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**STATE OF OHIO  
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

**SEAN A. HOLLAND**

DIVISION OF FINANCIAL  
INSTITUTIONS

CASE NO. M2006-9992945

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**REPORT AND RECOMMENDATION  
ADMINISTRATIVE HEARING OFFICER D. MICHAEL QUINN**

**February 5, 2007**

**I. FINDINGS OF FACT**

After having heard the testimony, considered the evidence, observed and weighed the demeanor and credibility of the witnesses, the following factual findings are made:

**A. BACKGROUND**

The above-captioned matter came before this Hearing Officer, 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."). Said hearing was scheduled for 10:00 AM on November 29, 2006, at 77 South High Street, 19<sup>th</sup> Floor, room 1936, Columbus, Ohio.

The hearing was held at the request of Respondent Sean A. Holland, of Streetsboro, Ohio (hereinafter the "Respondent") to consider the Division's Notice of Intent to Deny Loan Officer License Application, Notice of Opportunity for a Hearing (hereinafter "NOH"). Said NOH was based upon an allegation that Respondent was convicted of passing a bad check in 1993 and, also, that

Respondent failed to disclose his criminal conviction 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 Todd A. Nist. Neither Respondent nor any representative appeared or submitted a written statement, even though the start of the hearing was delayed until 10:42 AM.

At the hearing, State's Exhibits A, B, C, C-1, C-2, D and E were admitted into the record. One witness appeared for the Division.

## B. JURISDICTION

The Division issued the NOH against Respondent on September 12, 2006. The NOH was sent to the address Respondent provided on the Loan Officer Application but was returned as unclaimed. Respondent was then sent a letter indicating that the Division would publish Notice unless Respondent contacted the Division. The Division then sent the NOH to Respondent at the same address and it was received on, or about, October 16, 2006. Respondent submitted a written request, received by the Division on October 30, 2006. By letter sent regular mail October 31, 2006, the Division scheduled the hearing for November 9, 2006, and then continued the original date of the hearing to November 29, 2006, on its own motion, at which time the hearing went forward without any further communication from Respondent or anyone representing Respondent.

## C. PROPOSED ISSUANCE OF ORDER TO DENY LICENSE

1. The Division is the state agency responsible for the licensing and regulation of Mortgage Loan Officers pursuant to O.R.C. Chapter 1322.
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer (hereinafter "Loan Officer.") (Exhibit C-1.)
3. On July 7, 2006, the Division received from Respondent a Loan Officer Application (hereinafter the "Application"), signed by Respondent on June 19, 2006. (Exhibit C-1.)
4. On Question 6 on the Application, which asks if the applicant has been convicted of "any criminal offense involving ... passing bad checks ...", Respondent responded "No." (Exhibit C-1.)

5. On, or around, May 3, 1993, in Bedford Municipal Court, Ohio, Respondent pleaded No Contest to Passing Bad Checks, a misdemeanor of the first degree, and a finding was made of guilty. Respondent was sentenced to be incarcerated for 10 days, all suspended provided restitution of \$20.00 was paid and ordered to pay a fine of \$150. (Exhibit E.)
6. Respondent's explanation was that he gave a grocery store a \$20.00 check and, because he moved, he failed to have the bank statements needed to reconcile the account. He stated that he was not aware that he had insufficient funds in the account. (Exhibit E.)
7. Respondent did not appear or otherwise offer any evidence relating to his honesty, truthfulness, good reputation and that there is no basis in fact for believing that he would not commit such offenses again. Respondent did not offer an explanation why he failed to properly disclose the past criminal conviction.

## **II. CONCLUSIONS OF LAW**

### **A. JURISDICTIONAL ISSUE**

1. Pursuant to the Tenth District Court of Appeals decision in Porter v. State Medical Board (2006) 2006 Ohio App. LEXIS 5279, the Division failed to procedurally comply with O.R.C. Chapter 119 by not publishing or making personally deliver but, rather, sending a second certified mailing after the first mailing was returned as unclaimed.

### **B. LICENSE APPLICATION**

2. In 1993, Respondent was convicted of "a criminal offense involving passing bad checks", an offense specifically cited in section 1322.041(A)(3) O.R.C.
3. The passing bad checks conviction being proven by the Division, the Respondent must now prove, by a preponderance of the evidence, that the Respondent'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" in order to obtain a license. The Respondent must also demonstrate that that the

Respondent's character and general fitness will command the confidence of the public and will warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12, O.R.C. Sections 1322. 041(A)(3) and 1322. 041(A)(5), O.R.C.

4. Respondent did not offer any prove of his honesty, truthfulness, good reputation, or that he will not commit the offense, again.
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 bringing forth evidence of Respondent's Unauthorized Use of Property conviction and that Respondent did not answer Question 6 on the Application truthfully.
6. In eliciting evidence whether Respondent's character is honest, the Division demonstrated that, on or about March 5, 2004, Respondent signed an application under oath and filed that application with a state agency – the Division – to obtain a license to engage in an occupation and that application contained inaccurate material information, to wit: the "No" response to Question 6.
7. Filing an inaccurate Application is negatively demonstrative of an applicant's character and general fitness and whether the business will be operated honestly and fairly in compliance with law, including the lack of attention to detail.
8. Because the Application contained a false response, Respondent was not able to demonstrate that his activities show that he is honest and truthful. Respondent knew or should have known that he had been convicted of a crime.
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. Respondent's failure to put forth any evidence rebutting the Division's allegations requires a finding for the Division.


C. DISCUSSION

The Division has proven that the passing bad checks offense occurred. The burden to prove, by a preponderance of the evidence, that he should receive a license now falls to the Respondent. As the Respondent did not submit any written statements – other than Exhibit E which was part of the Application process – did not present any evidence at all, and, in fact, did not appear, there must be a finding for the Division in this case. However, as the Division failed to properly serve Respondent, no valid order may result from the instant NOH.

III. RECOMMENDATION

The recommendation to the Superintendent of Financial Institutions is to **TERMINATE CASE NUMBER M2006-9992945, THE NOTICE OF INTENT TO DENY A MORTGAGE LOAN OFFICER'S LICENSE TO SEAN A. HOLLAND.**

Respectfully submitted, 

 D. Michael Quinn  
Administrative Hearing Officer  
February 5, 2007  
Docket No. 06-DFI-208