

07 MAR -6 PM 4:00

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

IN THE MATTER OF:

TERRY L. HOGAN

:
:
:
:
:
:
:

**DIVISION OF FINANCIAL
INSTITUTIONS**

CASE NO. M2006-9992706

**LANDI JACKSON-FORBES
HEARING OFFICER**

REPORT AND RECOMMENDATION

Issued March 6, 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 Terry L. Hogan of Boardman, 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 on the basis that Respondent did not disclose criminal convictions on the loan officer license application submitted to the Division on March 2, 2006. The Division alleges that based upon Respondent's failure to disclose the convictions, Respondent 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 purposes of the Ohio Mortgage Broker Act. The Division also alleges violation of Revised Code §1322.07 (A), (B) and (C).

The hearing was held on September 12, 2006, at 77 South High Street, Room 1936, Columbus, Ohio. The Division appeared and was represented by Assistant Attorney General Timothy C. Loughry. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits 1 through 5 were admitted into the record without objection. Respondent's Exhibit A was also 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 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") on or about March 2, 2006. (State Ex. 1)
3. 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 and subsequent investigation revealed that in 1996 Respondent was charged and convicted with resisting arrest and disorderly conduct. (State Ex. 4 & 5)
4. Respondent checked the "No" box to Question 5 on the Application 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)
5. Respondent swore to or affirmed that the answers he gave in the Application are complete and true of his own knowledge. (State Ex. 1)
6. The Division proposes to deny Respondent a loan officer license on the bases that he did not disclose the convictions on his application, swore to or affirmed that the Application was complete and truthful, and submitted the Application to the Division to obtain a loan officer license. (State Ex. 2)
7. Respondent acknowledges that he has criminal convictions, and had not forgotten the underlying events that lead to his convictions or the convictions themselves. He explained that he did not disclose the convictions because he did not read the Application carefully when he answered the questions. He repeatedly testified that he did not intentionally lie on the Application, but hurriedly read through the Application, and did not give it the "attention that it deserved." Respondent believes that his nondisclosure of his criminal convictions on the Application a "simple mistake" because he "didn't read it." (Tr. at 13-15, 20, 44-45, 47 & 55)

8. Respondent testified that he also did not disclose his criminal convictions on an application for an insurance license that he submitted to the Ohio Department of Insurance and that the application was initially denied. Respondent stated:

It's an embarrassment that it happened twice, but it almost shows my absentmindedness, but my attention just wasn't on the application when I filled it out... I'll never do that again.

(Respondent Ex. A; Tr. at 43-44, 56 & 58)

9. Respondent believes that he is an honest law abiding citizen. John Beato, a close friend of Respondent, who is a marketing director with Work Financial Group and a branch manager of World Group Securities appeared as a witness on Respondent's behalf. Hillcrest Mortgage Company is affiliated with World Group Securities and is the employing/sponsoring mortgage broker company on Respondent's Application. Mr. Beato believes that Respondent did not intentionally lie on the Application but made a mistake because he did not read it thoroughly. He also believes that Respondent is honest, hardworking, and caring. No other evidence was offered attesting to Respondent's character fitness. (Tr. at 53)

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. 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 was found guilty and convicted of resisting arrest and disorderly conduct, which he failed to disclose on the Application. The Division did not rely on Respondent's underlying criminal record as a basis for intending to deny him a Loan Officer License, but the fact that Respondent answered untruthfully about the existence of his criminal convictions.
4. Respondent's explanation that his nondisclosure was a mistake because he did not take the time to read the loan officer license application, while possibly true, is troubling and raises concerns about his general fitness as it relates to detail. Respondent's hurried completion of the Application and inattention to detail raises concerns that he will not accurately complete loan documents. Those who participate in the mortgage industry are obligated to take the time and care to ensure that applications and loan-related documents are truthful and accurate in every respect. This obligation applies to documents relating to a loan as well as to documents relating to loan officer licensure. How an applicant answers an application is one of the Division's first opportunities to examine whether an applicant can fulfill the obligations of a mortgage loan officer honestly and competently. The public must also be able to trust the loan officer to pass complete and accurate information back and forth between the lender and the client. Respondent's explanation that he made a mistake because he did not take the time to read the Application does not support a finding that he has 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 purposes of the Ohio Mortgage Broker Act.
5. Respondent's statement that he will not rush through applications and inaccurately answer again is not reliable, probative or substantial evidence that he has the general fitness to command the confidence of the Division and the public. Evidence of Respondent's character was offered in the form of Mr. Beato's testimony, but no evidence was submitted of Respondent's work ethics or performance to substantiate the testimony that he will accurately complete forms and documents in the future.
6. The Division has also charged violations of the Ohio Mortgage Broker Act §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 his 1996 criminal convictions on the Application.
7. Respondent's failure to disclose his convictions on the Application does not automatically demonstrate that he intended to make a substantial misrepresentation on his Application. 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. 10th Dist., 2001).

8. Respondent's explanation that he made a mistake because he did not read the application carefully and give it the attention that it deserved demonstrates carelessness, not that he intentionally withheld his criminal record to mislead the Division. Respondent's carelessness, while not excusable, was not a substantial misrepresentation in the Application that violated Revised Code §1322.07(A), or a false statement of a material fact in violation of Revised Code §1322.07(B).
9. 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 inaccurately answering Question 5 demonstrates a lack of care. Respondent's inexcusable lack of care does not amount to engaging in conduct that is improper, fraudulent, or dishonest in violation of Revised Code §1322.07(C).
10. Respondent did not have the requisite intent to violate Revised Code §1322.07(A), (B) or (C).
11. Respondent's actual criminal offenses are now in the distant past, but by not fulfilling his duty to take the time to read the Application carefully and accurately answer Question 5, Respondent demonstrated that he lacks the present general fitness required to be a licensed loan officer. Since the burden was on him to overcome the Division's evidence, and he has not carried that burden, the application for a loan officer license should be denied.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Terry L. Hogan be found to have not presented sufficient evidence to overcome the Division's evidence questioning his 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 he be denied an Ohio Loan Officer License.

Respectfully submitted

Landi Jackson-Forbes
Hearing Officer
March 6, 2007
Docket No. 06-DFI-123