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 : **DIVISION OF FINANCIAL**
 : **INSTITUTIONS**
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 : **CASE NO. 05-0163-LOD**
 :
 : **LANDI JACKSON-FORBES**
 : **HEARING OFFICER**

Issued October 6, 2006

The hearing was scheduled by the Division at the request of Respondent Todd D. Loughry of Tallmadge, 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 served upon Respondent on October 4, 2005. The Division issued the NOH to Respondent on the basis that Respondent had been convicted of unauthorized use of property, a fourth degree misdemeanor in 2001 which was not disclose on Respondent's loan officer license application. The NOH alleges that based on Respondent's conviction, he 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 NOH also alleges that Respondent's conviction and his failure to disclose the criminal conviction on his loan officer license application 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 further alleges that Respondent's failure to disclose his conviction on the loan officer application constitute violations of Revised Code §1322.07(A)(B) and (C).

Respondent requested and was granted a continuance at the November 18, 2005 hearing for good cause shown. The hearing went forward on January 26, 2006 at 1:35 p.m., at 77 South High Street, 19th Floor, Room 1908, Columbus, Ohio. The Division, represented by Assistant Attorney General James Evans, appeared at the hearing. Respondent appeared and testified at the hearing and was represented by Attorney Marc E. Myers. At the hearing, State's Exhibits 1 through 9 and Respondent's Exhibits A and D 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. 1)
2. Respondent applied for an Ohio Mortgage Loan Officer License by submitting to the Division a Loan Officer License Application ("Application") and fingerprint card on or about May 5, 2005. Hudson Executive Mortgage is listed as the sponsoring Mortgage Broker. (State Ex. 1)
3. Respondent checked the "no" 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 any criminal offense? Exclude minor misdemeanor traffic and parking offenses. (DUIs and DWIs are criminal offenses.)

(State Ex. 1)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 1)
5. Respondent noted on his Application that he had received a speeding ticket and did not know whether the speeding ticket was to be disclosed on the application. Respondent stated that, "I am writing this note to let you [Division] know." (State Ex. 1)
6. 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 records background check revealed a September 2001 fourth degree misdemeanor conviction for unauthorized use of property, an April 20, 2002 noise violation, and an October 2002 disorderly conduct conviction, a fourth degree misdemeanor, all in the Portage County Municipal Court. Neither of the convictions or the noise violation was disclosed in the Application. (State Ex. 2 & 3)
7. At the Division's request, Respondent provided an explanation of the circumstances that lead to his convictions and violation and provided journal entries evidencing the Court's findings. (State Ex. 3)

8. Respondent's unauthorized use of property conviction arose because of two parking signs that were found in Respondent's apartment. A guest of Respondent's brother took the signs from the apartment complex and hid the signs underneath his brother's bed. Respondent as the sole lessee was initially charged with the offense of Receiving Stolen Property. Respondent was attending Kent State University and plead guilty to the lesser offense of unauthorized use of property, at the advice of counsel and an instructor, so that he would not have any pending court cases against him that would impede him from receiving funding for school. Respondent was told that he could get the conviction expunged in two years. (Tr. 44-47 & 59)
9. Respondent has paid in full all accompanying fines and court costs. (State Ex. 3 Tr. at 30, 35 & 38)
10. Respondent fully understood what Question 5 was asking and did not seek assistance from anyone at the employing mortgage broker company or outside the company. (Tr. at 25)
11. Respondent explained at the hearing that he did not disclose his unauthorized use of property and disorderly conduct convictions on the Application because he did not remember that the offenses and the convictions took place. (Tr. at 26, 36 & 40)
12. Respondent also explained that even if he did remember his 2001 unauthorized use of property conviction to disclose it on the Application, he still would have answered "no" to Question 5 because he had the conviction expunged from his record. (Tr. 28 & 60)
13. Respondent testified that he submitted paperwork to have his unauthorized use of property conviction expunged, but did not hear from the Portage County Municipal Court. Respondent nor the Portage County Municipal Court had any record or paperwork of Respondent filing to expunge his 2001 conviction. Respondent could not remember when he filed to expunge the conviction, but believed that he filed shortly after the two year anniversary of the conviction, which would have been in 2003. (Tr. at 28, 59 & 86-87)
14. Respondent was called to active duty for the army from January 2003 to November 2003. (Tr. at 50)
15. At the time of the hearing Respondent was attending Kent State University majoring in economics. Respondent was scheduled to graduate in May 2006. Respondent has worked as a bartender and server, which permitted him to handle money and take on some managerial responsibilities. (Respondent Ex. A, Tr. at 51-52)

16. Letters of recommendation provided statements from a family friend who previously employed Respondent, a program director from the gifted and talented program in which Respondent participated while in school, Respondent's current employer and Respondent's pastor. These statements, while hearsay, provided specifics why the individuals wrote the letters and their familiarity with Respondent's activities that formed the basis of their positive and favorable impression of Respondent's character. (Respondent's Ex. A-D)
17. On July 22, 2005 Hudson Executive Mortgage notified the Division that as of July 21, 2006, Respondent was no longer working for the mortgage broker company. Respondent did not submit a new loan officer license application with a different sponsoring mortgage broker company, and since he had not received a loan officer license, did not apply for a transfer. (State Ex. 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 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 2001 Respondent plead no contest and was found guilty of the fourth degree misdemeanor unauthorized use of property, 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).
3. The unauthorized use of property 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 submitted letters of recommendation from persons who did not attend 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 and employment since his 2001 unauthorized use of property 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.
5. Respondent’s 2001 conviction is in the recent past. However, the nature of the offense and there being no other theft related violations on Respondent’s criminal record, in conjunction with Respondent’s un rebutted explanation, and the statements from the letter writers, would be sufficient to meet Respondent’s burden to show there is no basis in fact for believing that he will commit another theft offense again or commit any other offense involving money or securities.
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 demonstrated that Respondent signed an inaccurate loan officer license application under oath and filed it with the Division to obtain a loan officer license.
7. Respondent offered two explanations for not disclosing his criminal convictions on the Application. Although the time span between the 2001 conviction and the filing of the Application was under four years, it is possible that Respondent forget about his conviction. However, Respondent’s second or alternate explanation that he still would have answered “no” because he had the conviction expunged and his inconsistent testimony prevent excepting either of his explanations.
8. Revised Code §2953.32(A) provides that a first offender may apply to the sentencing court, to expunge the conviction and seal the record, at the expiration of one after the offender’s final discharge if convicted of a misdemeanor. A first offender is defined in Revised Code §2953.31(A) as anyone who has been

convicted of an offense in Ohio or another state and who previously or subsequently has not been convicted of the same or a different offense in Ohio or another state. It is not clear where Respondent got the belief that he could have the 2001 conviction expunged after two years had passed from the date of the conviction, but it is clear that Respondent was convicted of disorderly conduct in July 2002. Within the meaning of Revised Code 2953.51(A), Respondent is not a first time offender and thus was not entitled to have his conviction expunged and his record sealed. (*See State v. McCoy*, No. O4AP-121, 2004 WL 2896356 (Ohio App. 10 Dist., Franklin December 12, 2004). Respondent's 2001 and 2002 convictions were in the same court. Thus, the court would not have had to check outside its records to advise Respondent that his 2001 conviction was not entitled to be expunged and the record of the conviction sealed.

9. Respondent's explanation that he submitted the paperwork to the Portage County Municipal Court to have his conviction expunged is contrary to law, lacks credibility, is unconvincing, and cannot be accepted at face value. Respondent's testimony that he filed paperwork to expunge the conviction, but could not remember when he went to the court, nor does he have any record to demonstrate that the paperwork was filed is further indication of the lack of credibility of Respondent's explanation, especially since Respondent was out the country for at least 10 months in 2003. Respondent appeared to be presenting any argument that might prove successful, which demonstrates a lack of honesty. The Division rebutted Respondent's assertion that since his conviction he has been honest, truthful and of good reputation.
10. The Division brought into question Respondent's character and general fitness to command the confidence of the public and that the business will be operated honestly and fairly, by demonstrating that Respondent failed to disclose on his 2001 conviction on his Application.
11. Filing an inaccurate response to Question 5 is negatively demonstrative of Respondent's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law.
12. Respondent provided testamentary and character reference letters to demonstrate his general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.
13. Respondent may be well thought of by friends, employers and long time acquaintances; however his vague, inconsistent and evasive explanations at the hearing and his inaccurate Application demonstrate that the public cannot rely on him to be honest and fair, particularly when the outcome is unfavorable for him. Respondent did not take responsibility for any part of his convictions or violations, although one of the complaints states that he was intoxicated. (*See State Ex. 3 – Complaint dated 7-5-02*). Respondent did not provide convincing and credible testimony in his explanation for answering Question 5 incorrectly. Respondent has not provided sufficient evidence to overcome the Division's

evidence questioning his character and general fitness to command the confidence of the public and the belief that he will operate as a loan officer honestly and fairly in compliance with law.

14. The Division has also charged Respondent with violations of the Ohio Mortgage Broker Act §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 all his criminal convictions on his Application.
15. Respondent's failure to disclose his convictions on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation, false statement of material fact or engage in 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).
16. Respondent's explanations that he forgot about his conviction and, his forgetfulness aside, he failed to expunge the convictions are untenable, unreliable and contrary to law. Respondent's explanations were insufficient to refute the Division's evidence that the inaccurate response to Question 5 was a substantial misrepresentation, a false statement of material fact required by law on the Application and that his incorrectly answering Question 5 amounts to fraudulent or dishonest conduct.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Todd D. Loughry be found not to have proved, by a preponderance of the evidence, that since his conviction 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 denied an Ohio Loan Officer License. It is also recommended that Mr. Loughry be found to have violated Revised Code §1322.07(A)(B) and (C).

Respectfully submitted,

[Handwritten signature]

Landi Jackson-Forbes
Hearing Officer
October 6, 2006
Docket No. 05-DFI-173