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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

**DIVISION OF FINANCIAL
INSTITUTIONS**

BRETT A. SCHIFFER

CASE NO. 05-0165-LOD

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued May 24, 2006

I. FINDINGS OF 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 held at 12:01 pm on January 18, 2006, at 77 South High Street, 19th Floor, Room 1908, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Brett A. Schiffer, of North Royalton, 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 October 26, 2005.

The Division issued the NOH to Respondent on the bases that Respondent swore that the information on his Loan Officer License Application ("Application") regarding his 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 James M. Evans appeared at the January 18, 2006 hearing and presented its case. Witness for the Division was Iris Eubank and staff attorney Mark Rhea. Respondent did not appear at the hearing, nor was he represented by counsel. At the hearing, State's Exhibits 1 through 9 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 April 11, 2005, 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. 1, Tr. at 11-12)
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 26-27)
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. Respondent's criminal background check revealed a 1996 Driving under the Influence of Alcohol conviction in the Superior Court for the County of Cook in Georgia and a 2001 Obstructing Justice Conviction in the Cuyahoga County Court of Common Pleas. (State Ex. 3)
6. Respondent submitted a letter to the Division on or about August 3, 2005 explaining the circumstances that lead to his 1996 and 2001 convictions, along with copies of judgment entries evidencing each conviction. Respondent did not provide an explanation for why he did not disclose the two criminal convictions on her Application. (State Ex. 3)
7. The Division issued its NOH against Respondent on October 26, 2005. (State Ex. 4)
8. Respondent personally received the NOH via certified mail return receipt and requested a hearing. (State Ex. 4, 5 & 8)

9. By letter dated November 10, 2005 the Division scheduled the hearing for November 18, 2005 and continued the hearing on its own motion to January 18, 2006. The letter was sent to Respondent's attorney of record. The November 10, 2005 letter scheduling the hearing was not returned to the Division as undeliverable. (State Ex. 6, 7 & 9; Tr. at 22 & 24)
10. Respondent did not request a continuance of the January 18, 2006 hearing. On December 19, 2005 via facsimile and on December 21, 2005 via certified mail, Respondent's counsel sent a letter to the Division withdrawing Respondent's Application and indicating that there was no need for the requested hearing. On January 6, 2006, via facsimile, counsel for the Division notified Respondent's counsel that the Division does not allow the withdrawal of loan officer applications and that the hearing scheduled at Respondent's request would go forward on January 18, 2006. (State Ex. 9)
11. A hearing was held on January 18, 2006. Respondent did not appear for the scheduled hearing in person or through counsel. (Tr. at 5)

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 his 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 he 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 Respondent's attorney of record 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 Respondent's attorney of record 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 his absence. Reed v. State Med. Bd., 40 Ohio App.3d 124, 125-126, 532 N.E.2d 189, 191 (1988). Moreover, Respondent's attorney attempted to withdraw Respondent's Application and indicated that the requested hearing was not necessary is further evidence that Respondent did not intend to attend the January 18, 2006 hearing in person or through his attorney.

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 April 1, 2005, Respondent signed the Application, containing an inaccurate response to Question 5, under oath and subsequently filed that application on April 11, 2005 with the Division to obtain a loan officer license.
3. Evidence of 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 his two separate convictions, but did not indicate why he 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 his character and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly. Respondent failed to prove by a preponderance of the evidence his honesty in his activities, specifically relating to his response to Question 5, support a finding 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.

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 a 1996 Driving Under the Influence charge and plead guilty to a 2001 Obstructing Justice charge and was found guilty of both charges, thereby making his 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 his 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 he did intend to answer Question 5 incorrectly to obtain a loan officer license in violation of §§1322.07(A), (B) and (C). Respondent's unexplained inaccurate response to Question 5 supports a finding that he intended to made a substantial misrepresentation, that he intended to make a false statement of a material fact required by law on the license application, and that his 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 Brett A. Schiffer be found to have not presented sufficient evidence 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 the Ohio Mortgage Broker Act, and that Brett A. Schiffer violated §§1322.07(A), (B) and (C) of the Ohio Mortgage Broker Act. Accordingly, it is recommended that Brett A. Schiffer be denied an Ohio Loan Officer License.

Respectfully submitted,

A handwritten signature in cursive script that reads "Landi Jackson-Forbes".

Landi Jackson-Forbes

Hearing Officer

May 24, 2006

Docket No. 05-0165-LOD