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**STATE OF OHIO**  
**DEPARTMENT OF COMMERCE**

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

**CHARLES E. ZIBELL**

CASE NO. 04-0186-LOD

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**REPORT AND RECOMMENDATION**  
**ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued July 22, 2004

**I. FINDINGS OF FACT**

**A. BACKGROUND**

This matter came before this Hearing Officer, 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 an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). Said hearing was held at 1:00 PM on March 12, 2004, at 77 South High Street, 19<sup>th</sup> Floor, room 1918, Columbus, Ohio.

The hearing was held at the request of Respondent Charles E. Zibell, of 9214 B Blueberry Lane, Macedonia, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent was convicted of four specified criminal charges, between the years 1995 and 1997, and, also, that Respondent failed to disclose the past criminal offenses, and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio

Attorney General's Office, Assistant Attorney General Emily A. Smith.  
Respondent appeared pro se.

At the hearing, State's Exhibits A through J were admitted into the record by stipulation. Respondent's Exhibits 1 through 3 were admitted into the record over the State's objection on hearsay grounds, all subject to the limited weight afforded the documents, as discussed in the transcript (hereinafter "Tr."). Respondent called one witness in addition to himself.

## B. JURISDICTION

The Division issued the NOH against Respondent on January 22, 2004. Respondent requested a hearing, which request was received by the Division. On February 13, 2004, the Division scheduled the hearing for February 23, 2004, but continued the hearing to March 12, 2004, on its own motion, at which time the hearing went forward.

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

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 4.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit A; Tr. p. 13.)
3. A statutory requirement became effective on May 2, 2002, which mandated, for the first time, that Mortgage Loan Officers become licensed. (Senate Bill 76, 2001.)
4. On or about January 17, 2003, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"). (Exhibit A.)
5. Respondent completed and signed the Application on, or about, December 18, 2002. (Exhibits A, B; Tr. pp. 33-39.)
6. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense including, but not limited to, theft, ...forgery, ... , or any criminal offense involving money..." (Exhibit A; Tr. p. 14.)

7. About February 27, 1995, over seven years prior to the submission of the Application, Respondent was found guilty of one count of Defrauding a Livery. (Exhibits A - G; Tr. p. 20.)
8. Respondent's explanation of the 1995 conviction was that: when he was 18 years old, he and some friends had a "hotel party" and Respondent signed a fictitious name to the hotel registry. The others were all under 18 and Respondent was the only one arrested. (Exhibits A - G; Tr. p. 20.)
9. About August 16, 1995, over seven years prior to the submission of the Application, Respondent was found guilty of one count of Possession of Drug Paraphernalia. (Exhibits A - G; Tr. pp. 20-21.)
10. Respondent's explanation of the 1995 Possession of Drug Paraphernalia conviction was that: he was stopped at a routine traffic stop and caught with a marijuana pipe in his car. (Exhibits A - G; Tr. pp. 20-21.)
11. About August 10, 1996, over six years prior to the submission of the Application, Respondent was found guilty of one count of Possession of Drug Paraphernalia. (Exhibits A - G; Tr. pp. 20-21.)
12. Respondent's explanation of the 1996 conviction was the exact same as the same conviction in 1995: he was stopped at a routine traffic stop and caught with a marijuana pipe in his car. (Exhibits A - G; Tr. pp. 20-21.)
13. About March 1997, over five years prior to the submission of the Application, Respondent was found guilty of one count of Misuse of a Credit Card. (Exhibits A - G; Tr. pp. 21-23.)
14. Respondent's explanation of the 1997 conviction was that: A friend had found a lost credit card, used it, and passed it on to Respondent who used it. After Respondent gave it to another person, who was apprehended and identified Respondent, Respondent returned the items purchased. Respondent was identified at the store when he returned the items and ultimately arrested and convicted. (Exhibits A - G; Tr. pp. 21-23.)
15. Respondent spent a night in jail when first arrested on the misuse of credit card charge, prior to his conviction. He did community service as his sentence. (Tr. p. 22.)
16. Respondent acknowledges his commission of all offenses and expressed regret. (Exhibit E; Tr. pp. 18-23.)

17. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or for those offenses for which there exists a record, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit A.)
18. Respondent's explanation of why he answered Question 5 on the Application as "no" when he knew that he had felony convictions on his record was that he misread the question because he was in a hurry to submit the Application and that he "turned the page on those incidents a long time ago." (Exhibit E, 3; Tr. pp. 14-15, 29-30, 36, 66-69, 73-74.)
19. Respondent was convicted of Driving Under the Influence approximately six years ago and this conviction was not disclosed on the Application. (Exhibit A; Tr. p. 30.)
20. The three individuals who have had present or prior opportunities to observe Respondent in a work environment and who wrote letters on Respondent's behalf believe Respondent to have a good reputation. (Exhibits 1 – 3.)
21. Respondent's responses and demeanor during the hearing were generally credible, except for his explanation of why he responded no to Question 5.

## II. CONCLUSIONS OF LAW

### A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119 .

### B. LICENSE APPLICATION

2. On about March 1997, Respondent was found guilty of a criminal offense involving theft, fraud or any criminal offense involving money, which offenses are specifically cited in section 1322.041(A)(3), O.R.C., and on the Application.

3. The criminal offense involving theft, fraud or any criminal offense involving money being proven by the Division, the Respondent must now prove by a preponderance of the evidence, in order to obtain a license, that the Respondent'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." Section 1322.041(A)(3), O.R.C.
4. Respondent's Exhibits 1 and 3 are letters from Respondent's past and present employers and Exhibit 2 is from a coworker, all of whom were not in attendance at the hearing. Respondent's Exhibits 1 through 3 are accepted to be what they purport to be, although they constitute hearsay and only a limited foundation was offered. Because an administrative hearing is designed to permit a respondent an opportunity to offer an explanation without the formalities or expense of a trial, Exhibits 1 through 3 were admitted into the record and considered. Because the State could not cross examine the letter writers to test the authenticity, accuracy or details of the documents, and the exhibits did not offer specificity for the general statements made within them, Exhibits 1 through 3 have been afforded limited weight.
5. Because the decision in this case rests on a matter other than Respondent's reputation, the weight given to Exhibits 1, 2 and 3 was not determinative of the outcome.
6. The two 1995 convictions and the 1996 conviction are sufficiently removed in time from the Application, the convictions occurred at a time when Respondent was still somewhat immature and Respondent's explanation and demeanor during the hearing were sufficiently credible, to assist in meeting Respondent's burden to show there is no basis in fact for believing that he will commit such offenses again.
7. Although the Respondent presented minimal evidence to substantiate his own sworn testimony, his testimony about the convictions was credible. There is no basis in fact for believing that the Respondent will commit such an offense again.
8. When considering the nature of the 1997 misuse of a credit card offense, the offense deals with the misuse of money and property not belonging to Respondent. The business for which Respondent seeks a license would cause Respondent to be dealing with money and property of others. However, the conviction is seven years old. There is no evidence of Respondent having committed further acts

of a similar nature and Respondent's remorse appeared genuine, albeit it is unclear if the remorse was over the act or the conviction.

9. The Division brought into question Respondent's honesty and truthfulness in his activities since the offense by bringing forth evidence of Respondent's inaccurate response to Question 5 on the attested Application.
10. Respondent presented minimal evidence that he was honest and truthful when filling out and submitting the Application.
11. Respondent knew or should have known that he had been convicted of a crime.
12. Even accepting the Respondent's most favorable explanation of his response to Question 5 at face value, it demonstrates a lack of attention to detail. The Application specifically asks for any criminal convictions.
13. Because the Application submitted by Respondent contained a false response, Respondent was not able to demonstrate that his activities since the offenses show that the Respondent is honest or truthful.
14. Respondent failed to prove by a preponderance of evidence his honesty in his activities since the offense – specifically relating to his response to Question 5.
15. 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.
16. The Division brought 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 bringing forth evidence of Respondent's inaccurate response to Question 5.
17. Filing an inaccurate Application is negatively demonstrative of an applicant's character or general fitness to command the confidence of the public or of whether the business will be operated honestly and fairly in compliance with law, at least demonstrating the lack of attention to detail.

18. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning his general fitness to command the confidence of the public. Because the nature of the business for which Respondent seeks a license requires attention to detail and reading complex documents, Respondent did not demonstrate he can command the confidence of the public.
19. Respondent failed to provide sufficient evidence to overcome the Division's evidence questioning whether the business will be operated honestly and fairly in compliance with law. Respondent has not demonstrated how he could have failed to recall, and mention on Question 5, four separate incidences resulting in criminal convictions, particularly one described as one of the darkest moments of his life.

### **III. RECOMMENDATION**


Three factors weighed in Respondent's favor: a) the facts underlying three of the four convictions were not egregious; b) the convictions occurred five to seven years prior to the Application; and, c) his demeanor during the hearing generally conveyed remorsefulness. This Respondent's convictions – even one involving a misuse of another's credit card – probably would not, in themselves, cause his license to be denied. But although Respondent generally provided convincing, credible testimony, the one exception was his explanation for answering Question 5 incorrectly. One would expect that the traumatic events in his life, at least as he described the conviction for misuse of a credit card, would be remembered. Such a remembrance would cause a reasonable person to read Question 5 on the Application with attention to detail. Based on the record available, it must be concluded that the Division did rebut Respondent's implied assertion that, since the conviction, Respondent was honest or, in the alternative, the Division demonstrated that Respondent's character and general fitness do not command the confidence of the public.

The loan officer licensing statutes serve to protect the public in the public's financial dealings with licensees. Respondent's criminal convictions included a felony of the type cited in section 1322.041(A)(3), O.R.C., and on the Application, but committed six or seven years prior to the submission of the Application. Respondent has presented evidence that the offenses occurred when he was young and immature, he has paid his debt to society and that he would not be likely to engage in the criminal activity again. However, because Respondent did not answer Question 5 on the Application honestly, he cannot show that he has

been honest and truthful or, in the alternative, that he would command the confidence of the public. Either he was intentionally hiding his past criminal convictions or his response to Question 5 was lacking in attention to detail.

The Division has proven the prior criminal convictions. Respondent did not present sufficient evidence to prove, by a preponderance of the evidence, that his activities since the convictions show that he has been honest and truthful, or that he would command the confidence of the public, and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **DENY A MORTGAGE LOAN OFFICER'S LICENSE TO CHARLES E. ZIBELL.**

Respectfully submitted,

  
Michael Quinn  
Hearing Officer  
July 22, 2004  
Docket No. 04-DFI-060