

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS

**LANDI JACKSON-FORBES
HEARING OFFICER**

The hearing was scheduled by the Division at the request of Respondent Lawrence B. Hubbs of Columbus, 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 July 24, 2006. The Division issued the NOH to Respondent on the basis that Respondent was convicted of Trafficking in Marijuana in 1995, and failed to disclose that criminal conviction on his application to the Division for a loan officer license. 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 September 27, 2006, at 77 South High Street, Columbus, Ohio. The Division appeared and was represented by Assistant Attorney General Timothy C. Loughry. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 4 were admitted into the record without objection, and Respondent's Exhibits A through D were 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 October 4, 2006 to permit Respondent to submit a signed copy of the letter from Tina Hay identified as Respondent's Ex. D into the record. Respondent submitted a signed copy of the letter which was substituted for the unsigned version.

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. 1)
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") on or about February 3, 2006. Quality Mortgage of Ohio is listed as the sponsoring/employing mortgage broker company.
3. Respondent checked the "No" box to Question 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. (DUIs and DWI' [sic] are criminal offenses.)

(State Ex. 1 & 2)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 2)
5. 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 1994 aggravated drug trafficking charge in Kettering, Ohio. (State Ex. 4)
6. In 1994 Respondent was arrested and charged with aggravated drug trafficking. Respondent sold marijuana. Respondent plead guilty to the offense of trafficking in marijuana on February 10, 2005, and was subsequently convicted in the Common Pleas Court of Montgomery County, Ohio on March 10, 1995. Respondent was sentenced to a one year suspended jail term and placed on probation for five years. The Court also suspended Respondent's driver's license for six months and determined that he was indigent and unable to pay the mandatory fine of \$1,000. (State Ex. 4)

7. Respondent's probation was terminated after eleven months. A letter from his former probation officer indicated that he was compliant with the terms of his supervision which lead to early termination. Respondent has not been charged with any other criminal offenses since 1994 other than traffic violations. (State Ex. 4; Tr. at 18)
8. Respondent disclosed his conviction to Joseph Baird, the Operations Manager at Quality Mortgage prior to filling out the Application. Respondent explained to Mr. Baird that he was seventeen years old when he was arrested and eighteen years old when he plead guilty and was convicted. Respondent sought Mr. Baird's assistance on how to answer Question 5. Mr. Baird indicated to Respondent that juvenile offenses were irrelevant to the loan officer license application process and instructed Respondent to answer "no" if he was seventeen when he was arrested. (Respondent Ex. A; Tr. at 17-19, 20-21 & 23)
9. Mr. Baird wrote a letter explaining his involvement with Respondent's preparation of the Application, as well as appeared at the hearing and testified. Mr. Baird accepts responsibility for Respondent answering "no" and not disclosing the conviction on the Application. His testimony confirmed and coincided with Respondent's explanation for his not disclosing the conviction on the Application. Mr. Baird wrote and testified that he understood that Respondent was seventeen years old when he was arrested and that based on that understanding he told Respondent to answer "no" to Question five. (Respondent Ex. A, Tr. at 29)
10. In a letter submitted to the Division explaining the circumstances of his conviction, Respondent wrote that he was seventeen years old when he committed the offense and eighteen when he was convicted. At the hearing, Respondent testified that he was sixteen years old when the offense took place, seventeen when he was arrested and that he turned eighteen years old by his final court date, which was March 10, 1995. Respondent also testified that he was arrested in 1994, three days before Christmas. (State Ex. 4; Tr. at 15 & 18-19)
11. Respondent was born on February 24, 1976. A review of the dates on the journal entries evidencing Respondent's conviction indicates that Respondent was eighteen years of age when he was arrested and plead guilty, and was nineteen years old on his final court date. No evidence was submitted to substantiate Respondent's letter and testimony that he was sixteen or seventeen when he sold the marijuana. (State Ex. 2 & 4)
12. Respondent acknowledges he committed the offense. He indicated that he regrets his action and credits his behavior to immaturity. (State Ex. 4; Tr. at 27)

13. Three letters of recommendation from previous employers indicate that Respondent is reliable, honest and has good work ethics. None of the documents were notarized however, and only two indicated that the author was aware of Respondent's criminal conviction. (Respondent Ex. B-D)

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 1995 Respondent plead guilty to and was convicted of trafficking in marijuana, a felony of the fourth degree. Drug trafficking is an offense specifically 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 trafficking in marijuana 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 sole conviction occurred eleven years ago and at age when he was somewhat immature. There is no evidence of a pattern of drug trafficking or other convictions involving drugs or money in the eleven years that have passed between Respondent's conviction and the date of the hearing.
5. Respondent's testimony, the documents he provided from others attesting to his character, and the passage of eleven years since the conviction would support a conclusion there is no basis in fact for believing that Respondent will commit another drug trafficking offense again or any other offense involving money or securities. Eleven years have passed since the underlying events without incident. That alone indicates that Respondent is not likely to commit another crime in the future. However, Respondent's untruthful answer to Question 5 on the Application and his contradictory explanations indicates otherwise.
6. Respondent's explanation for his inaccurate answer, while supported by Mr. Baird's testimony and letter, cannot be accepted. Respondent cannot rely on Mr. Baird's instructions to answer "no" because he was not honest with Mr. Baird regarding his age at the time of his arrest and subsequent conviction. Respondent was not tried in a juvenile court system and he knew or should have known that he was eighteen when he was arrested and convicted as an adult. Disclosure of his conviction was required and his inaccurate representation of his age to Mr. Baird and to the Division demonstrates dishonesty. Moreover, Respondent's claim at the hearing that he was sixteen when he committed the offense contradicted his earlier written statement that he was seventeen when he committed the offense. Respondent appeared to be presenting any argument that would validate his nondisclosure of his felony offense which is also an indication of dishonesty. Respondent has not established that he meets the licensing prerequisites set forth in Ohio Revised Code Section 1322.041(A)(3).
7. For the same reasons, Respondent has failed to prove by a preponderance of the evidence that he has 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 Revised Code §1322.01 to 1322.12. Those who participate in the mortgage industry are obligated to take the time and care to ensure that applications and loan-related documents are truthful and accurate in every respect. This obligation applies to documents relating to a loan as well as to documents relating to loan officer licensure. How an applicant answers an application is one of the Division's first opportunities to examine whether an applicant can fulfill the obligations of a mortgage loan officer honestly and competently. The public must also be able to trust the loan officer to pass complete and accurate information back and forth between the lender and the client. Respondent's dishonest answer does not support a finding that he has 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

8. The Division has also charged violations of the Ohio Mortgage Broker Action §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 not disclosing his 1995 criminal conviction on the Application.
9. Respondent's failure to disclose his conviction on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation on his Application. 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. Ohio Revised Code §1322.031(A)(2) requires a loan officer license applicant to include in the application a statement as to whether he 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. Respondent's conviction is a "drug trafficking" conviction that was required to be disclosed.
11. Respondent's explanation that he was misinformed by the Operations Manager does not excuse his nondisclosure because he was not honest about his age at the time of his arrest and conviction that lead to the inaccurate instructions. Respondent's response to Question 5 on the Application indicating that he did not have any criminal convictions when in fact he had been convicted of a felony in 1995, as an adult, was a substantial misrepresentation in the Application that violated Revised Code §1322.07(A), a false statement of a material fact in violation of Revised Code §1322.07(B). Respondent's act of answering Question 5 untruthfully also constitutes engaging in conduct that is improper, fraudulent, and dishonest dealings.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Lawrence B. Hubbs be found not 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 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 Ohio Mortgage Broker Act, and that consequently he be denied an Ohio Loan Officer License.

Respectfully submitted,

Làndi Jackson-Forbes
Hearing Officer
March 1, 2007
Docket No. 06-DFI-155