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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

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| IN THE MATTER OF: | : | DIVISION OF FINANCIAL INSTITUTIONS |
| | : | |
| JASON S. SANDERS | : | CASE NO. 05-0027-LOD |
| | : | |
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**REPORT AND RECOMMENDATION
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

Issued August 26, 2005

I. FINDINGS OF FACT

A. BACKGROUND

This matter came before Terrence O'Donnell, 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 an adjudicative hearing in accordance with the Administrative Procedures Act, Chapter 119, Ohio Revised Code (hereinafter "O.R.C."). The hearing in this matter was held at 1:00 PM on May 12, 2005, at 77 South High Street, Room 1938, Columbus, Ohio. Subsequent to the hearing, the undersigned was appointed as hearing officer and prepared this Report and Recommendation based upon the hearing transcript and all exhibits.

The hearing was held at the request of Respondent Jason S. Sanders of Copley, Ohio, (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (herein "NOH"). Said NOH was based upon an allegation that Respondent failed to disclose on the Loan Officer Application that Respondent was convicted in 2004 of two misdemeanor charges and is thereby ineligible to hold a license as a Mortgage Loan Officer. The Division appeared and was represented by the Ohio Attorney General's Office, Assistant Attorney General Martine Jean. Respondent appeared pro se.

At the hearing, State's Exhibits 1A, 1B, 1C, 1D, 1E, 2, 3, 4A, 4B, 4C and 4D were admitted into the record as discussed in the transcript (herein "Tr."). The only witness for the Division was Respondent, as on cross. Respondent's Exhibits A and B were admitted into the record. Respondent testified and called one other witness on his behalf.

B. JURISDICTION

The Division issued the NOH against Respondent on March 21, 2005. The Respondent requested a hearing, which was received by the Division on April 11, 2005. By letter dated April 13, 2005, the Division scheduled the hearing for April 21, 2005. The Division continued the hearing to May 12, 2005, on its own motion, at which date the hearing was held.

C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE APPLICATION

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322. (Exhibit 1A.)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer. (Exhibit 1A.)
3. On or about October 26, 2004, the Division received Respondent's Loan Officer Application (herein the "Application"). (Exhibit 2.)
4. Respondent filled out and signed the Application on, or about, October 18, 2004. (Exhibit 2.)
5. Within the Application Respondent answered "No" to Question number 5, which asked: "Have you ... ever been convicted of or pleaded guilty to any criminal offense ..." (Exhibit 2; Tr. pp. 17-18.)
6. On, or about, April 26, 2004, at age 23, six months prior to submitting of the Application, Respondent was convicted of Criminal Damaging and to Disorderly Conduct. (Exhibits 4B, 4C, 4D; Tr. pp. 22-29.)
7. Respondent's explanation of the events leading to the Criminal Damaging and Disorderly Conduct was that an altercation began in a tavern, was taken outside where a police officer was called, charged Respondent with Disorderly Conduct, cuffed and placed him in the cruiser. The officer, later, also, cited Respondent for attempting to break the patrol car's rear window, although Respondent states that he

only was pounding on the glass with his hands to attract the officer's attention. (Exhibits 4B, 4C, 4D; Tr. pp. 22-29.)

8. The Loan Officer Application contained inaccurate information at the time that Respondent signed it, to wit: the response "No" to Question number 5 when Respondent had been convicted of a criminal offense.
9. Respondent's explanation of why he answered Question 5 on the Application as "No" when he knew he had a conviction on his record was that he didn't realize that his convictions were the kind of criminal offenses included or maybe that he overlooked the "but not limited to" part of the question. He thought felonies or theft crimes were what the question was requesting. He acknowledged that his answer to Question 5 was incorrect but maintained that it was unintentional. (Tr. pp. 18-19, 29-33.)
10. The Application does not limit the response sought on Question 5 to felonies, or to a particular period of time, or to those offenses for which there is a record, but asks if the applicant has ever been convicted of or pleaded guilty to any criminal offense, including, but not limited to, certain named offenses. (Exhibit 2.)
11. Respondent's current employer only asked him about felonies and theft and fraud convictions when discussing being hired, leaving Respondent with the impression that information about the misdemeanors was not required. (Tr. pp. 31, 50-51.)
12. Respondent was not given instruction how to fill out the Application by his current employer, seeking to hire Respondent as a Loan Officer, such as the employer would normally have done with a new hire because Respondent was already working for that employer in another capacity. Respondent's supervisor-employer assumes partial responsibility for the mistake on Question 5 because he gave Respondent no guidance. (Tr. pp. 41-42, 45.)
13. Respondent's employer-supervisor has held training classes for new hires which includes instructions on filling out the Application. In his experience, Question 5 is confusing to many applicants who fill out the Application. He has ordinarily told his new hires to err on the side of over-disclosure, but Respondent was not placed in a training class of new hires but trained with persons who already had their licenses, so there was no instruction on filling out the Application. (Tr. pp. 40-43.)
14. Respondent was given a copy of the Division's Application Instruction Sheet. (Tr. pp. 47-48.)

15. The Application Instruction Sheet was not placed into evidence.
16. Respondent's present employer has known him in the work environment for two years prior to the hearing and believes Respondent to be honest and hard-working and his behavior warrants the belief that the business will be operated honestly and fairly in compliance with the purposes of the law. Respondent is currently processing loans and through that his employer believes he will command the confidence of the public. (Tr. pp. 37-56.)
17. Respondent knew the Division would obtain a criminal background check since the Application asked for fingerprints for the stated purpose of conducting the background check. (Exhibit 2; Tr. p. 31.)
18. Respondent's explanation of his submission of the Application with incorrect information was credible and not overcome by evidence presented by the Division.

II. CONCLUSIONS OF LAW

A. JURISDICTIONAL ISSUE

1. The Division procedurally complied with O.R.C. Chapter 119.

B. LICENSE APPLICATION

2. In 2004, Respondent was convicted of Criminal Damaging and of Disorderly Conduct, offenses not specifically cited in section 1322.041(A)(3), O.R.C., but inquired about on Question 5 of the Application as "any criminal conviction".
3. 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 sections 1322.01 to 1322.12 of the Revised Code. Section 1322.041(A)(5), O.R.C.
4. Respondent's convictions of Criminal Damaging and Disorderly Conduct are not sufficient, of themselves, to bring 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 in compliance with the purposes of the Ohio Mortgage Broker Act.

5. 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 in compliance with the purposes of the Ohio Mortgage Broker Act by proving Respondent's inaccurate response to Question 5.
6. Respondent's explanation of his response to Question 5 is not implausible in light of the employer's testimony. The compound structure of Question 5 is not difficult to read for someone with a Juris Doctorate, but could be difficult for an average person.
7. Respondent's testimony demonstrates that he did not understand how he failed to read the all-encompassing language, which itself lends credence to his statement that he simply failed to see the "but not limited to" language.
8. Respondent provided sufficient evidence to overcome the Division's presumptive evidence questioning his character and general fitness to command the confidence of the public.
9. The Division also charged violations of the Ohio Mortgage Broker Act sections 1322.07(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 state law) and (C) (engaging in conduct that constitutes improper, fraudulent, or dishonest dealings) all resulting from Respondent answering Question 5 on the Application "No."
10. Intent is required for a finding of any of the three provisions and the Division has not proven such intent. The court in Webb v. State Med. Bd., 146 Ohio App. 3d 621, 628 (Ohio Ct. App. 10th Dist., 2001) noted that intent is required for a finding of fraud, misrepresentation, or deception when it observed "The trial court properly concluded that the Ohio medical board committed error when it adopted a conclusion of law that indicated that appellant's intent was irrelevant." In Powell v. Administrator, 1984 Ohio App. LEXIS 10467 (Ohio Ct. App. 6th Dist., 1984), the court stated that:

A careful examination of the record fails to disclose substantial, credible evidence going to the specific intent to improperly secure unemployment benefits required to be proven under the definitions of false misrepresentation provided by the appellees.

*** Both of the definitions adopted by the appellees, supra,

require "knowledge" of the falsity on the part of the claimant. Once again, appellant's actions subsequent to receiving a profit from his arcade business negate any knowledge on his part that he was in fact self-employed.

11. Respondent demonstrated that his failure to respond to Question 5 accurately was a mistake rather than an intentional act and, therefore, not misrepresentation, false or misleading statements or fraud. Consequently Respondent has not violated sections 1322.07(A), (B) or (C), O.R.C.

C. DISCUSSION

Respondent's employer-supervisor was a credible and persuasive witness and weight was given to his testimony, both as to why Respondent answered Question 5 incorrectly and as to Respondent's character and general fitness, all of which corroborated Respondent's testimony. That evidence overcame the Division's allegations and the Division did not meet its burden to prove that Respondent's character and general fitness did 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 sections 1322.01 to 1322.12 of the Revised Code.

III. RECOMMENDATION

Based on the record, 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 sections 1322.01 to 1322.12 of the Revised Code and that a license should be issued. Consequently, the recommendation to the Superintendent of Financial Institutions is to **GRANT A MORTGAGE LOAN OFFICER'S LICENSE TO JASON S. SANDERS.**

Respectfully submitted, _____

D. Michael Quinn
Hearing Officer
August 26, 2005
Docket No. 05-DFI-120