

DIVISION OF FINANCIAL INSTITUTIONS

CASE NO. 06-0096-LOD

**LANDI JACKSON-FORBES
HEARING OFFICER**

Issued October 27, 2006

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:

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 Jane Lewis, of Fairport Harbor, 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 January 27, 2006. The Division issued the NOH to Respondent on the bases that Respondent was convicted of one drug felony (fifth degree, non-trafficking) in 2005. The Division alleges that based upon Respondent's conviction 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 fraud, theft or any criminal offense involving money or securities and 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 purposes of the Ohio Mortgage Broker Act.

The hearing was held at 9:30 a.m. on March 14, 2006, at 77 South High Street, 19th Floor, Room 1924, Columbus, Ohio. The Division, represented by Assistant Attorney General Daniel P. Jones, appeared at the hearing. Respondent appeared *pro se* and testified at the hearing. At the hearing, State's Exhibits A through H were admitted into the record without objection and Respondent's Exhibits 1 through 4 was admitted into the record, over objection, as discussed in the transcript (hereinafter "Tr."). The record was kept open until March 28, 2006, 5:00 p.m., to allow Respondent to submit additional letters and other written statements by individuals in support of Respondent's character and honesty, over objections by the Division. Five additional notarized letters were received thereafter into the record, numbered 5 through 9, identified as follows: 5: letter by Jonathan F. Sobel, Esq.; 6: letter from Elena DeFranco, M.A., L.P.C.C.; 7: letter from Susan C. Hefty; 8: letter from Diane L. Stevenson; 9: letter from Constance B. Rusnek.

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. (State Ex. F)
2. Respondent is an individual who wishes to conduct business in Ohio as a Mortgage Loan Officer (State Ex. A)
3. Respondent applied with the Division on August 6, 2005 by submitting a signed, sworn and attested to Ohio Loan Officer Application ("Application") and Certificate of Employment. Stouffer Financial Services, LLC is listed as the employing Mortgage Broker. (State Ex. A)
4. Respondent swore to or affirmed that the answers she gave in the Application are complete and true of her own knowledge. (State Ex. A)
5. Within the 2005 Application Respondent checked the "no" box to Question 7, which asked:

Have you ever been a defendant in a criminal action in the Federal court system?

(State Ex. A, Tr. at 40-41)
6. Respondent added a notation to her response to Question 7 "Please see enclosed letter." Respondent's letter, attached to the Application, indicated that she had been convicted of a state drug charge. (State Ex. A; Tr. at 40-41)

7. Nowhere on the Application was there a question wherein Respondent would have been required to disclose the state drug conviction because it was not a trafficking conviction. (State Ex. A; Tr. at 40-41)
8. On October 11, 2005, the Division sent Respondent a letter requesting a detailed explanation of the facts of her conviction and a certified copy of the journal entry of her plea. Because Respondent had already submitted a detailed explanation of the facts surrounding her conviction, Respondent sent a certified copy of the Judgment Entry of Sentencing. (State's Ex. D)
9. Respondent's explanation of the 2005 drug conviction was as follows: In March of 2004 Respondent was seriously injured in a traffic accident. Her doctor prescribed a drug for pain relief. The drug was not sufficient to alleviate the pain. When Respondent went to a second doctor he also prescribed the same pain drug. After a few visits the second doctor asked if Respondent had received the same drug from the first doctor and Respondent stated she had. The second doctor then contacted the police. Respondent pleaded guilty by way of information to Deception to Obtain a Dangerous Drug, a felony of the fifth degree. (State Ex. B, D; Tr. 21-29.)
10. The Division issued the NOH on January 27, 2006. (State Ex F.)
11. Respondent requested a hearing, which request was received by the Division on February 6, 2006. (State Ex. G.)
12. On February 9, 2006, the Division scheduled a hearing on this matter for February 16, 2006, but continued the hearing on their own motion to March 14, 2006, at 9:30 p.m. (State Ex, H.)
13. Respondent voluntarily joined Alcoholics Anonymous in 1998 and has not had a drink for over 15 years. (State Ex. B; Respondent's Ex. 4, 6, 7, 9; Tr. 21-29.)
14. Respondent understands that she had become addicted to the pain medication. (State Ex. B, Tr. 21-29.)
15. Respondent has been a regular patient of psychological counseling as well as attending multiple weekly AA meetings, in order to help control her addictive tendencies, which she now recognizes to include the pain medication. (State Ex. B, Respondent Ex. 6; Tr. 21-29.)
16. Respondent's witness, Stouffer, is the owner of the firm for which Respondent intends to work if she is granted her license. Stouffer has known Respondent for 13 years. Stouffer spoke highly of Respondent and believes her to be honest, trustworthy and of the highest character, notwithstanding the drug conviction, of which he is aware. He believes that the drug offense was a one-time occurrence, resulting from a

combination of the significant pain Respondent was in and the addictive nature of the pain medication she was given. Because Respondent has stated her intention to avoid all pain medication in the future, Stouffer expressed confidence in her ability to avoid future addiction problems. (Respondent Ex. 4; Tr. 33-51.)

17. Respondent submitted notarized letters attesting to her good character and honesty. The fact that the letters were received after the hearing and were from witnesses not available to testify reduces the value which can be placed on the evidence. However, the fact that they were all notarized and spoke with some detail and specificity and indicated knowledge of the conviction gives greater weight to the evidence. (Respondent Ex. 4, 5, 7, 8, 9.)
18. Respondent's Probation Officer for Lake County submitted a letter indicating that Respondent was complying with the reporting requirements imposed by her sentence. (Respondent Ex. 1.)
19. Respondent works with others addicted to substances as a sponsor of AA members. (Respondent Ex. 9, Tr. 24.)

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 2005 Respondent pleaded guilty to a charge of Deception to Obtain a Dangerous Drug.
2. Deception to Obtain a Dangerous Drug is not one of the offenses listed in Section 1322.041(A)(3), R.C., the conviction for which requires a respondent to 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."

3. The Division erroneously charged Respondent with a violation of Revised Code §1322.041(A)(3), but did not allege or prove that Respondent's one conviction fell within that section. Consequently, Respondent does not have to 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."
4. The Division charged, and must prove, 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 the purposes of the Ohio Mortgage Broker Act.
5. In eliciting evidence whether Respondent's activities prove that the Respondent is honest and truthful, the Division demonstrated that 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 truthful information, to wit: the unsolicited response to Question 7.
6. In eliciting evidence whether Respondent's activities prove that the Respondent is honest and truthful, the Division demonstrated that 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 additional information beyond what was required in the interest of full disclosure.
7. Filing an accurate Application is positively demonstrative of an applicant's character and general fitness and of whether the business will be operated honestly and fairly in compliance with law. Providing information beyond that required by the Application, especially when that information is negative to the applicant, demonstrates that Respondent is honest, of good character, and that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act.
8. Respondent's witness and testamentary letters, including that from the parole officer, demonstrate Respondent does 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.
9. The Division's single proof 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 the purposes of the Ohio Mortgage Broker Act was the fact that Respondent pleaded guilty to the drug charge in 2005, shortly before the Application was submitted.

10. The conviction occurring just a few months prior to the Application requires consideration. However, the crime is not one of the statutorily listed crimes and does not involve money or securities. The Application form itself does not inquire regarding these types of convictions, giving rise to the belief that, if Respondent can demonstrate that other factors should control, the particular timing of the conviction need not prohibit Respondent from receiving the license.
11. Respondent was able to demonstrate that her employment and community activities since the offenses show that Respondent is honest or truthful. Respondent presented evidence to demonstrate that she has undergone, and continues in, a substance abuse program and that she has avoided further use of drugs.
12. Respondent did present evidence to substantiate her own sworn testimony of her honesty in her activities since the offense.
13. Respondent did provide sufficient evidence to overcome the Division's single piece of evidence questioning her general fitness to command the confidence of the public and the belief that the business will be operated honestly and fairly.

III. RECOMMENDATION

In careful consideration of the record made in this matter, it is recommended that Jane Lewis be found to have presented sufficient evidence to prove, by a preponderance of the evidence, that her 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 she be granted an Ohio Loan Officer License.

Respectfully submitted,

Landi Jackson-Forbes
Hearing Officer
October 27, 2006
Docket No. 06-DFI-025