

RECEIVED
DIVISION OF FINANCIAL
INSTITUTIONS
03 DEC 14 PM 1:11

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

**DIVISION OF FINANCIAL
INSTITUTIONS**

AMANDA D. ROBERTS

CASE NO. 06-0050-LOD

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued December 14, 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 Amanda D. Roberts of Parma, 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 March 13, 2006. The Division issued the NOH to Respondent on the basis that Respondent provided untruthful information about her criminal background on her loan officer license application and attempted to obtain a loan officer license providing untruthful information. The NOH alleges that Respondent's untruthful information about her criminal record and attempt to obtain a license providing untruthful information shows that her 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 acts of providing untruthful information on the loan officer application and attempt to obtain a license with this untruthful information constitutes violations of Revised Code §1322.07(A)(B) and (C).

The hearing was held at 9:30 p.m. on June 20, 2006, at 77 South High Street, 19th Floor, Room 1938, Columbus, Ohio. The Division, represented by Assistant Attorney General Laura A. Meechan, appeared at the hearing. Respondent appeared at the hearing and was represented by Attorney Matthew Cox. Respondent also testified at the hearing. At the hearing, State's Exhibits 1 through 4 and Respondent's Exhibits A through C and G through L were admitted into the record as discussed in the transcript. (hereinafter "Tr.") The record in this proceeding was left open to permit Respondent to enter additional evidence. A notarized letter dated June 16, 2006 was marked as Respondent exhibit M and entered 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. 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") and fingerprint card on or about January 5, 2005. 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's [sic] are criminal offenses.)

(State Ex. 3)

3. Respondent swore to or affirmed that the answers she gave in the Application are complete and true of her own knowledge. (State Ex. 3)
4. 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 records background check revealed a Driving Under the Influence (DUI) conviction on October 21, 2002 in the Medina Municipal Court. (State Ex. 4)
5. Respondent was fined \$600 for her DUI conviction, and sentenced to 180 days in jail, with 170 of the days suspended. Respondent was also placed on probation for one year and directed to undergo alcohol and drug abuse assessment and a six-week treatment program. (State Ex. 4)
6. Respondent has paid in full all accompanying fines and court costs and received early termination from probation. (Tr. at 24-25)
7. Respondent completed the alcohol and drug abuse treatment program on March 21, 2005. A letter from her therapist indicated that Respondent regularly attended the program and was cooperative and compliant with all regulations of the group.

Respondent also attends AA three to five times a week. (Respondent Ex. G & H; Tr. at 31)

8. Respondent has not had an alcohol related conviction since 2004. In July of 2004 the Cuyahoga County Department of Children and Family Services determined that it was in the best interest of Respondent's minor brother to be in her care and modified Respondent's temporary custody to Planned Permanent Living Arrangement. (Respondent Ex. I & J; Tr. at 15 & 23)
9. Respondent began working in the mortgage industry in 2004. Notarized letters from former and current colleagues in the mortgage industry indicate that the authors believe that Respondent is a professional, has acquired skills necessary to complete a loan, and is knowledgeable about the mortgage industry. The authors also consider Respondent to be honest, dedicated and hardworking. (Respondent Ex. K & M)
10. Respondent admitted that she understood what Question 5 was asking and that she read the question correctly. She repeatedly stated that she made a mistake marking the "no" box to Question 5. Respondent stated that she did not intend to lie to the Division and knew that her convictions, including the 2002 DUI would be revealed through the criminal background check. (Tr. at 62 -64)
11. Respondent also stated that she was confused about what she was required to disclose on the Application. Respondent now believes that she should have contacted the Division for clarification and to confirm what she was required to disclose on the Application. (Respondent Ex. L; Tr. at 44-45)
12. Respondent contributes her mistake and confusion to a conversation that she had with her manager, Chris Riddle, and an application she filed with the Ohio Department of Insurance. (Tr. at 11, 23 & 64)
13. Respondent was under the impression that DUIs would not affect her getting a loan officer license. Prior to filling out the Application, Respondent asked Mr. Riddle, "Can I get a license with having DUIs on my record?" Mr. Riddle wrote that he stated as follows:

Before Amanda filled out the application she did then ask me before she did she had a past of DUIs and asked if that would be a problem. I explained no that a journal entry might be required however, you cannot get approved with felonies and/or money laundering.

(Respondent Ex. B; Tr. at 23-24 & 62)

14. Respondent admitted that Mr. Riddle did not tell her to answer any question incorrectly and did not advise her whether or not to disclose her convictions, but

stated that, "he [Riddle] did give me the impression that I didn't have to worry about my past record." (Respondent Ex. L; Tr. at 44-45 & 49)

15. Respondent also contributed her answering "no" to Question 5 on the Application to how she answered the criminal background question on the Ohio Department of Insurance Producer Application. She answered "no" to Question one under the Background Information section of the Producer Application which asks:

Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations and juvenile offenses.

(Respondent Ex. C; Tr. at 54-55)

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:

(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. Revised Code §1322.031(A)(4) authorizes the Division to require an applicant to submit "any further information that the superintendent requires". Therefore, it was appropriate for the Division to require Respondent to disclose criminal convictions that are not specifically listed in Revised Code §1322.031(A)(2).
3. The Division brought into question Respondent's character and general fitness to command the confidence of the public and that the business will be operated

honestly and fairly, by demonstrating that Respondent was convicted of a DUI in 2002 and she failed to disclose that conviction on her Application.

4. Respondent must prove by a preponderance of the evidence that she 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. Respondent's failure to answer all questions on the Application truthfully does not help her demonstrate that she has the requisite character and fitness.
5. Respondent's explanation is that she failed to correctly answer Question 5 on the Application because she was confused about whether she was required to disclose her DUI convictions because of her conversation with Mr. Riddle and the language of the criminal background question on the Department of Insurance application that permits an applicant to exclude misdemeanor traffic citations. Respondent's explanation is troubling because she admitted that she correctly read and understood Question 5, which conflicts with her testimony that she was confused by what she was required to disclose in the Application. Question 5 on the Application requires disclosure of any criminal conviction and specifically states that "DUIs... are criminal offenses".

Respondent did not ask her manager for advice on how to answer Question 5 because she was confused by any wording in the question. Respondent asked her manager whether her past record of DUIs would be a problem for her getting a license. Respondent questioning whether a past criminal record would impede her chances of being granted a license and believing that the criminal record would not affect the grant of the license does not equate with answering Question 5 untruthfully. There is nothing in the language of Question 5 that permits an applicant to exclude a criminal conviction if the applicant determines that the conviction will not affect the grant of a loan officer license.

Likewise, the exclusion of misdemeanor traffic convictions allowed by the Department of Insurance application and Respondent's belief that her DUIs were not relevant to that proceeding does not equate with excluding that same information from the Loan Officer License Application, particularly when Respondent admitted that she read and understood that Question 5 was asking about her criminal record and did not permit her to exclude any of her criminal convictions. Respondent's explanation cannot be accepted to excuse her untruthful answer.

The Division did not rely on Respondent's underlying criminal record as a basis for intending to deny her a Loan Officer License, but the fact that Respondent answered untruthfully about the existence of her 2002 DUI. The record in this case does not demonstrate that Respondent answered untruthfully because she was confused by what was she was required to disclose on the Application. Instead the record demonstrates that Respondent answered untruthfully because she either believed that her criminal record would not affect her getting a license

or questioned whether her criminal record would affect her obtaining a loan officer license. Respondent's explanation for answering Question 5 untruthfully shows that she is unwilling to answer questions truthfully if she believes the answer is irrelevant or questions the impact of the answer to the process, which demonstrates a reckless disregard for the need to make truthful statements.

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 for documents relating to loan officer licensure. Respondent had a duty to answer truthfully even though she believed that her criminal record would have no effect on her obtaining a license.

6. The character reference letters submitted by former and current colleagues, while hearsay, were admitted into the record. These colleagues, in their working experience with Respondent, consider her to be competent, reliable, hardworking and honest. These beliefs, however cannot overcome the Division's evidence in light of Respondent's explanation for answering Question 5 untruthfully. Respondent has not provided sufficient evidence to overcome the Division's evidence questioning his character and general fitness to command the confidence of the public and the belief that he will operate as a loan officer honestly and fairly in compliance with law.
7. 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 all her criminal convictions on the Application.
8. Respondent's failure to disclose her convictions on the Application does not automatically demonstrate that she made a substantial misrepresentation, false statement of material fact or engaged in fraudulent or dishonest conduct. 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).
9. Revised Code §1322.031 (A)(2) and (4) are the provisions that sets forth the information that an applicant must provide on a loan officer license application. Revised Code §1322.031(A)(4) requires "[a]ny further information that the superintendent requires." The Superintendent, authorized by Revised Code §1322.031(A)(4), required Respondent to disclose "any criminal offense" in Question 5. Respondent read and understood that Question 5 required her to disclose her criminal record, including the 2002 DUI, but answered untruthfully because she determined that her convictions were irrelevant. Respondent's act of answering untruthfully amounts to making a substantial misrepresentation in the any license application – Loan Officer License Application - in violation of

Revised Code §1322.07(A) and omitting statements required by state law – Revised Code §1322.031(A)(4) – in violation of Revised Code § 1322.07(B). Respondent's act of answering Question 5 untruthfully when she read and understood what the question was asking 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 Amanda D. Roberts be found not to have presented sufficient evidence to prove, by a preponderance of the evidence, 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, and that consequently she be denied an Ohio Loan Officer License. It is also recommended that Amanda D. Roberts be found to have violated Revised Code §1322.07(A)(B) and (C).

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
December 14, 2006
Docket No. 06-0050-LOD