

STATE OF OHIO  
DEPARTMENT OF COMMERCE

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IN THE MATTER OF:

DIVISION OF FINANCIAL  
INSTITUTIONS

JEFFREY A. RAINS

CASE NO. 05-0171-LOD

LANDI JACKSON-FORBES  
HEARING OFFICER

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**REPORT AND RECOMMENDATION**

Issued June 30, 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 1:40 p.m. on January 19, 2006, at 77 South High Street, 19<sup>th</sup> Floor, Room 1908, Columbus, Ohio.

The hearing was scheduled by the Division at the request of Respondent Jeffrey A. Rains, of West Carrollton, 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 November 21, 2005. The Division issued the NOH to Respondent on the bases that Respondent was convicted of Petit Theft, a misdemeanor of the first degree in the Municipal Court of Miamisburg, Ohio in 1990 and Trafficking In Marihuana, a felony of the third degree in the Court of Commons Pleas, Warren County, Ohio in 1991, and that Respondent failed to disclose the Petit Theft conviction on his loan officer applications filed in 2002 and 2005.

The Division alleges that based upon Respondent's convictions, he is not honest, truthful, and of good reputation, and that there is no basis in fact for believing that Respondent will not commit another criminal offense involving money or securities. The Division further alleges that Respondent's convictions and nondisclosure of the Petit Theft conviction 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 Petit Theft conviction on applications filed in 2002 and 2005 constitute violations of Revised Code §1322.07(A)(B) and (C).

The Division, represented by Assistant Attorney General Mindy A. Worly, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through G were admitted into the record without objection and Respondent's Exhibit 1 was 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 Revised Code Chapter 1322.
2. Respondent is not new to the mortgage loan business. He was a mortgage loan officer from 1994 to 2002. Respondent previously applied for a loan officer license in 2002 but did not complete the licensing process. The 2002 Application was not offered into evidence and made a part of the record in this hearing. (Tr. at 41-42)
3. On or about February 1, 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 ("Application") to the Division pursuant to Revised Code Chapter 1322. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. A, Tr. at 15-16)
4. Respondent checked "yes" to Question five within the application which asked: "Have you ... ever been convicted of any criminal offense?" In his explanation to Question five, Respondent wrote "trafficking in Marihuana, I was talked into doing this to pay ex-wife off on the home we owned." Respondent also attached a certified copy of the journal entry from the Warren County Court of Commons Pleas evidencing the 1991 conviction. (State Ex. A, Tr. at 16)

5. Respondent was sentenced to one year in jail, fined \$3,000 and placed on probation for five years for his Marihuana trafficking conviction, a felony in the fourth degree. Respondent served sixty days of the one year sentence with the remainder of the sentence held in abeyance. Respondent's probation was terminated after three years. (State Ex. A, Tr. at 28)
6. Question/Statement number 8 on the Application provides that the applicant must submit a fingerprint background check as part of the application. (State Ex. A)
7. The criminal records background check conducted by the Division pursuant to §1322.03 (B) of the Revised Code revealed the disclosed the 1991 Trafficking in Marihuana charge and a 1990 Petit Theft charge in the Municipal Court of Miamisburg, Ohio, which prompted the Division to initiate an investigation and request Respondent to explain the Petit Theft charge and provide a journal entry evidencing the court's findings. (State Ex. B & C)
8. Respondent explained that the charge arose because he walked out of a Sears Department Store with a gas blower that he thought was paid for by a friend that accompanied him to the store. Respondent testified that both he and his friend explained that his taking of the blower was the result of a misunderstanding; however Respondent was arrested and charged with Petit Theft. He plead guilty, was fined \$240.00 and placed on probation for one year. (State Ex. C)
9. On or about November 21, 2005, the Division issued to Respondent the NOH which alleges that Respondent has not proven since his Petit Theft and Trafficking in Marihuana convictions that he is honest, truthful, and of good reputation and that there is no basis in fact for believing that he will not commit another criminal offense involving theft, drug trafficking, or any criminal offense involving money or securities. The NOH also alleges that Respondent's 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 purposes of the Ohio Mortgage Broker Act. The Division also alleges that Respondent's failure to disclose the Petit Theft conviction is a violation of Revised Code §1322.07(A)(B)and (C). (State Ex. D)

10. As with the current application in question, Respondent believes that he answered Question 5 the same. He omitted the Petit Theft conviction, a misdemeanor of the first degree, because he understood the question to not require disclosing misdemeanor convictions. (Tr. at 14, 16, 26 & 42)
11. Respondent's reading of Question 5, although incorrect; lead him to believe that felonies and not misdemeanors were required to be disclosed on the Application. Respondent appeared honest in his belief and provided consistent answers when questioned regarding his nondisclosure of his misdemeanor conviction. Respondent's belief that felony convictions and not misdemeanor convictions were only required to be disclosed is exemplified by his statement:

And that last sentence on this application in number 5 it says, Exclude minor misdemeanors. I understood that to be the misdemeanor that I had got the petty theft on and that's why I didn't put it on there. If I would have known, I would have listed it because the felony is a far more worse crime that I committed than the petty theft, in my opinion.

(Tr. at 13-14. See also Tr. at 16, 26, 36 & 41-42)

12. Respondent acknowledges that he committed the offenses and understands that both of his offenses are serious. He regrets and is embarrassed by his actions and he appeared remorseful. Respondent indicated that he will not engage in any criminal activity again because he doesn't want to put himself in that situation again and he would not do anything to hurt his family. Respondent believes that he has changed in a positive manner in the fifteen years since his convictions. His time spent in prison was life changing and his marriage and becoming a father have changed him positively. (Tr. at 16-17, 22, 25 & 29-31)
13. Respondent has completed probation and paid all Court ordered fines in full. (Tr. at 28, 33-34)
14. Respondent has not been convicted of any criminal convictions after 1991. (Tr. at 31 )

15. Colleagues in the mortgage business and members of Respondent's family provided signed and notarized letters of recommendation. The letters from the colleagues provided positive statements regarding Respondent's character. These persons believe that Respondent is ethical, honest, trustworthy and hardworking. (Respondent's Ex. 1)
16. Letters from Respondent's wife and eleven year old son provided positive statements regarding Respondent's character. These letters while signed and notarized were not considered as evidence of Respondent's character since his conviction. The authors, because of their close relations with the Respondent, are not neutral. They stand to gain financially and thus have a vested interest in Respondent obtaining a loan officer license.
17. Scott Van Iden, a friend, who formerly supervised Respondent as a loan officer, testified convincingly that Respondent was known for his honesty and truthfulness. Mr. Van Iden who currently works for the same mortgage company as Respondent, has known him for approximately fifteen years and has observed Respondent as a loan officer as first a supervisor and currently as a colleague. Mr. Van Iden is also a licensed loan officer but currently does not work in that capacity. In his current capacity, He interacts with management on a daily basis and is not aware of there ever being issues both past and present with Respondent in the workplace.

## 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, 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 1990 Respondent was convicted of Petit Theft, a misdemeanor one. Respondent was also convicted of Trafficking in Marihuana in 1991. Both of Respondent's criminal offenses are specifically cited in Revised Code §1322.031(A)(2) and §1322.041(A)(3).
3. The Petit Theft and the Trafficking in Marihuana offences and convictions being proven by the Division shifts the burden to Respondent to prove by a preponderance of the evidence that Respondent's "activities and employment record since the conviction show that he is honest, truthful, and of good reputation, and there is no basis in fact for believing that Respondent will commit such offenses again." Revised Code §1322.041(A)(3)
4. The letters of recommendation from colleagues provided statements, while hearsay provided specifics why the individuals wrote the letters and the basis of their positive statements regarding Respondent's character. Each of letter writers is aware of Respondent's past criminal convictions and is familiar with his work as a loan officer. Because the Division could not cross examine the letter writers to test the authenticity, accuracy or the details of the letters at the hearing, the letters have been afforded limited weight. However, notarization of the letter writers' signature and the specificities in the letters lends more weight to the documents and more conviction to the truthfulness of the positive statements regarding Respondent's character than most such evidence.
5. The 1990 and 1991 convictions which took place approximately fifteen years ago are far enough removed in time. There is no evidence of a pattern of continued theft or drug trafficking in the fifteen years that have passed between the convictions and the date of this Report. The Division did not rebut the evidence of Respondent's current reputation and character. The positive statements from the letters of recommendation and the live testimony, and Respondent's demeanor at the hearing in

combination with his testimony and clean criminal record since his last conviction are sufficient to meet his burden to show there is no basis in fact for believing that he will commit Petit Theft and Trafficking in Marihuana again or any other criminal offense involving money or securities.

6. Respondent disclosed his drug trafficking felony conviction but excluded the misdemeanor conviction. Answering incorrectly on an application reflects negatively on an applicant's character and fitness as it relates to honesty. In this instance Respondent's partially correct answer is not a negative reflection on his character. Respondent's testimony that he mistakenly read Question five to not require disclosure of misdemeanor convictions was credible. Respondent had nothing to gain from disclosing the felony conviction and excluding the misdemeanor as both types of criminal convictions are offenses listed in Revised Code §1322.031(A)(2) that automatically bar obtaining a loan officer license. Respondent answered Question five in good faith as he understood it and his testimony that he did not intend to answer Question five dishonestly and mislead the Division about his criminal history is believable. His testamentary and written evidence of his honest character coupled with his clean record since his last conviction fifteen years ago demonstrate that Respondent does have the character and fitness to command the confidence of the public and has shown that he will operate as a licensed loan officer honestly and fairly.
7. Respondent 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 the business will operated honestly and fairly in compliance with law.
8. 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 his criminal convictions on his Application and Respondent claiming that the solicitation charge was dropped, when it was not. 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. 10<sup>th</sup> Dist., 2001).


9. Respondent disclosed his felony conviction on the Application; a conviction that pursuant to Revised Code §1322.031(A)(2), is an automatic bar from receiving a loan officer license. Leaving off the misdemeanor conviction would gain Respondent no advantage in obtaining a loan officer license which he recognized when he expressed his opinion that his felony was a worse crime than his misdemeanor. Respondent's explanation why he excluded the Petit Theft conviction from Question five was plausible and consistent. Respondent's mistake in excluding the misdemeanor conviction from the Application is not a substantial misrepresentation in violation of Revised Code §1322.07(A).
10. Respondent excluding the Petit Theft conviction for 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 the misdemeanor from the Application, but he did not exclude it to mislead the Division about his criminal past which is evidenced by his disclosing the felony. Respondent honestly believed that at the time of filling out the Application his misdemeanor conviction was not required. Although he was mistaken, he fully complied with the Division's request for an explanation and supporting documentation about his conviction. He did not try to hide anything and his explanation that he incorrectly read Question five was both plausible and believable.
11. 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. He did not disclose the conviction because his reading and understanding of Question five did not require the misdemeanor to be disclosed. His good faith belief that the Petit Theft conviction was 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).
12. 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 Jeffrey A. Rains be found to have presented sufficient evidence to prove, by a preponderance of the evidence, that his activities since his convictions show that he is honest, truthful, and of good reputation, and 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.

Respectfully submitted,

  
Landi Jackson-Forbes  
Hearing Officer  
June 30, 2006  
Docket No. 05-0171-LOD