

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

DEC -9 11:11:43

IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

KEITH DANIEL BLAKE

CASE NO. 05-0158-LOD

LANDI JACKSON-FORBES
HEARING OFFICER

REPORT AND RECOMMENDATION

Issued December 7, 2005

I. FINDINGS OF 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 held at 2:00 pm on October 24, 2005, at 77 South High Street, 19th Floor, Room 1938, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Keith Daniel Blake, of Toledo, 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 August 25, 2005.

The Division issued the NOH to Respondent on the bases that Respondent was convicted of breaking and entering in the Common Pleas Court, Lucas County, Ohio, and violated Revised Code §1322.07(A)(B) and (C) by failing to disclose the conviction on his loan officer application. The Division alleges that based upon Respondent's conviction, nondisclosure, and violations of Revised Code §1322.07 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 Division further alleges that Respondent's actions and conviction shows 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, represented by Assistant Attorney General Mindy Worly appeared at the October 24, 2005 hearing and presented its case. Witness for the Division was staff attorney Mark Rhea. Respondent did not appear at the hearing, nor was he represented by counsel. At the hearing, State's Exhibits 1 through 10 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. On or about September 27, 2004, the Respondent applied for an Ohio Mortgage Broker Loan Officer license ("loan officer license") by submitting a signed, sworn and attested Ohio Loan Officer Application to the Division pursuant to Revised Code Chapter 1322. (State Ex. 1, Tr. at 10)
3. Within the application Respondent checked the "no" box to question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (State Ex. 1, Tr. at 10)
4. Pursuant to §1322.03 (B) of the Revised Code, the Division is required to conduct a criminal records background check based on the applicant's fingerprints as part of the application process.
5. Respondent's criminal records background check revealed possible convictions of breaking and entering in 1979, grand theft in 1981 and theft in 1981. The criminal background check also listed Respondent as having criminal convictions in states other than Ohio. (State Ex. 3 & 6)
6. On or about October 26, 2004, the Division notified Respondent that his application was being investigated and required Respondent to explain the convictions in detail and submit certified copies of the judgment entries for all convictions. The Division sent Respondent another letter on May 18, 2005 requesting certified copies of the court's findings for various convictions. (State Ex. 3 & 7)
7. Respondent submitted a letter to the Division on or about November 26, 2004 acknowledging and explaining the 1978 breaking and entering conviction in the Lucas County Court of Common Pleas and the 1981 theft conviction. Respondent also submitted a certified docket sheet for the 1978 conviction from the Lucas County Court of Commons Pleas. (State Ex. 5)

8. In 1978 Respondent entered into unoccupied premises and removed the carpeting and curtains. Respondent was convicted of breaking and entering, ordered to pay cost of prosecution and sentenced to one to five years imprisonment. Respondent's imprisonment sentence was suspended and Respondent was placed on probation for two years and ordered to spend the first five weekends of his probation in the Lucas County Corrections Center. (State Ex. 4 & 5)
9. Respondent was required to submit a Multi-state Offender Questionnaire as result of the criminal background check identifying him as having criminal convictions in states other than Ohio. Respondent reported a Driving while under the influence ("DUI") conviction in Sumter County, Florida in 1995. Respondent was fined, sentenced to ten days in jail and placed on probation for one year. (State Ex. 5 & 6, Tr. at 20-21)
10. Respondent did not disclose the 1979 breaking and entering conviction, the 1981 theft conviction, or the 1994 DUI conviction on his loan officer application nor did he explain in his letters to the Division why he failed to disclose these convictions.
11. In response to the NOH issued to the Respondent, a hearing was requested and scheduled. On or about September 26, 2005, the Division sent Respondent a letter scheduling the requested hearing for October 3, 2005. The Division continued the hearing on its own motion to October 24, 2005 at 1:00 p.m. The letter was sent to Respondent at the same address as the NOH. (State's Ex. 9 & 10, Tr. at 28)
12. The August September 26, 2005 letter scheduling the hearing was not returned to the Division as undeliverable. (Tr. at 28-29)
13. Respondent did not appear at the October 24, 2005 hearing in person or through counsel. (Tr. at 5)
14. Respondent did not request a continuance of the October 24, 2005 hearing. (Tr. at 5)

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 September 26, 2005 scheduling the requested hearing was sent to the Respondent by regular mail at the most recent address he had provided to the Division and at which he received certified mail service of the NOH. 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 (1947), 81 Ohio App. 158, 161, 77 N.E.2d 76, 78. Testamentary evidence from the Division that the August 24, 2005 letter was sent to the Respondent and not returned to the Division as undeliverable also demonstrate that the Division complied with Revised Code §119.07.
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. (1988) 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191.

B. Loan Officer License Application

1. Pursuant to Revised Code §1322.041(A)(5), to issue a license, the Division must make a finding that, inter alia, 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 in compliance with the purposes of Revised Code §1322.01 to §1322.12.
2. Ohio Revised Code Section 1322.031(A)(2) requires a loan officer license applicant to include in his or her application a statement as to whether he or she has been convicted of or pleaded 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. Ohio Revised Code Section 1322.07(A) prohibits a loan officer license applicant from making any substantial misrepresentation in any license application.
4. Ohio Revised Code Section 1322.07(B) prohibits a loan officer license applicant from making false or misleading statements of a material fact or omissions of statements required by state law.
5. Respondent's failure to disclose his 1979 breaking and entering conviction was a substantial misrepresentation in his application in violation of Revised Code §1322.07(A).
6. Respondent's omission of his 1979 breaking and entering conviction on his application is an omission of a statement required by law and a violation of Revised Code §1322.07(B).
7. Pursuant to Revised Code §1322.07(C) a loan officer license applicant is prohibited from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings."
8. Respondent's act of omitting his 1979 breaking and entering conviction from his loan officer application indicates that he intended to conceal this conviction from the Division. Respondent's act of omission indicates that he is dishonest and would attempt to obtain a loan officer license through dishonesty. Respondent's act of omitting the 1979 breaking and entering conviction constitutes dishonest dealings which violates Revised Code §1322.07(C).
9. Once the breaking and entering conviction was proven by the Division, the burden shifts to Respondent 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 such an offense again" in order to obtain a license. Revised Code §1322.041(A)(3)
10. Respondent, although having received proper notice of the scheduled hearing, failed to appear to meet his burden to prove that his activities and employment record since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will commit the offense of theft again. Respondent stated in his explanation to the Division that he is "honest and law abiding", but offered no evidence to support this statement. On the contrary, Respondent's failure to disclose the 1979 breaking and entering conviction on his loan officer application and his failure to

explain why he omitted the conviction is indicative that he does not honest and law abiding and does not have the character to obtain a loan officer license.

11. 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 the business will be operated honestly and fairly in compliance with the Ohio Mortgage Broker Act.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Keith Daniel Blake be found to have not presented sufficient evidence to prove, by a preponderance of the evidence, that his activities since his conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that he will be subject to a judgment again 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.

Respectfully submitted,



Landi Jackson-Forbes
Hearing Officer
December 7, 2005
Docket No. 05-0158-LOD