

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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DIVISION OF FINANCIAL  
INSTITUTIONS

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**Jason R. León**

CASE NO. 05-0078-LOD

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REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER JAMES N. TURNER

Issued August 17, 2005

I. FINDINGS OF FACT

A. BACKGROUND

This matter first came before Hearing Officer Terrence O'Donnell, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions (the "Division") to serve as Hearing Officer for an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (the "R.C."). Said hearing was held 1:15 PM on May 24, 2005, at 77 South High Street, Room 1924, Columbus Ohio. Following the hearing it was determined that as result of another client relationship held by the law firm of Bricker & Eckler, with which Mr. O'Donnell is employed as an Associate Attorney, Mr. O'Donnell had been placed in a situation involving a potential conflict of interest. As a result, James N. Turner, Chief Legal Counsel for the Ohio Department of Commerce, an attorney licensed to practice law in Ohio, assumed the responsibility to serve as Hearing Officer for the purpose of preparing a Report and Recommendation in accordance with R.C. Chapter 119.

The hearing was held at the request of Respondent Jason R. León, of Cleveland, Ohio (the "Respondent") to consider the Division's Notice of its Intent to Deny Mr. León's Application for a Loan Officer License and Notice of Opportunity for a Hearing (the "NOH"). The NOH alleges that the Respondent was convicted of "Giving False Information" as a result of which his character and general fitness do not command the confidence of the public so as to warrant a belief that the business will be operated honestly, fairly, and in compliance with the purposes of the Ohio Mortgage Act. The

Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General James M. Evans. Respondent requested a hearing but did not appear. The Respondent did submit a written statement of his position to the Division. (Ex. 6). During the hearing, the Division did not produce a certificate of delivery of certified mail for the notice of the re-scheduled hearing, instead relying on an inference that delivery had been effected for that letter since the same delivery address was used for the it as was used for the NOH, which was delivered via certified mail, although it was signed for by an individual other than the Respondent. (T. pp. 16, Exhibit 8, pp.5)

At the hearing, State's Exhibits 1 through 13 were admitted into the record (Transcript (the "T".) pps. 19, 24).

#### B. JURSDICTION

The Division issued the NOH to Respondent on March 10, 2005 (Ex. 8). Respondent timely requested a hearing by an undated document received in the Division on March 16, 2005. (Ex. 9). The Division scheduled a hearing for March 28, 2005 by letter dated March 17, 2005, as required by R.C. Chapter 119 (Ex. 10), and on its own motion continued that date to April 19, 2005 (Ex. 10). By letter dated April 12, 2005 the Division continued the date of the hearing to May 24, 2005 at the Respondent's request (Ex. 11), on which date the hearing went forward notwithstanding that the Respondent failed to appear. (T., pp. 6-7).

#### C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. A statutory requirement became effective on May 2, 2002, which mandated that mortgage loan officers become licensed. (Senate Bill 76, 2001).
  2. The Division is the state agency responsible for the licensing and regulation loan of mortgage officers pursuant to R.C. Chapter 1322.
  3. Respondent is an individual who wishes to conduct business in Ohio as a mortgage loan officer. (Exhibit 1)
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1. On April 20, 2004, the Division received from Respondent a Loan Officer Application (the "Application") which was signed under oath by the Respondent on February 23, 2004. (Exhibit 1)
  2. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you or has any company for which you have been an officer, or more than 5% owner or director, ever been convicted of any criminal offense? Exclude minor misdemeanor traffic and parking offenses." (Exhibit 1, pp. 2)
  3. During the course of a standard background check, the Division became aware of the existence of a prior criminal history for the Respondent, as a

result of which the Division requested additional information to complete the application process. (Exhibits 2-5 )

4. The Respondent replied by providing a certified copy of his guilty plea to and criminal conviction of the offense of Giving False Information on March 5, 2004 in Lakewood Municipal Court stemming from an incident that took place in October 2003. The Respondent also provided a written explanation of the incident in which, in order to hide his failure to appear in court on a charge of Operating a Motor Vehicle while Under License Suspension, he had given a false name to the police officer investigating an altercation. At the time, that his explanation was submitted to the Division, Respondent indicated that he had completed his sentence for community service, but had not yet completed his probation on the conviction. (Exhibit 6)
5. The guilty plea to Giving False Information was entered less than two months prior to the Division receipt of the Respondent's original application. (Exhibits 1 and 6) The Division further presented certified evidence of other criminal misconduct involving an incident from October 31, 2003 for which the Respondent was convicted of the offenses of: Driving Under Suspension, Possession of Drug Paraphernalia, and Drug Abuse on January 28, 2004 in the Medina Municipal Court (Exhibit 13). None of the offenses described in paragraphs 4 and 5 of this Report and Recommendation were disclosed on the Respondent's original application for a Mortgage Loan Officer license. (Exhibit 1)
6. Respondent did not appear to submit any evidence into the hearing record. However, the letter received from Respondent providing his explanation of the record for his conviction of Giving False Information was introduced by the Division as part of the Application and is treated as Respondent's written statement for the purpose of this Report and Recommendation. (Exhibit 6) Since that letter cannot be cross examined, it was not given significant weight.

## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.
2. An agency is under no duty to discover whether someone subject to adjudication has moved so that notice can be mailed to their present address. The duty rests upon the person subject to the adjudication to notify the agency of their new address, and if they fail to do so, it is

enough that the notice was sent to the last known address. See: *McCoy V. Bureau of Unemployment Compensation* (1947), 81 Ohio App. 158 and *Blanchard v. Bureau of Unemployment Compensation* (1968), 14 Ohio Misc. 181.

B. LICENSE APPLICATION

3. The Division has proven that in 2004 Respondent was convicted of the offenses stemming from criminal activity that occurred in 2003 as set forth in paragraphs 4 and 5 above and that those convictions were not disclosed on the application form originally submitted.
4. The Division also charged 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.
5. The Division sought to bring into question Respondent's general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly, by presenting evidence of Respondent's 2004 conviction of Giving False Information to a police officer.
6. O.R.C. section 1322.041(A)(3) states that if Respondent has been convicted of any criminal offense involving certain named offenses, Respondent must prove by a preponderance of the evidence that Respondent's activities and employment record since the conviction show that Respondent is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such an offense again. Included among the listed offenses are offenses related to fraud and drug trafficking.
7. Possession of Drug Paraphernalia and Drug Abuse do not import holding contraband substances or materials for sale so as to support a conviction for Drug Trafficking and therefore will not be considered here to be a violation of R.C. Section 1322.041(A)(3) as it incorporates the regulations provided in R.C. Section 1322.031(A)(2). Further, those convictions were not made a part of the NOH. (Exhibit 8)
8. Because the nature of the 2004 conviction for Giving False Information is known, both the burden of proof and of going forward shifted to Respondent by virtue of the above-cited section once evidence was presented by the Division.
9. As a result of the conviction for Giving False Information set forth above and the Respondent's failure to disclose it despite its recent occurrence relative to the application, the Division has raised the issue of

Respondent's character and general fitness under R.C. Section 1322.041 (A)(5).

10. The Respondent did present some evidence of his rehabilitation in the form of his statement explaining his conviction of Giving False Information to a police officer. Because that explanatory note was not made under oath or submitted to cross-examination, it cannot be concluded that Respondent has successfully refuted the Division's assertions that Respondent's character and general fitness do not command the confidence of the public or warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Section 1322.041(A)(5).

### III. RECOMMENDATION

The Division has proven the Respondent has a criminal conviction that involves fraudulent behavior – namely that the Respondent knowingly gave false information to a police officer. Respondent did not submit any substantial evidence to prove that his activities and employment record show that 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 the Ohio Mortgage Broker Act. The Respondent did not appear. Consequently, the recommendation to the Superintendent of Financial Institutions is to **deny a mortgage loan officer's license to Jason R. León.**

Respectfully submitted,

James N. Turner  
Hearing Officer  
October 25, 2004  
Docket No. 04-DFI-055