

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

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

06 DEC 27 PM 1:59

IN THE MATTER OF: : CASE NO. M2006-9992994
:
:
:
Bruce A. Thompson : James J. Lawrence, Hearing Officer

**ADMINISTRATIVE HEARING OFFICER'S
REPORT AND RECOMMENDATION
December 26, 2006**

I. FINDINGS OF FACT

A. Background

This matter came before James J. Lawrence, an attorney licensed to practice law in the state of Ohio and duly appointed by the Ohio Division of Financial Institutions (Division) to serve as Hearing Officer for this hearing in accordance with Ohio Revised Code (R.C.) Chapter 119, the Administrative Procedure Act. The hearing was held at 1:30 p.m. on November 20, 2006, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Bruce A. Thompson (Respondent) to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License Application and Notice of Opportunity for Hearing (NOH).

The Division alleges that Respondent failed to disclose a criminal conviction on his loan officer application filed in July of 2006. Therefore, the Division asserts that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent has not proven that Respondent is honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will commit another criminal offense involving passing bad checks or any criminal offense involving money or securities as required by R.C. 1322.031(A)(2) and R.C. 1322.041(A)(3).
2. Respondent's conviction 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 as required by R.C. 1322.041(A)(5).

3. Respondent's failure to disclose the conviction on his loan officer 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 as required by R.C. 1322.041(A)(5).
4. By failing to disclose his criminal convictions on his loan officer application, Respondent failed to comply with R.C. 1322.07 (A), (B) and (C) as required by R.C. 1322.041(A)(2).

Todd A. Nist, Assistant Attorney General, from the Executive Agencies Section of the Office of the Attorney General, represented the Division at the hearing. Respondent appeared at the hearing without counsel. At the hearing, State's Exhibits A through F were admitted into the record.

B. Jurisdiction and Procedural Matters

The Division issued the NOH to Respondent on September 21, 2006 by certified mail, return receipt requested. (Exhibit C.) Respondent's hearing request was received by the Division on October 23, 2006. (Exhibit B.) The Division scheduled the hearing for November 2, 2006 but, on its own motion, continued the hearing to November 20, 2006. Notice of the date, time and location of the hearings was sent by ordinary mail addressed to the same address as the NOH. (Exhibit A.)

C. Respondent's Loan Officer Application

1. The Respondent completed the loan officer application on July 13, 2006. (Exhibit D.)
2. Question 6 of that application asked the following question:

6. Have you been convicted of or plead 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?
3. In response to Question 6, the Respondent answered "No." (Exhibit D; TR at 13, 14.)
4. The Division conducted a criminal background check pursuant to R.C. 1322.031(B) which revealed that the Respondent had been convicted of passing bad checks in 1993. By letter dated August 17, 2006, the Division required the Respondent to submit a detailed explanation of the facts and circumstances which gave rise to the charge, and a certified copy of the judgment entry that evidences his plea and the court's finding. (Exhibit E.)
5. The Respondent provided a certified Journal Entry from the Hamilton County Municipal Court. The Journal Entry for Case No. 92-CRB-28370 shows that

on April 27, 1993 the Court found the Respondent guilty of passing a check with insufficient funds in violation of R.C. 2913.11(B)(2), a first degree misdemeanor. The Court ordered the Respondent to make restitution but did not impose any sentence upon the Respondent or order Respondent to pay court costs. (Exhibit F.)

6. The Respondent testified that the offense occurred when he had closed his checking account and another individual used a check without his knowledge. (TR at 15.) When he was notified of the charge and the judge explained the advantages and disadvantage of his pleas options, he pled no contest because he could not prove that he had not written the check. (TR at 17, 20.)
7. The Respondent testified that he did not intentionally answer Question 6 incorrectly. Respondent stated that he simply forgot about the conviction. (TR at 14, 17).
8. The record does not disclose that the Respondent was furnished any instructions regarding Question 6 other than the instructions which are part of Question 6 on the loan officer application form.
9. In support of his character, the Respondent testified that he has not been convicted of any other offense since 1993. (TR at 17.) In the twelve years since the conviction there is nothing else on his record. (TR at 23.)
10. Also in support of his character, the Respondent testified that since the conviction he worked for several employers in the financial services industry. The include Alliance One Collections (TR at 27), Great American Insurance as an assistant underwriter, (TR at 27), and CSC Equifax as a credit analyst (TR at 24).
11. No witnesses appeared, either personally or in writing, on the Respondent's behalf.

II. CONCLUSIONS OF LAW

A. Jurisdictional and Procedural Matters.

1. The Division procedurally complied with R.C. Chapter 119 and jurisdiction over this matter has been established.

B. Loan Officer Application.

1. The Division is the state agency responsible for the licensing and regulation of loan officers pursuant to R.C. Chapter 1322.
2. R.C. 1322.041(A) provides that the Superintendent of Financial Institutions (Superintendent) shall issue a loan officer license if the Superintendent finds

that certain conditions are met, including, among other requirements not relevant here:

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(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 sections 1322.01 to 1322.12 of the Revised Code.

3. The Superintendent has promulgated Ohio Adm. Code 1301:8-7-21 which provides that in determining "character and general fitness" as those terms are used in R.C. 1322.041(A)(5) the Superintendent shall consider whether the applicant [for a loan officer license] has, among other things, been found guilty within the prior ten years of any misdemeanor involving deception, moral turpitude, or any offense listed in R.C. 1322.031(A)(2).
4. R.C. 1322.031(A)(2) describes the following offenses: 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.
5. The NOH asserts that Respondent's loan officer application should be denied because he was convicted of passing a bad check, an offense described in R.C. 1322.031(A)(2), and he has not shown 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 such an offense again. Respondent's conviction occurred more than thirteen years prior to his filing an application to become a loan officer. The record in this case establishes that the Respondent's activities and employment in the intervening thirteen years prove that he is honest, truthful and of good reputation. Moreover, the intervening thirteen years without

further legal incidents establishes that there is no basis in fact for believing that Respondent will commit such an offense again.

6. The NOH asserts that Respondent's loan officer application should be denied because Respondent's conviction 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 as required by R.C. 1322.041(A)(5). However, the conviction occurred more than ten years prior to Respondent's application for a loan officer license. Pursuant to Ohio Adm. Code 1301:8-7-21 (B), the Superintendent will not consider such a conviction in determining character and general fitness for purposes of R.C. 1322.041(A) (5).
7. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent's failure to disclose the conviction 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 as required by R.C. 1322.041(A)(5).
8. The Respondent failed to disclose his criminal conviction on his loan officer application as required by R.C. 1322.031(A)(2). The Respondent contends that he answered the question incorrectly because he simply forgot about the conviction in the intervening thirteen years. The Division infers from the Respondent's incorrect answer on his loan office application that his character and general fitness do not command the confidence of the public and warrant the belief that his will perform as a loan officer honestly and in compliance with the purposes of the Ohio Mortgage Broker act. That inference is defeated by the Respondent's uncontroverted testimony that the incorrect answer was due to an oversight caused by the passage of thirteen years between the conviction and his application. Respondent's testimony that he forgot about the conviction is credible in this case not only because of the number of years that had passed since the conviction but also because the Court imposed no sentence as a result of the conviction. Thus, Respondent suffered no jail time, probation oversight or community service that might normally fix the seriousness of a conviction in an offender's mind.
9. The NOH asserts that the Respondent's loan officer application should be denied because the Respondent did not comply with R.C. 1322.07(A), (B) and (C) as required by R.C. 1322.041(A)(2).
10. R.C.
1322.07 provides, in part, that no applicant for a loan officer license shall do any of the following:
 - (A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application.

(B) Make any false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations.

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings.

- 11. R.C. 1322.07(A) and (B) prohibit false statements or omissions of material facts or substantial misrepresentations. A material fact is a fact that may affect the outcome of a matter. The Respondent's conviction would not have affected the outcome of the loan officer application. The conviction was not committed within the time period that the Superintendent has set for considering convictions as evidence of character and general fitness. Ohio Adm. Code 1301:8-7-21(B). The disclosure of the conviction on the loan officer application would not have affected the outcome of the application process because the Superintendent has provided by administrative rule that he will not consider criminal violations that occurred more than ten years prior to the application in making a determination about an applicant's character. Therefore, Respondent's failure to disclose the conviction did not violate R.C. 1322.07(A) or (B). Moreover, as discussed above, the failure to disclose the conviction did not, under the facts established by the record herein, constitute improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C).**
- 12. Respondent has proven by a preponderance of the evidence that his activities and employment in the thirteen years since his conviction prove that he is honest, truthful and of good reputation and that there is no basis in fact for believing that Respondent will commit such an offense again. Moreover, the record in this proceeding does not contain evidence that the 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 as required by R.C. 1322.041(A)(5). Nor does the record contain evidence that the Respondent's inaccurate answer on his loan officer application is a misrepresentation or omission of a material fact in violation of R.C. 1322.07(A) or (B) or constituted improper, fraudulent or dishonest dealings with the Superintendent in violation of R.C. 1322.07(C).**

III. RECOMMENDATION

Based upon the particular facts and circumstances of this case, I respectfully recommend that the Superintendent of Financial Institutions issue a loan officer license to the Respondent pursuant to R.C. 1322.041(A).

Respectfully Submitted,

James D. Lawrence
Hearing Officer
December 26, 2006