

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

SHANNON D. DONOVAN

CASE NO. 05-0172-LOD

LANDI JACKSON-FORBES  
HEARING OFFICER

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REPORT AND RECOMMENDATION

Issued August 23, 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 Shannon D. Donovan, of Reynoldsburg, 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 December 1, 2005. The Division issued the NOH to Respondent on the basis that Respondent was subject to an adverse judgment in the Probate Court of Franklin County, Ohio in 2005. The Division alleges that based upon Respondent's adverse judgment 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 be the subject to such an judgment again. The Division further alleges that Respondent's adverse judgment 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 hearing was held at 9:30 a.m. on February 7, 2006, at 77 South High Street, 19<sup>th</sup> Floor, Room 1910, Columbus, Ohio. The Division, represented by Assistant Attorney General Matthew J. Lampke, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through C were admitted into the record without objection and Respondent's Exhibits 6 through 8 was admitted

into the record as discussed in the transcript (hereinafter "Tr."). At the end of the hearing the record in this case was left opened until February 14, 2006 to permit Respondent to submit evidence to support his testimony. Respondent's exhibits 1 through 5 and 9&10 were admitted 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. A)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. He is employed as a mortgage broker originating loans in the state of Michigan with the mortgage broker company Home 123. (State Ex. A)
3. Respondent applied with the Division on August 24, 2005 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("Application") and fingerprint card. (State Ex. C)
4. Within the Application Respondent disclosed an adverse judgment against himself issued on June 2, 2005 by the Probate Court of Franklin County, Ohio. The Probate Court found that Respondent and his father concealed, embezzled or conveyed away assets from a trust established by his great-grandmother and her personal assets by duress and undue influence. (State Ex. C - Entry)
5. The Probate Court's judgment ordered Respondent and his father to return disputed personal and trust assets or pay compensatory damages in equivalent value, pay a ten percent statutory penalty along with all costs associated with the acts including attorney fees incurred in bringing the action. (State Ex. C - Entry)
6. Respondent was appointed trustee of his great-grandmother's trust on May 17, 2004. Soon thereafter, his father was named soled beneficiary of the trust and was gifted most of the trust assets and the grantor's personal assets. Respondent also received a \$20,000 loan from his father from the proceeds of the gifts. (State Ex. C - Entry, Tr. at 25, 40 & 42)
7. Respondent offered as explanation for his adverse judgment that as the trustee appointed by his great grandmother he was carrying out his duties pursuant to her wishes. Respondent contends that he was implicated because he executed documents and acted on instructions from documents signed by his great-grandmother. Respondent asserts that if he had not signed the documents as instructed by his great-grandmother he would have breached his fiduciary duty as the trustee. (Tr. at 56& 61-62)
8. Respondent believes that he is honest and truthful and that the adverse judgment does not accurately reflect his character. (Tr. at 56)
9. Respondent had some experience in the financial area prior to working as a mortgage broker. He has a college degree in business from Notre Dame University. Respondent was employed with Merrill Lynch for approximately 18 to 20 months upon graduation, Circuit City and the American Heart Association.

Respondent testified that he left all three employers on good terms and that all three would rehire him. (Tr. at 49-50, 62-63 & 67)

10. Respondent introduced performance evaluations, surveys from loan customers and notarized reference letters to demonstrate that the authors of the documents believe that he is a person with good work ethics and integrity. (Respondent Ex. 2-5 & 7-10)
11. A former colleague of Respondent's while he was employed at Circuit City believes that Respondent is a committed and responsible worker. (Respondent Ex. 2)
12. Respondent's performance evaluations from the American Heart Association indicate that his work performance was on track for his job duties. The evaluator also considered Respondent to demonstrate integrity as shown by him consistent aim to follow rules and procedures. (Respondent Ex. 1)
13. Current colleagues that have known Respondent for five months believe Respondent to be honest and trustworthy, and have an overall favorable impression of Respondent and have heard positive comments from others. (Respondent Ex. 3-5)
14. The four surveys indicated that Respondent's loan customers believed that Respondent treated them in a professional manner and were overall satisfied with the level of service that Respondent provided. (Respondent Ex. 7-10)
15. None of the letters from Respondent's colleagues or his surveyed loan customers indicate that the authors are aware of Respondent's adverse judgment or the underlying facts that lead to the judgment. The letters were notarized but the authors of those letters were not available for cross-examination by the Division at the hearing.

## **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*:
  - (4) The applicant has not been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty...
  - (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 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 presented the June 3, 2005 adverse judgment issued against Respondent where the Probate Court found that Respondent did conceal, embezzle, or convey ways the trust and personal assets of his great grandmother Hilda Donovan.
3. The adverse judgment 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 judgment show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will be subject to such a judgment again." Revised Code §1322.041(A)(4)
4. Respondent answered Question six honestly on Application to the Division. Answering truthfully on the application favorably demonstrates that an applicant for a loan officer license is truthful and that the applicant has the character and general fitness to operate as a loan officer honestly and fairly in compliance with the Mortgage Broker Act. Answering question six honestly however is not enough evidence by itself for Respondent to meet his burden.
5. Respondent provided testamentary and documentary evidence to overcome the Division's evidence questioning his character and general fitness to obtain a loan officer license. Revised Code §1322.041(A)(4) provides that the applicant must prove that their activities and employment record since the judgment demonstrate that they have been honest, truthful and of good reputation, hence the evidence must be based on the activities engaged in and an employment record developed after the judgment. Respondent's performance reviews from the American Heart Association, while containing positive statements regarding Respondent's character, took place prior to his Probate Court judgment, and therefore are not actual evidence of Respondent's character since his judgment.

6. The positive statements from Respondent's colleagues and loan customers while admitted into the record were given less weight than they might have been given if the authors had testified regarding the bases for their opinions as well as been available for cross-examination. The weight given the letters and surveys also took into consideration the frequency of the authors' contact with Respondent, the length of acquaintance and whether they were aware of Respondent's judgment. Only one of the authors has known Respondent for any length of time. Respondent's current colleagues have only known him for five months and the loan customers only contact with Respondent was through the limited loan process. The letters and surveys were given some weight, but when viewed in light of the recent judgment, were insufficient to conclude that Respondent will not conceal, embezzle or wrongfully convey someone's personal assets again.
7. The nature of Respondent's judgment and the underlying facts raises serious concerns regarding Respondent's character. Respondent personally benefited from his appointment as trustee as evidenced by the loan received from his father. His claim that he was implicated because he signed documents that he was required to sign as trustee amounts to a collateral attack on the Probate Court's judgment, which is not proper in an administrative proceeding. It must be assumed that facts that lead to the Probate Courts judgment stand true. The underlying facts of Respondent's judgment and his participation in the events that lead to his father being named sole beneficiary of the trust, and being gifted the personal assets leads to question whether Respondent will not use his position as a loan officer for undue personal gain over the welfare of Ohio citizens. Respondent's evidence is insufficient to show that he does 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 Revised Code §1322.01 to 1322.12.
8. Respondent has failed to demonstrate by a preponderance of the evidence that he has the present fitness required to be a licensed loan officer. Since the burden was on him to demonstrate that he possesses such fitness, and he has not carried that burden, the license should be denied.

### **III. RECOMMENDATION**

In careful consideration of the record made in this matter, it is recommended that Shannon D. Donovan be found to have not presented sufficient evidence to prove, by a preponderance of the evidence, that there is no basis in fact for believing that he will not be the subject of an adverse 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,

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Landi Jackson-Forbes  
Hearing Officer  
August 23, 2006  
Docket No. 05-0172-LOD