

STATE OF OHIO
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL
INSTITUTIONS

MICHAEL J. LARocca

CASE NO. 06-0048-LOD

LANDI JACKSON-FORBES
HEARING OFFICER

REPORT AND RECOMMENDATION

Issued November 1, 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 Michael J. LaRocca of Cleveland, 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 9, 2006. The Division issued the NOH to Respondent on the basis that Respondent had been convicted of two domestic violence related criminal convictions in October 2002, which he failed to disclose on his loan officer license application. The NOH alleges that Respondent's failure to disclose the criminal convictions on his loan officer license application shows 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 purposes of the Ohio Mortgage Broker Act. The Division further alleges that Respondent's failure to disclose his convictions on the loan officer application constitute violations of Revised Code §1322.07(A)(B) and (C).

The hearing was held at 2:00 p.m. on May 16, 2006, at 77 South High Street, 19th Floor, Room 1936, Columbus, Ohio. The Division, represented by Deputy Attorney General Matthew J. Lampke, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through F were admitted into the record without objection. Respondent's Exhibits 1 through 5 were admitted into the record 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 R.C. Chapter 1322. (State Ex. D)
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 September 5, 2005. Heartland Home Financial is the sponsoring mortgage broker company listed on the Application. (State Ex. D)
3. Within the Application 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 or pleaded guilty to any criminal offense?

(State Ex. D)
4. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. D)
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 records background check revealed two domestic violence convictions in October of 2002 in the Lubbock County Court in Texas. Both convictions were based on offenses that occurred in May and October 2002. (State Ex. E; Tr. at 14)
6. Respondent was sentenced to 234 days in jail and ordered to pay \$246 in court costs for the May 2002 offense. He received a one year jail sentence and ordered to pay court costs of \$246 and complete 59 hours of community service for the offense. The jail sentences for both convictions were suspended. Respondent completed the 50 hours of community service but still owes the full balance of all imposed court costs. (State Ex. E; Tr. at 15-16)

7. The Division issued the NOH on March 9, 2006. (State Ex A)
8. Respondent requested a hearing, which request was received by the Division on April 19, 2006. (State Ex. B)
9. On February 9, 2006, the Division scheduled a hearing on this matter for February 16, 2006, but continued the hearing on their own motion to March 14, 2006, at 9:30 p.m. (State Ex, H)
10. Respondent explained that he was not confused by the wording of Question 5 when he filled out the Application. He answered "no" because he believed that Question 5 required that only felony convictions or convictions involving theft, stealing money or embezzlement be disclosed and not domestic violence related misdemeanors. Respondent's belief was based on advice from his manager at Heartland Financial and information in an in-house employee handbook. Respondent did not contact anyone from the Division to clarify his understanding of Question 5, or to ask if he needed to disclose his domestic violence misdemeanors. (Tr. at 18, 23 & 28-29)
11. Respondent consistently explained that he answered "no" based on his impression, which lead to his misunderstanding of what criminal convictions were required to be disclosed. Respondent understands now that he answered Question 5 incorrectly and appeared remorseful. (Tr. at 18 & 29)
12. Respondent worked in pharmaceutical sales for 22 years. He was in a car accident in 2002 and was on disability for a year and a half before moving to Cleveland, Ohio. For approximately eighteen months, he worked in sales for Active Response Marketing, the previous telemarketing division of Heartland Home Finance before becoming a loan officer with the company. Respondent has certification to originate loans in four states and has completed six hours of continuing education in preparation for originating loans in Ohio. (State's Ex. F; Respondent's Ex. 3-5; Tr. at 11 & 22)
13. Respondent submitted notarized letters attesting to his good character and honesty from his previous manager at Active Response Marketing, and the co-owner of Heartland Home Finance. The fact that the letters were from witnesses not available to testify reduces the value which can be placed on the evidence. However, the fact that they were notarized and spoke with some detail and specificity and indicated knowledge of the convictions gives greater weight to the evidence. (Respondent's Ex. 1 & 2)
14. No evidence was submitted that Respondent has had other criminal convictions since 2002.

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. Pursuant to Revised Code §1322.041(A)(5), to issue a license, the Division must make a finding that an 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 Revised Code §1322.01 to §1322.12.
2. The Division brought into question Respondent's character and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly by demonstrating that Respondent failed to disclose his 2002 domestic violence convictions on his Application.
3. Answering incorrectly on an application reflects negatively on an applicant's character and fitness as it relates to honesty. Statements made on a filed application may be considered in determining an applicant's character and fitness since the application, having been given under oath, is held to be based on truthful statements. *Szep v. Ohio State Board of Pharmacy*, 106 Ohio App.3d 621 (1995)
4. Respondent's consistent testimony that based on advice from his manager and information that Respondent read in the employee handbook, he understood Question 5 as not requiring disclosure of his domestic violence misdemeanors was credible and convincing. It is not unreasonable for an employee to rely on advice from his manager, who is in a position of authority because of their knowledge and experience. It is also not unreasonable for an employee to rely on information distributed in the workplace by his employer. Respondent misinterpreted the information he received, which lead him to answer incorrectly, but he did not answer "no" to hide his convictions or mislead the Division. He did not believe that domestic violence convictions would prohibit from obtaining a license from the Division, therefore he had no reason to withhold the fact of the convictions from the Division. Respondent demonstrated that he answered Question five in good faith, as he

understood it, and that his mistake does not negatively reflect his character and fitness to operate as a loan officer in Ohio.

5. Respondent has not had any criminal conviction since 2002, and the nature of his offenses is not likely to prevent him from operating as a loan officer honestly and fairly. His current and former employers provided positive statements regarding Respondent's work ethics and honesty. Evidence of Respondent's reputation through the character reference letters, his own testimony and his clean criminal record are sufficient evidence to overcome the Division's evidence questioning Respondent's character and general fitness to command the confidence of the public and warrant the belief that the business will operated honestly and fairly in compliance with the law.
6. The Division has also charged violations of the Ohio Mortgage Broker Act §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 2002 convictions 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).
7. Respondent's failure to disclose his convictions on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation on his Application. Respondent's explanation why he did not disclose the convictions on the Application was credible and convincing. Respondent answered Question five in good faith as he understood it. His testimony that he did not intend to answer Question five dishonestly and mislead the Division about his criminal history is believable and consistent with his interpretation, albeit wrong, of Question 5. Respondent's mistake in excluding the convictions from the Application was not intentional and is not a substantial misrepresentation in violation of Revised Code §1322.07(A).
8. Respondent's failure to report his domestic violence convictions on the Application was also not a false or misleading statement of material fact or an omission required by state law. Respondent was incorrect in excluding his convictions from the Application, but he convincingly explained why he concluded that domestic violence convictions were not required to be reported on the Application. Although he was mistaken, he fully complied with the Division's request for an explanation and supporting documentation about his conviction.

9. Pursuant to Revised Code §1322.07(C) a loan officer license applicant is prohibited from engaging in "conduct that constitutes improper, fraudulent, or dishonest dealings." Respondent made a mistake. His mistake, based on his good faith belief that the convictions were not required to be disclosed on the Application, does not amount to engaging in conduct that is improper, fraudulent, or dishonest in violation of Revised Code §1322.07(C).
10. Respondent did have the requisite intent to violate Revised Code §1322.07(A), (B) or (C).

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Michael J. LaRocca be found to have presented sufficient evidence to prove, by a preponderance of the evidence, that his 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 he be granted an Ohio Loan Officer License. It is also recommended that Mr. LaRocca not be found to have violated Revised Code §1322.07(A)(B) and (C).

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
November 1, 2006
Docket No. 06-DFI-085