respondent submitted an attachment with the 2005 Application that listed and gave an explanation for seven criminal convictions, Minor Purchasing of Alcohol

(1996), Unauthorized Use of Property (1997), Driving Under the Influence (2000), Discharging a Firearm within the City Limits (2000), Criminal Trespass (2000), Passing a Bad Check (2000), and Driving Under the Influence and Falsification (2002). (State Ex. A)

8. Respondent testified that he did not fully disclose all of his convictions on his 2003 Application because he did not remember the dates and details of his record. He testified that the owner of the mortgage broker company that sponsored his 2003 Application instructed him to answer "no" to prompt the Division to give him dates and details that he could later expound upon. Respondent testified that he did respond to the Division's request to explain his convictions. (State Ex. A, Tr. at 28 & 40)
9. Respondent claims that he took plea bargains for his disorderly conduct and criminal trespass convictions because he could not afford legal counsel to help him prove his innocence. He claims that the passing bad check charge and conviction arose out of a civil case that was initiated by the parents of a friend so that he would pay the monies owed from a bounced check. Respondent has paid all fines, court costs and restitution imposed from his convictions. Respondent has also served or completed all ordered jail time, community service and probation. (State Ex. A, Tr. at 18-25)
10. Respondent acknowledges his past mistakes but believes that his mistakes will not prevent him from operating honestly and fairly as a loan officer. He has some experience in the mortgage loan industry. He was employed with Countrywide Home Loans as a loan officer, titled account executive, from May 2004 to April 2005, and with Ameriquest Mortgage from 1999 to 2000. (Tr. at 33-35, 42, 51-52)
11. For the past five years Respondent has handled sensitive and personal information, money and credit cards as an interim innkeeper for a bed and breakfast. (State Ex. A – Letter from Debra Fitzgerald, Tr. at 38)
12. Letters of Recommendation submitted on Respondent's behalf indicate that Respondent is a considerate and responsible person. One author indicated that Respondent is "extremely knowledgeable, honest and helpful to his clients who are applying for home loans." The author however has not applied for a mortgage loan with Respondent nor has first hand knowledge of anyone else's experience with a mortgage loan with Respondent. Neither of the letters is notarized and did not indicate that the authors are aware of Respondent's past criminal convictions. (State Ex. A- Letter from Thomas J. Fitzgerald, Letter from Debra Fitzgerald, Tr. at 37)
13. The record contains no evidence that Respondent has had any criminal convictions since his 2002 conviction, which the Division did not allege as a ground for denying Respondent a license.

14. At the close of the hearing the record remained open for thirteen days to allow Respondent the opportunity to submit additional evidence to support his testimony. No additional evidence was received in this case. (Tr. at 52)

## **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 in 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. In 2000 Respondent plead guilty to and was convicted of Passing Bad Checks, a misdemeanor of the first degree, which is a criminal offense specifically stated in Revised Code §1322.031(A)(2) and is a conviction that may provide a basis for recommending that Respondent's application for a license be denied under Revised Code §1322.041(A)(3).
3. The Passing Bad Check conviction being proven by the Division shifts the burden to Respondent to prove by a preponderance of the evidence that Respondent's "activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again." Revised Code §1322.041(A)(3)

4. Respondent's Passing Bad Checks conviction is in the recent past; however there was no evidence of a pattern of Passing Bad Checks offenses in the six years that have passed between the 2000 conviction and the date of the hearing.
5. Respondent submitted letters of recommendation from persons who were not in attendance at the hearing. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, the letters of recommendation were considered as evidence to show Respondent's activities since his 2000 Passing Bad Checks conviction. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, the letters have been afforded limited weight.
6. In eliciting evidence that Respondent's activities since his conviction demonstrates that he is not honest and truthful and of good reputation, the Division offered its 2004 Final Order, in which the Division found Respondent violated Revised Code §§1322.07(A), (B) and (C) by failing to disclose all of his criminal convictions on his 2003 Application. The Division's 2004 Final Order also concluded that Respondent's 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 the Ohio Mortgage Broker Act.
7. There is no question regarding the validity of the Division's 2004 Final Order. Respondent received notice of the Division's intent to deny his 2003 Application and was notified of his right to a hearing. Respondent was also notified of his right to appeal the Division's 2004 Final Order. Respondent recognized that he did not accurately answer the 2003 Application and upon reapplication answered the 2005 Application accurately and was forthcoming in his explanations to the Division regarding his past criminal convictions. Filing an accurate application favorably demonstrates that Respondent is honest, truthful and of good reputation. The specificity of the letter from Debra Fitzgerald in conjunction with Respondent's clean record since 2000 and Respondent's honesty and forthrightness on his 2005 Application are demonstrative of Respondent's honesty, truthfulness and good reputation since his Passing Bad Checks conviction and are sufficient to meet Respondent's burden to show there is no basis in fact for believing that he will pass bad checks again or commit any other offense involving money or securities.
8. The Division brought into question Respondent's general fitness to command the confidence of the public and that the business will be operated honestly and fairly, by bringing forth evidence of Respondent's disorderly conduct and criminal trespass convictions and the Division's 2004 Final Order.

9. At the time of the hearing, Respondent has had no other criminal convictions since 2002, which was an offense that is not the subject of the Division's NOH. Respondent was honest, truthful and forthcoming regarding all of his past criminal convictions. Respondent's own testimony, which is consistent with the two letters of recommendation from individuals who spoke highly of Respondent's character and general fitness and his clean record provided sufficient evidence to overcome the Division's evidence questioning his 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 Revised Code §1322.01 to 1322.12.

### **III. RECOMMENDATION**

In careful consideration of the record made in this matter, it is recommended that Stephen G. Drapp, III be found to have presented sufficient evidence to prove, by a preponderance of the evidence, that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and that his 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 Ohio Mortgage Broker Act, and that consequently he be granted an Ohio Loan Officer License.

Respectfully submitted,

Landi Jackson-Forbes  
Hearing Officer  
September 28, 2006  
Docket No. 05-0173-LOD