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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

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**DIVISION OF FINANCIAL
INSTITUTIONS**

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ALEX B. MUHAMMAD

:

CASE NO. M2006-9992740

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:

**LANDI JACKSON-FORBES
HEARING OFFICER**

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REPORT AND RECOMMENDATION

Issued December 21, 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 Alex. B. Muhammad, of Cleveland, 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 April 20 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted in 1986 of Petty Theft, a misdemeanor of the first degree, and that Respondent had failed to disclose that past criminal offense on his application to the Division. The Division alleges that based upon Respondent's conviction and failure to disclose the conviction, 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, and 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 the purposes of the Ohio Mortgage Broker Act. The Division also alleges violation of Revised Code §1322.07 (A), (B) and (C).

The hearing was held on June 28, 2006, at 77 South High Street, 19th Floor, Room 1928, Columbus, Ohio. The Division appeared and was represented by Assistant Attorney Theodore L. Klecker. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through E were admitted into the record without objection, and Respondent's Exhibits 1, 2, 4 and 5 were at admitted into the record as discussed in the transcript (hereinafter "Tr."). At the end of the hearing the record in this proceeding was left opened until July 11, 2006 to permit Respondent to submit evidence to support his testimony, over the objection from the Division. Respondent submitted one additional document from the Ohio Department of Insurance which was marked Respondent's Exhibit 6 and entered into the record.

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. D)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. Respondent submitted to the Division a Loan Officer License Application ("Application") and fingerprint card on or about August 8, 2005. Respondent checked the "No" box to Question 6 which asked:

Have you 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?

(State Ex. D)

3. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. D)
4. 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 background check revealed a 1986 Petty Theft conviction, a misdemeanor of the first degree, in the Bedford Municipal Court, Ohio. (State Ex. E)
5. On August 19, 1986, Respondent and a friend were arrested for shoplifting merchandise from Sears Department Store valued at \$52.03. Respondent plead no contest to the charge of Petty Theft, was ordered to pay \$250.00 in fines and court costs and received a 30 day jail suspension. (State Ex. E)
6. Respondent was nineteen years when he was convicted of Petty Theft. He explained that he did not disclose his 1986 conviction because he believed that the conviction had been expunged when he entered the United States Marines on November 4, 1986. This belief was based upon statements he believes were made to him by the judge that sentenced him in 1986 and because no one has ever indicated to him that they found his conviction, including when he received

security clearance to serve as a Communication Center Operator while in the U.S. Marines. (Respondent Ex. 1; Tr. at 34-35 & 38-40)

7. Respondent did not follow-up with the Judge whom he believed expunged his 1986 criminal conviction. Respondent also did he check with the Bedford Municipal Court before filling out the Application because in the years since his conviction he has always answered questions regarding his criminal background in the negative, including when he applied for and received an insurance agent license from the Ohio Department of Insurance in 1993. (Tr. at 34 & 38)
8. When Respondent went to the Bedford Municipal Court to obtain court documents in compliance with the Division's request to submit the journal entry evidencing the outcome of his conviction, the records had been transferred for storage to an off-site facility and were mailed to Respondent after several days of searching the records. No transcript of the 1986 court proceeding was provided with the court documents evidencing Respondent's conviction. (Tr. at 39)
9. Respondent served in the U.S. Marines and the Marine Corps Reserve for over seven years. While serving, he received a Good Conduct Medal and voluntarily extended service with the Marines at the request and for the convenience of the U.S. Government. He was also honorably discharged from active service. (Respondent Ex. 1; Tr. at 28)
10. Letters of Recommendation and a Certificate of Special Congressional Recognition submitted on Respondent's behalf indicate that he exhibits professionalism and leadership, is trustworthy and reliable, and is active in the community. None of the documents was notarized and did not indicate that the authors are aware of Respondent's past criminal conviction. (Respondent Ex. 2, 4 & 5)
11. Respondent has not had any criminal convictions since his 1986 conviction, which occurred twenty years ago. (Tr. at 41 & 47)

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 1986 Respondent plead no contest and was convicted of Petty Theft, a misdemeanor of the first degree, which is a criminal offense included by reference to "theft" offenses 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 Petty Theft 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 one conviction occurred twenty years ago. There is no evidence of a pattern of Petty Theft or other theft convictions involving theft in the twenty years that have passed between the 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. Respondent's testimony, the documents he provided from others attesting to his character, and the passage of twenty years since the conviction establish that Respondent is honest, truthful, and of good reputation and that there is no basis in

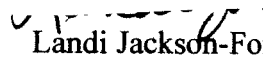
fact for believing that he will commit such an offense again. Twenty years have passed since the underlying events without incident. That alone indicates that Respondent is not likely to commit another crime in the future.

7. Respondent's testimony, his military service record, the documents submitted from others attesting to his character and the passage of twenty years since his conviction are 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 he will operate honestly and fairly as a mortgage loan officer in compliance with the Ohio Mortgage Broker Act.
8. The Division has also charged 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 answering Question 6 on the Application "No".
9. Respondent's failure to disclose his conviction on the Application does not automatically demonstrate that he made a substantial misrepresentation, false statement of material fact or engaged 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)
10. Respondent answered Question 6 based on his understanding of past events and what he has experienced in the past with answering questions regarding his criminal background in the negative. Respondent's belief and understanding were incorrect, but his testimony explaining why he excluded the twenty year old conviction was credible and convincing. The record demonstrates that Respondent's act of excluding the conviction was not done intentionally to hide the conviction from the Division or mislead the Division about his criminal past and does not support a finding that he intentionally violated Revised Code §1322.07(A) or (B). Respondent's one act of excluding the twenty year old conviction also does not demonstrate that he has engaged in a pattern of conduct or transactions that constitutes improper, fraudulent or dishonest dealings in violation of Revised Code §1322.07(C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Alex B. Muhammad 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
December 21, 2006
Docket No. M2006-9992740-LOD