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**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF:**

**DIVISION OF FINANCIAL  
INSTITUTIONS**

**JEREMIAH J. HAYES**

**CASE NO. 06-0013-LOD**

**LANDI JACKSON-FORBES  
HEARING OFFICER**

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**REPORT AND RECOMMENDATION**

**Issued October 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 Jeremiah J. Hayes of Akron, 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 January 17, 2006. The Division issued the NOH to Respondent on the basis that Respondent had been convicted of criminal convictions in 1999 and 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 1:00 p.m. on May 2, 2006, at 77 South High Street, 19<sup>th</sup> Floor, Room 1938, Columbus, Ohio. The Division, represented by Assistant Attorney General James Evans, appeared at the hearing. Respondent appeared at the hearing and was represented by Attorney Augustin F. O'Neil. Respondent also testified at the

hearing. At the hearing, State's Exhibits 1 through 7 and Joint Exhibits A and B 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 R.C. Chapter 1322. (State Ex. 1)
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 August 17, 2005. 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 including but not limited to, theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities?

(State Ex. 1)

3. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 1)
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 records background check revealed a May 1999 first degree misdemeanor conviction for underage consumption of alcohol and disorderly conduct in the Portage County Municipal Court. Respondent has an October 1999 underage possession and consumption of alcohol conviction also in the Portage County Municipal Court and a September 2002 open container conviction in the Akron Municipal Court. (State Ex. 2 & Joint Exhibit A & B)
5. Respondent was fined \$200 for his May 1999 conviction, and sentenced to 30 days in jail, which was suspended if Respondent completed 16 hours of community service and an alcohol treatment program. Respondent was imposed a \$250 fine and a 30 day jail sentence for the October 1999 offense. The Court suspended \$100 of the fine and the 30 day sentence if Respondent completed certain conditions. Respondent's fines and court costs totaled \$132 for his September 2002 conviction. (State Ex. 2, Joint Ex. A & B, Tr. at 24-26 & 30-31, 33-34, 38-40)
6. Respondent has completed all Court imposed community service and treatment programs, and has paid in full all accompanying fines and court costs. (State Ex. 2, Joint Ex. A & B, Tr. at 25, 34)

7. Respondent knew that the Division was going to conduct a criminal background check as part of the loan officer license application process. (Tr. at 20 & 47)
8. Respondent offered as an explanation for not disclosing his alcohol related convictions on the Application that he understood Question 5 to be only inquiring about criminal offenses or convictions that are financially related. (Tr. at 22 & 47)
9. Respondent also explained that he did not disclose his convictions because he did not know that his convictions, that are minor misdemeanors, are criminal offenses or convictions. (Tr. at 22-23 & 38)
10. Respondent graduated from the University of Akron in May 2005 with a degree in personal finance. During college Respondent worked as a vinyl siding installer and as a server. As a server Respondent handled money, and when acting as the lead server, was responsible for day and night money deposits. (Tr. at 47 & 53-55)
11. Respondent believes that he is honest, truthful and upfront. He did not intend to answer Question 5 untruthfully and has not intended to deceive anyone in the past and does not intend to deceive anyone in the future. (Tr. at 56)
12. 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. In order to issue a license Revised Code §1322.041(A) requires the Division must make a finding that *inter alia*:
  - (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. In order to determine whether the applicant has the character and general fitness to obtain an Ohio Loan Officer License, Revised Code §1322.031(A)(4) authorizes the Division to require an applicant to submit "any further information

that the superintendent requires". Therefore, it was appropriate for the Division to require Respondent to disclose criminal convictions that are not specifically listed in Revised Code §1322.031(A)(2).

3. The Division brought into question Respondent's character and general fitness to command the confidence of the public and that the business will be operated honestly and fairly, by demonstrating that Respondent has three alcohol-related criminal convictions that he failed to disclose on his Application.
4. Filing an inaccurate response to Question 5 is negatively demonstrative of Respondent's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law.
5. Respondent offered two explanations for not disclosing his criminal convictions on the Application. He stated that he understood Question 5 to be asking about financially related criminal convictions, but this explanation conflicts with his second or alternative explanation that he did not know that his minor misdemeanors are criminal convictions that were required to be disclosed. Question 5 specifically asks the applicant if they have been convicted of "any criminal offense", and Respondent testified that he believed that only criminal offenses that are financially related needed to be disclosed. When answering Question 5, Respondent either believed that only financially related criminal convictions were required to be disclosed or he did not know that his minor misdemeanor convictions are criminal convictions that required disclosure. If Respondent did not know that his minor misdemeanors were criminal convictions he would not need to determine if Question 5 was only inquiring about financially related criminal convictions. And, if Respondent understood Question 5 to be asking about any financially related criminal conviction, and he did not know that his minor misdemeanors are criminal convictions, he would not need to determine if Question 5 was asking about financially related criminal convictions. Either belief on Respondent's part equates to him answering "no", but the explanations are conflicting. Respondent's explanations are mutually exclusive, conflicting and does not support a conclusion that Respondent has the character and general fitness to have an Ohio Loan Officer License.
6. Respondent knew that a criminal background was going to be conducted; therefore it is probable that when answering Question 5 he believed that the question was only inquiring about financially related criminal convictions, but his inconsistent explanations for his response to Question 5 prevent accepting either explanation. Respondent's inconsistent explanations at the hearing indicate that he was offering any argument that might prove successful, which demonstrates a lack of honesty. His testimony that he is honest and has never intentionally deceived anyone and his intent to never deceive anyone, while possibly true, has very little probative value and is unreliable without other evidence to substantiate his own sworn testimony.

7. Respondent's inconsistent explanations and inaccurate Application demonstrate that the public cannot rely on him to be honest and fair. Respondent has not 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 he will operate as a loan officer 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.
9. Respondent's failure to disclose his convictions on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation, false statement of material fact or engage in fraudulent or dishonest conduct. 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).
10. Respondent knew that a criminal background check was going to be conducted that would reveal his three alcohol related convictions. His knowledge that the Division would discover his convictions do not support a finding that his nondisclosure of the convictions was on the Application was intentional and therefore was a substantial misrepresentation, a false statement of material fact required by the law on the application, or fraudulent or dishonest conduct.

### **III. RECOMMENDATION**

In careful consideration of the record made in this matter, it is recommended that Jeremiah J. Hayes be found not 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 denied an Ohio Loan Officer License. It is also recommended that Mr. Hayes not be found to have violated Revised Code §1322.07(A)(B) and (C).

Respectfully submitted,

Landi Jackson-Forbes  
Hearing Officer  
October 2, 2006  
Docket No. 06-0013-LOD