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**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

CRYSTAL L. SHEHEE

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**DIVISION OF FINANCIAL
INSTITUTIONS**

CASE NO. M2005-9992171

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued March 12, 2007

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 Crystal L. Shehee of Columbus, 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 May 10, 2006.

The Division issued the NOH to Respondent alleging that Respondent's 1979 conviction for Grand Theft and Respondent's failure to disclose that conviction in a previous application for loan officer licensure filled with the Division in 2003 shows that she has not proven that she is honest, truthful, and of good reputation, and that there is no basis in fact for believing that she will not commit another criminal offense involving theft, money or securities, and that she 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 the Ohio Mortgage Broker Act. The Division also alleges that Respondent's failure to disclose her criminal conviction on the loan officer license application filled in 2003 is a violation of Revised Code §1322.07 (A), (B) and (C).

The hearing was held on November 21, 2006 at 2:00 p.m. in Room 1936 at 77 South High Street, Room 1936, Columbus, Ohio. The Division, represented by Assistant Attorney General Theodore L. Klecker, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through I were admitted into the record as discussed in the transcript (hereinafter "Tr."). At the end of the hearing the record in this case was left opened until November 30, 2006 to permit Respondent to submit evidence to support her testimony. Due to a death in the family, Respondent was granted additional time to submit evidence. No additional evidence was received from Respondent.

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. A & C)
2. Respondent signed under oath and afterwards filed with the Division on August 19, 2005 a Loan Officer License Application ("2005 Application") for licensure as a loan officer pursuant to Revised Code Chapter 1322. Apex Mortgage Services, LLC is listed as the sponsoring/employing mortgage broker. (State Ex. D)
3. Within the Application Respondent checked "yes" to Question 5 and disclosed a 1979 criminal conviction for Poor Relief. (State Ex. D)
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 background check revealed a 1974 petty theft charge and 1979 charges for poor relief and grand theft.
5. By letter dated September 23, 2005, the Division requested Respondent to provide explanations of the facts and circumstances which gave rise to the 1974 and 1979 charges and provide judgment entries evidencing the disposition of the charges. (State Ex. E)
6. No evidence was offered by either the Division or Respondent to show that Respondent provided an explanation for her charges and/or the court documents evidencing the outcome of the charges and the court's finding in response to the Division's September 23, 2005 letter. However, Respondent had previously provided an explanation and journal entry in conjunction with a loan officer application filled with the Division on February 23, 2003.
7. Respondent did not disclose the Grand Theft conviction in the 2003 Application. Respondent provided the court journal entry evidencing her 1979 convictions and a letter of explanation concerning her Grand Theft conviction to the Division on June 25, 2003. Respondent explained she was pregnant with her second child and was receiving Aid to Dependent Children ("ADC"). During this time she worked temporary job assignments beyond the hours allowed to maintain ADC assistance

and was charged with Grand Theft. Respondent plead guilty to the charge and was sentenced to a suspended prison term. Respondent was also placed on probation for one year and ordered to pay court costs. Respondent has not had any other criminal convictions since 1979. (State Ex. I; Tr. at 28)

8. Based on the Grand Theft conviction and her failure to disclose the conviction on the 2003 Application, the Division issued to Respondent a Notice of Intent to Deny and Notice of Opportunity for a Hearing on January 22, 2004 ("2004 Notice").
9. Respondent did not request a hearing on the 2003 Application by the statutory deadline. The Division issued an Order on March 25, 2004 ("March 2004 Order") denying Respondent's 2003 Application on the basis that she is not honest, truthful and of good reputation, and that there is no basis in fact to believe that she would not commit the crime of Grand Theft again, and that she 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 the Ohio Mortgage Broker Act. The Division also held that Respondent violated Revised Code 1322.07 (A), (B) and (C). No appeal was taken from the 2004 Order.
10. The Division proposes to deny Respondent's 2005 Application alleging that the 1979 Grand Theft conviction, and Respondent's failure to disclose the 1979 conviction in the 2003 Application shows that Respondent has not proven that she is honest, truthful and of good reputation, and that there is not basis in fact for believing that she will not commit another criminal offense involving theft, money or securities, and that she 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 the Ohio Mortgage Broker Act. The Division also alleges that Respondent's failure to disclose her criminal conviction on the 2003 Application is a violation of Revised Code §1322.07 (A), (B) and (C).
11. Respondent testified that she has been employed as a loan officer in the residential mortgage industry since 1997, prior to the statutory requirement that became effective on May 2, 2002, which mandated that mortgage loan officers in originating loans in Ohio be licensed. (Tr. at 31-32)

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:
 - (3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.
 - (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. The Division has proven that in 1979 Respondent was convicted of Grand Theft, which is included by reference to "theft" offenses so that the conviction may provide a basis for recommending that Respondent's Application be denied under Revised Code §1322.041 as the same incorporates the terms of Revised Code §1322.031(A)(2). Pursuant to Revised Code §1322.041(A)(3), the burden shifts to Respondent to prove by a preponderance of the evidence that her "activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again."
3. The Division has also charged that Respondent's 1979 conviction demonstrates that she 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 the Mortgage Broker Act.

4. Over twenty-seven years have passed since Respondent's conviction without incident. That alone indicates that Respondent is not likely to commit another crime in the future. The record demonstrates that Respondent successfully completed probation, and has not has any other criminal convictions involving Grand Theft. There is no evidence of a pattern of convictions involving money or securities. The passage of time without any other criminal convictions demonstrates that Respondent is not likely to commit such offenses in the future and would be unlikely to misuse a loan officer's license. However, Respondent's clean criminal record since 1979 is not a preponderance of evidence sufficient to meet her burden that her activities and employment record since the conviction show that she is honest, truthful, and of good reputation, and there is no basis in fact for believing that she will commit such an offense again.
- A preponderance of the evidence means the greater weight of evidence. (See *Trotters, Inc. v. Liquor Control Comm.*, Franklin App. No. 05AP-880, 2006-Ohio-2448, at ¶38, quoting *Travelers' Ins. Co. v. Gath* (1928), 118 Ohio St. 257, 261). Respondent did not offer any evidence to substantiate her testimony regarding her employment as a loan officer, or in any other capacity, or any or evidence of her activities since her 1979 Grand Theft conviction. As such, she has failed to meet the statutory burden to demonstrate that her activities and employment demonstrate that she is honest, truthful and of good reputation.
5. Respondent answered Question 5 honestly and fully disclosed her 1979 conviction on the 2005 Application. Filing an accurate Application is positively demonstrative of Respondent's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law. Respondent has also been a loan officer for over nine years, however the lack of any evidence to substantiate her testimony fails to overcome the Division's evidence questioning her character and general fitness.
6. The Division's proposes that Respondent's failure to disclose the 1979 conviction on the 2003 Application shows that Respondent is not honest, truthful and of good reputation, that Respondent does not have the character and general fitness to command the confidence of the public to hold a loan officer license and that Respondent has violated Revised Code §1322.07(A), (B) and (C).
7. The Division already made a finding in its 2004 Order that Respondent, by attesting to the false answer to Question 5 in the 2003 Application and filing that Application with the Division, is not honest, truthful, and of good reputation, and that there is no basis in fact to believe that she would not commit the crime of grand theft, 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 Mortgage Broker Act, and that she violated Revised Code §1322.07(A), (B) and (C). The Division provided Respondent notice in the 2004 Order that she had fifteen days to appeal that order. No such appeal was taken. Now, in the action on the 2005 Application, the Division cannot propose a

re-finding of charges already determined in the 2004 Order, nor can the Division charge Respondent, again, for violating the same statutes (§1322.07) by the same 2003 actions used to previously find a violation.

Respondent fully disclosed the 1979 Grand Theft conviction in the 2005 Application, thus there is no evidence to support a new finding that Respondent provided untruthful information regarding her criminal history in a sworn statement (application) and filed that application with the Division. Likewise, there is no new violation of Revised Code §1322.07. The doctrine of *res judicata* requires that "a valid final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." Grava v. Parkman Township, 73 Ohio St.3d 379, 382. The Division could have argued that the 2004 Order where there was findings that Respondent did not meet the licensing requirements found in Revised Code §1322.041(A)(3) and (5), and a violation of §1322.07 demonstrates a lack of good character or dishonest behavior because the 2004 Final Order already reached those final decisions, but they did not do so.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Crystal L. Shehee be found not to have presented sufficient evidence to prove by a preponderance of the evidence that she is honest, truthful, and of good reputation, and that she did not overcome the Division's evidence questioning her 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 consequently she be denied an Ohio Loan Officer License.

Respectfully submitted,


Landi Jackson-Forbes

Hearing Officer

March 12, 2007

Docket No. 06-DFI-121