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**LANDI JACKSON-FORBES
HEARING OFFICER**

The Division issued the NOH to Respondent on the bases that Respondent swore that the information on her Loan Officer License Application ("Application") regarding her criminal background was complete and truthful and attempted to obtain a loan officer license using untruthful information regarding her criminal record. The Division alleges those based upon Respondent's nondisclosure and attempt to obtain a loan officer license using incomplete and untruthful information, Respondent 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 Division further alleges that Respondent's actions violate Revised Code §§1322.07(A), (B) and (C).

The Division, represented by Assistant Attorney General Timothy Loughry appeared at the December 6, 2005 hearing and presented its case. Witness for the Division was staff attorney Mark Rhea. Respondent did not appear at the hearing, nor was she represented by counsel. At the hearing, State's Exhibits 1 through 5 were admitted into the record without objection, as discussed in the transcript (hereinafter "Tr.").

B. Loan Officer License Application

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to Revised Code Chapter 1322.
2. On or about October 26, 2004, Respondent applied for an Ohio Mortgage Broker Loan Officer license ("loan officer license") by submitting a signed, sworn and attested Ohio Loan Officer Application to the Division pursuant to Revised Code Chapter 1322. (State Ex. 2, Tr. at 10)
3. Within the application Respondent checked the "no" box to question number 5, which asked: "Have you ... ever been convicted of any criminal offense?" (State Ex. 1, Tr. at 10)
4. Pursuant to §1322.03 (B) of the Revised Code, the Division is required to conduct a criminal records background check based on the applicant's fingerprints as part of the application process.
5. In 1994, Respondent was found guilty of criminal trespass in the Moraine Mayor's Court, Moraine. Respondent plead no contest to a domestic violence charge in 1998 in the Kettering Municipal Court, Kettering, Ohio, and was found guilty of the offense. (State Ex. 5)
6. Respondent submitted a letter to the Division on or about December 27, 2004 explaining the circumstances that lead to her 1994 and 1998 convictions, along with copies of judgment entries evidencing each conviction. Respondent did not provide an explanation for why she did not disclose the two criminal convictions on her Application. (State Ex. 5)
7. The Division issued its NOH against Respondent on October 26, 2005. (State Ex. 1)
8. Respondent personally received the NOH via certified mail return receipt on October 31, 2005 and requested a hearing. Respondent wrote a different delivery address on the return receipt. (State Ex. 1)

9. By letter dated November 10, 2005 the Division scheduled the hearing for November 14, 2005 and continued the hearing on its own motion to December 6, 2005. The letter was addressed to the new delivery address that Respondent wrote on the return receipt. (State Ex. 1, Tr. at 11)
10. The November 10, 2005 letter scheduling the hearing was not returned to the Division as undeliverable. (Tr. at 16)
11. Respondent did not request a continuance of the December 6, 2005 hearing. (Tr. at 5)
12. A hearing was held on December 6, 2005. Respondent did not appear for the scheduled hearing in person or through counsel. (Tr. at 4)

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters

1. Ohio Revised Code §119.07 requires the Division to notify Respondent of his right to request a hearing. The Division complied with §119.07 by notifying Respondent of her right to a hearing in the NOH which was properly served upon Respondent by certified mail.
2. The Division further complied with §119.07 by notifying Respondent, when she requested a hearing, of the time, date, and place of the hearing once the date was set. The Division's November 10, 2005 letter scheduling the requested hearing was sent to the Respondent by regular mail at the most recent address she supplied on the certified mail's return receipt that was sent to the Division. Ohio Revised Code §119.07 does not require the notice of the hearing to be sent by certified mail. The use of regular mail was appropriate in this case. McCoy v. Bureau of Unemployment Compensation, 81 Ohio App. 158, 161, 77 N.E.2d 76, 78 (1947). Testamentary evidence from the Division that the November 10, 2005 letter was sent to the Respondent and not returned to the Division as undeliverable also demonstrate that the Division complied with Revised Code §119.07.
3. Respondent received proper notice of the hearing therefore it was appropriate for the hearing to proceed in her absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988).

B. Loan Officer License Application

1. Pursuant to Revised Code §1322.041(A)(5), to issue a license, the Division must make a finding that, inter alia, 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 Revised Code §1322.01 to §1322.12.
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 demonstrated that on or about October 21, 2004, Respondent signed a loan officer license application, containing an inaccurate response to Question 5, under oath and subsequently filed that application with the Division to obtain a loan officer license.
3. Filing an inaccurate Application reflects negatively on Respondent's character and general fitness as it relates to whether Respondent will operate as a loan officer honestly and fairly in compliance with law.
4. Respondent provided to the Division explanations of the facts that lead to her two separate convictions, but did not indicate why she answered Question 5 inaccurately.
5. Respondent, although having received proper notice of the scheduled hearing, failed to appear to provide sufficient evidence to overcome the Division's evidence questioning her character and general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly. Respondent failed to prove by a preponderance of the evidence her honesty in her activities, specifically relating to her response to Question 5 to support a finding that her 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.
6. The Division also charged violations of the Ohio Mortgage Broker Act, §§1322.02(A) (making any substantial misrepresentation in any registration or license application), (B) (making false or misleading statements of a 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 5 on the Application "No".

7. The Division presented evidence that Respondent plead no contest to two criminal offenses and was found guilty of both charges, thereby making her response to Question 5 on the Application inaccurate.
8. Intent is required for a conclusion that §§1322.07 (A), (B) and (C) have been violated. Webb v. State Med. Bd., 146 Ohio App. 3d, 621, 628 (2001), (intent is required for a finding of fraud, misrepresentation, or deception).
9. Respondent provided no explanation for her inaccurate response to Question 5 and failed to appear at the requested hearing to present evidence to overcome the Division's evidence that demonstrates that she violated §§1322.07(A), (B) and (C). Respondent's unexplained inaccurate response to Question 5 supports a finding that she intended to made a substantial misrepresentation, that she intended to make a false statement of a material fact required by law on the license application, and that her intentional act of answering inaccurately constitutes fraudulent or dishonest dealings in violation of Revised Code §§1322.07(A), (B) and (C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Amber L. Rife be found to have not presented sufficient evidence to prove, by a preponderance of the evidence, that she 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 Ohio Mortgage Broker Act, and that Amber L. Rife violated §§1322.07(A), (B) and (C) of the Ohio Mortgage Broker Act. Accordingly, it is recommended that Amber L. Rife be denied an Ohio Loan Officer License.

Respectfully submitted,



Landi Jackson-Forbes
Hearing Officer
April 20, 2006
Docket No. 05-0169-LOD