

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

BRIAN K. MEIER

CASE NO. 06-0157-LOD

LANDI JACKSON-FORBES  
HEARING OFFICER

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REPORT AND RECOMMENDATION

Issued December 27, 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 Brian K. Meier of Middletown, 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 February 23, 2006. The Division issued the NOH to Respondent on the basis that Respondent has a 1983 Theft Without Consent conviction, a 1983 Drug Abuse conviction, a 1983 Theft Beyond Scope of Consent conviction, a 1986 Aggravated Burglary conviction, a 1987 Passing Bad Checks conviction, and a 1998 Domestic Violence-Knowingly conviction, which Respondent failed to disclose on his Loan Officer License Application ("Application"). Respondent also swore that the information on his Application regarding his criminal background was complete and truthful and attempted to obtain a loan officer license using untruthful information regarding his criminal record.

The Division alleges that based upon Respondent's Theft Without Consent, Theft Beyond Scope of Consent, Receiving Stolen Property, Aggravated Burglary and Passing Bad Checks convictions, Respondent has not proven that he is honest, truthful, and of good reputation, and that there is no basis in fact for believing that he will not commit another criminal offense involving theft or any criminal offense involving money or securities. The Division further alleges that Respondent's convictions, his nondisclosure of his convictions, and his attempt to obtain a loan officer license using incomplete and untruthful information demonstrates that Respondent's 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 also alleges that Respondent's nondisclosure violates Revised Code §§1322.07(A), (B) and (C).

The hearing was held at 2:00 p.m. on August 16, 2006, in Room 1908 at 77 South High Street, Columbus, Ohio. The Division, represented by Assistant Attorney General Todd Nist, appeared at the hearing and presented its case. Witness for the Division was Iris Eubank. Neither Respondent nor any representative, including counsel, appeared even though the start of the hearing was delayed until 2:27 p.m. At the hearing, State's Exhibits A through F were admitted into the record without objection, 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. Respondent applied for an Ohio Mortgage Loan Officer License by submitting a signed, sworn and attested to Loan Officer License Application ("Application") and fingerprint card on or about January 13, 2005. Credit Financial Services, LLC is listed as the sponsoring Mortgage Broker. (State Ex. D)
3. Within the application Respondent checked the "no" box to Question number 5, which asked; "Have you ... ever been convicted of any criminal offense? Exclude minor misdemeanor traffic or parking offenses." (State Ex. D)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. D)
5. 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 that Respondent was convicted in 1983 of Theft-Without Consent, Drug Abuse, Theft-Beyond Scope of Consent and Receiving Stolen Property in the Hamilton County Municipal Court, Ohio. In 1986 Respondent was convicted of Aggravated Burglary in the Hamilton County Court of Commons Pleas, and in 1987 three counts of Passing Bad Checks in the Hamilton County Municipal Court in the Hamilton County Municipal Court. (State Ex. E & F)

6. Respondent submitted a letter to the Division on or about April 20, 2005 explaining the circumstances that lead to his convictions, along with copies of judgment entries evidencing the convictions. Respondent did not provide an explanation for why he did not disclose the criminal convictions on his Application. (State Ex. E & F)
7. The Division issued its NOH against Respondent on February 23, 2006. (State Ex. C)
8. Respondent received the NOH via certified mail return receipt on April 26, 2006 and requested a hearing. (State Ex. A & C)
9. By letter dated March 24, 2006, the Division scheduled the hearing for April 3, 2006 and continued the hearing on its own motion to June 13, 2006. The letter was addressed to the same delivery address where Respondent received the NOH. (State Ex. A)
10. Respondent, by telephone, requested a continuance of the June 13, 2006 hearing. Respondent's request was granted and the hearing continued to August 16, 2006 at 2:00 p.m. The Continuance Order was addressed to the same delivery address where Respondent received the NOH and the March 24, 2006 letter scheduling the initial hearing in this matter. (State Ex. B)
11. Respondent did not appear for the scheduled hearing in person or through counsel or request a continuance of the August 16, 2006 hearing from the hearing officer.
12. Respondent acknowledged his past criminal behavior and took full responsibility for the acts that lead to his convictions. (State Ex. E)

## II. CONCLUSIONS OF LAW

### A. Jurisdiction and Procedural Matters

1. 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.
2. The Division further complied with §119.07 by notifying Respondent, when he requested a hearing, of the time, date, and place of the hearing once the date was set. The Division's June 1, 2006 letter and the May 31, 2006 Order Continuing Hearing continuing the requested hearing was sent to the Respondent by regular mail at the address he supplied to the Division and where he had received previous written communications from the Division. Ohio Revised Code §119.07 does not require the notice of the hearing to be sent by certified mail. The use of regular mail was appropriate in this case. McCoy v. Bureau of Unemployment Compensation, 81 Ohio App. 158, 161, 77 N.E.2d 76, 78 (1947).
3. Respondent received proper notice of the hearing therefore it was appropriate for the hearing to proceed in his absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988).

### 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. Respondent was convicted of Theft Without Consent, Theft Beyond Scope of Consent and Receiving Stolen Property in 1983; Aggravated Burglary in 1986; three counts of Passing Bad Checks in 1987. All of these convictions are specifically enumerated in Revised Code §1322.031(A)(2) and may provide a basis for Respondent's application for a license to be denied under Revised Code §1322.041(A)(3) as the same incorporates the terms of Revised Code §1322.031(A)(2).
3. The convictions listed in paragraph 2 of this section 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 convictions are in the distant past, and there was no evidence of a pattern of offenses involving money in the eighteen years that have passed between the 1987 conviction and the date of the hearing. However, Respondent provided little evidence of his activities and employment record since his 1987 Passing Bad Checks conviction. Instead the record demonstrates that Respondent's untruthful response to Question 5 regarding his criminal record does not support a conclusion that Respondent is honest, truthful, and of good reputation. Respondent has not carried his burden to demonstrate that since his Passing Bad Checks conviction, his activities 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. In eliciting evidence 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 law, the Division demonstrated that on or about January 10 2005, Respondent signed a loan officer license application, containing an untruthful response to Question 5, under oath and subsequently filed that Application on August 13, 2005 with the Division to obtain a loan officer license.
6. Filing an inaccurate Application reflects negatively on Respondent's character and general fitness as it relates to whether Respondent will operate as a loan officer honestly and fairly in compliance with law.
7. Respondent provided to the Division explanations of the facts that lead to his conviction, but did not indicate why he answered Question 5 untruthfully.

8. Respondent, although having received proper notice of the scheduled hearing, failed to appear to provide 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 the business will be operated honestly and fairly. Respondent failed to prove by a preponderance of the evidence his honesty in his activities, specifically relating to his response to Question 5 to support a finding 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.
9. The Division also charged violations of the Ohio Mortgage Broker Act, §§1322.02(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a 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 answering Question 5 on the Application "No".
10. The Division presented evidence that Respondent was charged with seven offenses and was found guilty of each charge, thereby making his response to Question 5 on the Application inaccurate.
11. Intent is required for a conclusion that §§1322.07 (A), (B) and (C) have been violated. Webb v. State Med. Bd., 146 Ohio App. 3d, 621, 628 (2001), (intent is required for a finding of fraud, misrepresentation, or deception).
12. Respondent provided no explanation for his inaccurate response to Question 5 and failed to appear at the requested hearing to present evidence to overcome the Division's evidence that demonstrates that he violated §§1322.07(A), (B) and (C). Respondent's unexplained inaccurate response to Question 5 supports a finding that he intended to make a substantial misrepresentation, that he intended to make a false statement of a material fact required by law on the license application, and that his act of answering inaccurately constitutes fraudulent or dishonest dealings in violation of Revised Code §§1322.07(A), (B) and (C).

### III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Brian K. Meier be found to have not met his burden to prove, by a preponderance of the evidence, that his 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 he will commit an offense involving money or securities, and that he 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. It is further recommended that Mr. Meier be found to have violated §§1322.07(A), (B) and (C) of the Ohio Mortgage Broker Act. Accordingly, it is recommended that Brian K. Meier be denied an Ohio Loan Officer License.

Respectfully submitted,

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Landi Jackson-Forbes  
Hearing Officer  
December 27, 2006  
Docket No. 06-0157-LOD